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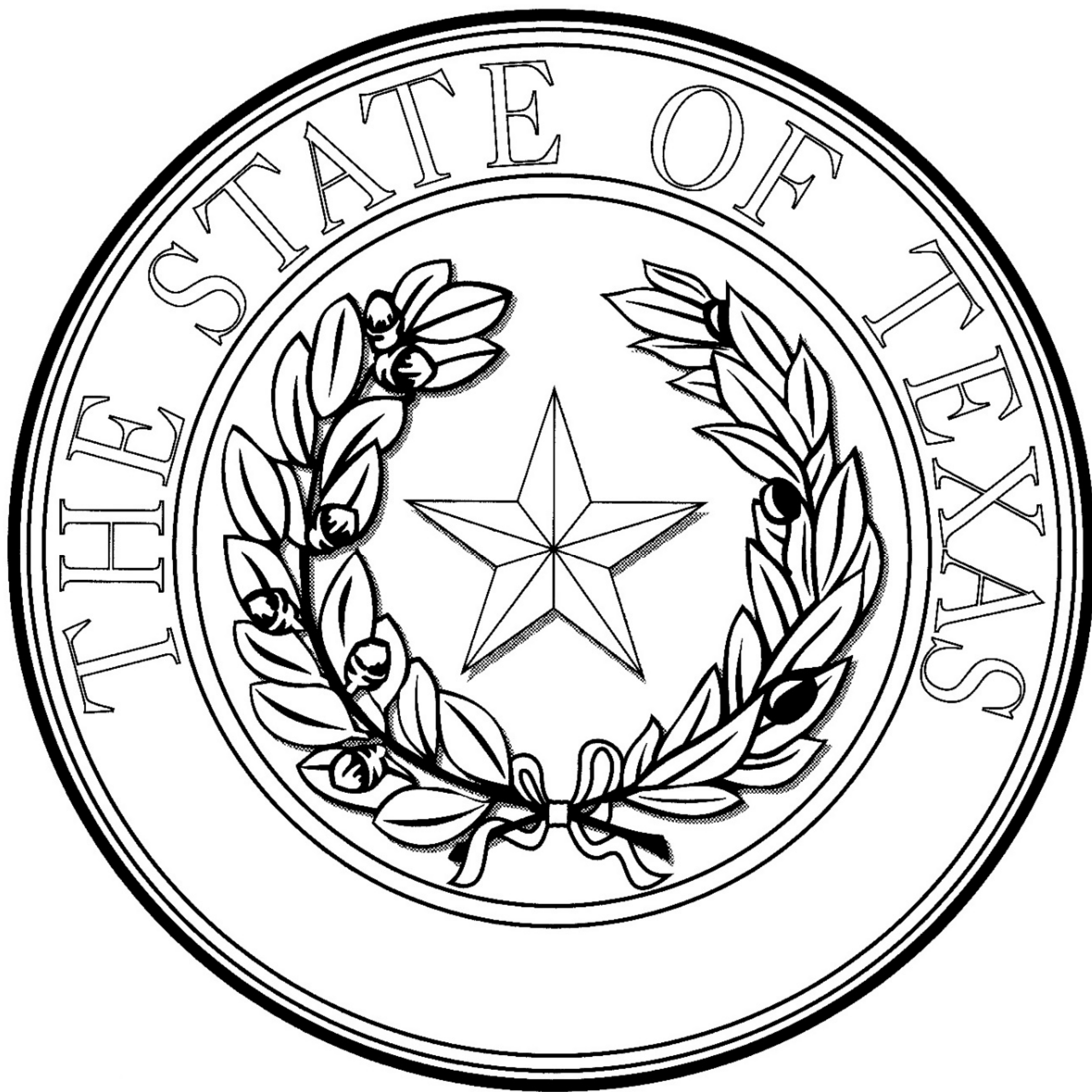

TEXAS REGISTER

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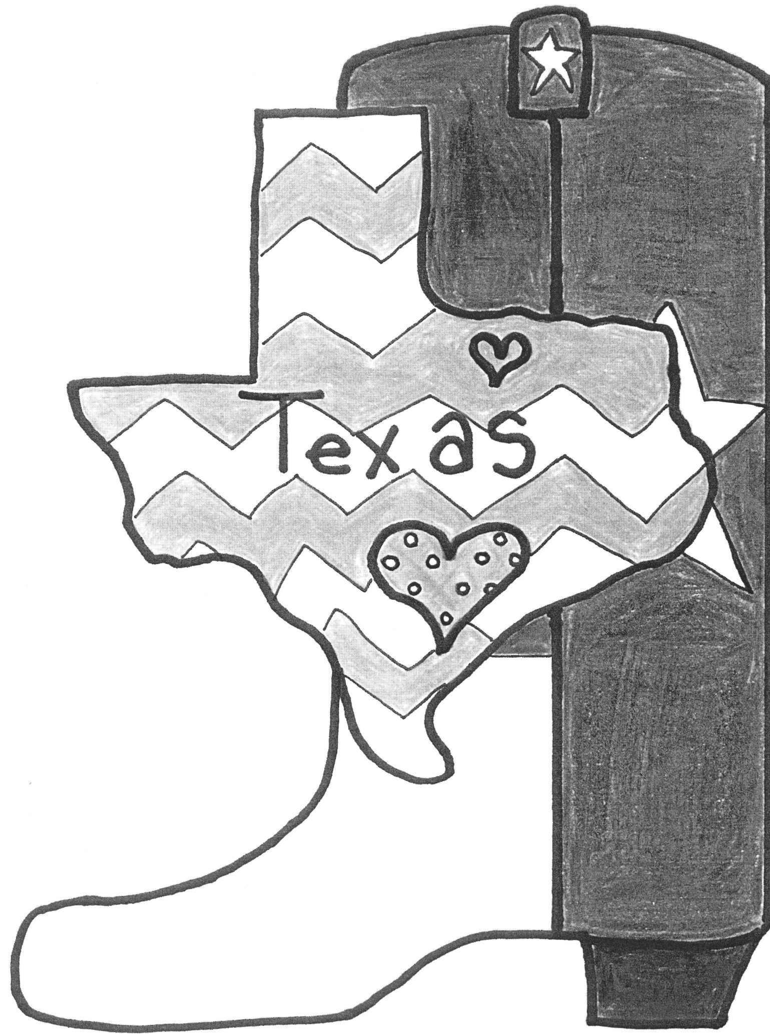

Texas

THE GOVERNOR

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

Appointments

Appointments for July 31, 2024

Appointed to the Gulf States Marine Fisheries Commission for a term to expire March 17, 2026, Douglass W. "Doug" Boyd of Boerne, Texas (Mr. Boyd is being reappointed).

Greg Abbott, Governor

TRD-202403537

Proclamation 41-4128

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Dan Patrick, Acting Governor of the State of Texas, issued successive disaster proclamations on Friday, July 5, 2024, certifying that Hurricane Beryl poses a threat of imminent disaster, including widespread and severe property damage, injury, and loss of life due to widespread flooding, life-threatening storm surge, damaging wind, and heavy rainfall in Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Cameron, DeWitt, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jackson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Matagorda, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Victoria, Webb, Wharton, Willacy, Wilson, Zapata, and Zavala Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in the additional counties of Anderson, Angelina, Austin, Bastrop, Bell, Bowie, Brazoria, Brazos, Burleson, Caldwell, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Dallas, Delta, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Galveston, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill, Hopkins, Houston, Hunt, Jasper, Jefferson, Kaufman, Lamar, Lee, Leon, Liberty, Limestone, Madison, Marion, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Walker, Waller, Washington, Williamson, and Wood Counties.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 6th day of July, 2024.

Dan Patrick, Acting Governor

TRD-202403502

Proclamation 41-4129

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be

suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 28th day of July, 2024.

Greg Abbott, Governor

TRD-202403503

Proclamation 41-4130

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 28th day of July, 2024.

Greg Abbott, Governor

TRD-202403504

Proclamation 41-4131

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions continue to exist in these and other counties in Texas, with the exception of Calhoun, Colorado, Edwards, Lavaca, Matagorda, Tom Green, Wharton, and Zavala Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Bandera, Bee, Blanco, Burnet, Cameron, Comal, Comanche, Concho, Culberson, Denton, El Paso, Hamilton, Hays, Hidalgo, Hudspeth, Irion, Jeff Davis, Karnes, Kendall, Kent, Kerr, Kinney, Llano, Lubbock, Maverick, Medina, Midland, Presidio, Real, Terrell, Travis, Uvalde, Val Verde, Victoria, Willacy, Williamson, Wilson, and Zapata Counties.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 28th day of July, 2024.

Greg Abbott, Governor

TRD-202403505

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0550-KP

Requestor:

The Honorable Matthew Poston

Liberty County Attorney

1923 Sam Houston Street, Suite 202

Liberty, Texas 77575

Re: Whether a county commissioners court may pay the legal defense costs incurred by a district attorney in successfully defending against a grievance filed against her with the Office of Chief Disciplinary Counsel of the Texas State Bar; and related questions (RQ-0550-KP)

Briefs requested by August 28, 2024

RQ-0551-KP

Requestor:

The Honorable Sean B. Galloway

Andrews County Attorney

121 N.W. Avenue A

Andrews, Texas 79714

Re: Whether a county commissioner may simultaneously serve as chief of the local fire department (RQ-0551-KP)

Briefs requested by August 28, 2024

RQ-0552-KP

Requestor:

The Honorable Donna Campbell, M.D.

Chair, Senate Committee on Nominations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether electronic notice captured by a QR code on a traffic violation card satisfies the notice requirements of Transportation Code sections 543.003 and 543.004 (RQ-0552-KP)

Briefs requested by August 28, 2024

RQ-0553-KP

Requestor:

The Honorable Bob Hall

Chair, Senate Committee on Administration

Texas State Senate

Post Office Box 12068

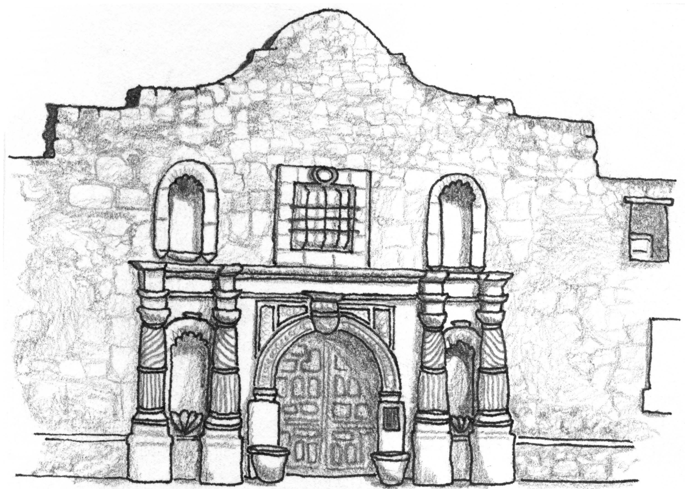
Austin, Texas 78711-2068

Re: Whether a vote by the board of a school district or governing body of an open-enrollment charter school affirming the existing policy to permit a chaplain to be hired by or volunteer at a school complies with the Eighty-eight Legislature's Senate Bill 763 (RQ-0553-KP)

Briefs requested by August 28, 2024

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

TRD-202403501
Justin Gordon
General Counsel
Office of the Attorney General
Filed: July 30, 2024



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 6. ORGANIZATION AND ADMINISTRATION

The Texas Ethics Commission (the TEC) proposes amendments to Texas Ethics Commission Rules in Chapter 6.

Specifically, the TEC proposes amendments to rules in Subchapter A of Chapter 6 (relating to General Rules), including §6.1 regarding Definitions, and §6.9 regarding Computation of Time.

The TEC also proposes amendments to rules in Subchapter B of Chapter 6 (relating to Officers and Employees of the Commission), including §6.21 regarding Officers of the Commission, and §6.23 regarding Commission Staff.

The TEC also proposes amendments to rules in Subchapter C of Chapter 6 (relating to Commission Meetings), including §6.35 regarding Called Meetings, §6.39 regarding Meeting Agenda, §6.43 regarding Speakers Addressing the Commission, §6.45 regarding Order and Conduct of Commission Meeting and §6.47 regarding Tape Recording of Meeting; Minutes.

This proposal, along with the contemporaneous proposal of the repeal of certain other rules in Chapter 6, amends the rules used in the organization and administration of the TEC.

State law requires state agencies to "review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding its organization and administration, which are codified in Chapter 6. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on the TEC's organization and administration.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER A. GENERAL RULES

1 TAC §6.1, §6.9

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code

§6.1. Definitions.

The following words and terms, when used in this Part [~~title~~], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Government Code, Chapter 571 (concerning Texas Ethics Commission).

(2) Administrative Procedure Act--The Government Code, Chapter 2001 (concerning Administrative Procedure).

(3) Agency--The state agency governed by the commission, as it functions and operates through the administrative staff hired by the commission and its executive director.

(4) Commission--The Texas Ethics Commission, as constituted and described in the Texas Constitution, Article 3, §24a and in the Government Code, Chapter 571.

(5) Document--A report, complaint, response, letter, or any other written material.

(6) Executive director--The person employed by the commission to serve as the agency's chief administrative officer, or any other employee of the commission acting as the designee of the executive director.

[(7) Family member or relative--An individual who is related within the second degree of affinity or consanguinity, as defined by the Government Code, Chapter 573, Subchapter B (concerning Relationships by Consanguinity or by Affinity).]

(7) [(8)] Filer--A person required to file a report with the commission or a local filing authority in accordance with a law enforced by the commission [this title].

(8) [(9)] Individual--A human being who has been born and is alive.

(9) [(10)] Local filing authority--A public servant other than the Texas Ethics Commission with whom a filer must file a report in accordance with a law enforced by the commission [this title, as identified in §20.5 of this title (relating to Reports Filed with a County Filing Authority) and §20.7 of this title (relating to Reports Filed with Other Local Filing Authority)].

(10) [(11)] Open Meetings Law--The Government Code, Chapter 551 (concerning Open Meetings).

(11) [(12)] Open Records Law--The Government Code, Chapter 552 (concerning Open Records).

(12) [(13)] Person--An individual, representative, corporation, association, or other entity, including any nonprofit corporation, or any agency or instrumentality of federal, state, or local government.

(13) [(14)] Postmark--A postal cancellation by the United States Postal Service that contains the post office name, state, and zip code and the month, day, and year the canceling post office accepted custody of the material.

[(15) Presiding officer--The person elected to serve as the commission's chairman or chairwoman under §6.21 of this title (relating to Officers of the Commission).]

(14) [(16)] Report--Any document or other information required to be filed under this title.

(15) [(17)] Staff--Employees of the commission, hired by the commission or the executive director.

(16) [(18)] Title 15--The Election Code, Title 15 (concerning Regulating Political Funds and Campaigns).

[(19) First responder--An individual who is:]

[(A) a peace officer whose duties include responding rapidly to an emergency;]

[(B) fire protection personnel, as that term is defined by Section 419.021, Government Code;]

[(C) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision;]

[(D) an ambulance driver; or]

[(E) an individual certified as emergency medical services personnel by the Department of State Health Services.]

[(20) Judicial office--The office of:]

[(A) chief justice or justice, supreme court;]

[(B) presiding judge or judge, court of criminal appeals;]

[(C) chief justice or justice, court of appeals;]

[(D) district judge;]

[(E) judge, statutory county court; or]

[(F) judge, statutory probate court.]

[(21) Non-judicial office--An elective public office and the secretary of state, but not including an office described by paragraph (20) of this section.]

§6.9. Computation of Time.

(a) This section states how to compute a period of time prescribed or allowed by this Part [title], by any order of the agency, or by any applicable statute. The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included. However, if the last day of the time period would not be a business day as defined by Section 552.0031 of the Texas Government Code [Saturday, a Sunday, or a legal holiday], the period is extended until the next day that is [not] a business day. [Saturday, a Sunday, or a legal holiday. A legal holiday, for purposes of this section, is any day other than a Saturday or Sunday that the agency is closed for a holiday established by state law.]

(b) A time period described by statute or this Part [title] to be a certain number of business days is calculated under subsection (a) of this section without including any day [Saturday, Sunday, or legal holiday] within that time period that is not a business day as defined by Section 552.0031 of the Texas Government Code.

(c) A document required to be filed or served by a deadline established by statute or this Part [title] is filed or served when it is actually received. A document may be deemed to be filed or served when it is deposited with the United States Postal Service, properly addressed to the recipient, with all postage prepaid. The date of the postmark on the envelope for the document is presumed to be the date the document was deposited with the United States Postal Service.

(d) A document filed or served by delivery to the United States Postal Service is presumed to have been filed before 5:00 p.m. on the date indicated by the postmark.

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

Filed with the Office of the Secretary of State on July 23, 2024.

TRD-202403289
James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 463-5800

SUBCHAPTER B. OFFICERS AND EMPLOYEES OF THE COMMISSION

1 TAC §6.21, §6.23

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code.

§6.21. Officers of the Commission.

[(a) The commission shall select a presiding officer and a vice-presiding officer.]

(a) [(b)] The commission's [Commission] chair and vice chair shall be [officers are] elected annually by majority vote of the commission. The election shall take place at the first commission meeting held after June 1 of each year. Each officer shall serve until his or her successor is selected.

(b) [(c)] The chair [presiding officer] and vice chair [the vice-presiding officer] shall be members of [elected from] different political parties [party caucus lists].

(c) [(d)] The chair and vice chair [presiding officer] may be re-elected; however, if a new chair [presiding officer] is elected he or she [it] should be a member of [from] a different political party [caucus list] than the former chair [presiding officer].

(d) [(e)] The person elected to serve as the commission's chair shall also serve as the commission's presiding officer. The presiding officer shall preside at all meetings of the commission. While presiding, the presiding officer shall direct the order of the meeting, appoint committees and persons to chair committees, recognize persons to be heard at hearings, set reasonable and necessary time limits for speakers, and take other actions to clarify issues and preserve order. Unless the chair appoints a presiding officer pro tem pursuant to subsection (f) of this section, [When the presiding officer is absent,] the vice chair [vice-presiding officer] shall perform all duties of the presiding officer when the chair is absent.

(e) [(f)] In addition to other powers identified elsewhere in this Part, the The] presiding officer may perform the following actions of the commission:

(1) Sign previously approved subpoenas and orders;

(2) Schedule hearings and meetings; and

(3) Timely respond to [litigation] matters on behalf of the commission, including litigation matters, when action is required before the next scheduled meeting [and is within the scope of the authorization granted by the commission; and.].

[(4) Respond to matters on behalf of the commission when action is required and is within the scope of the authorization granted by the commission.]

(f) [(g)] The chair [presiding officer] may appoint a commissioner as presiding officer [chair] pro tem to preside over a hearing held by the commission.

(g) If the chair or vice chair is unable to participate in a matter pending before the commission, either may select a replacement from among the other commissioners to exercise their authority and fulfill their duties under this Part and any other applicable law.

§6.23. Commission Staff.

(a) The executive director is the chief administrative officer of the agency. The executive director shall attend commission meetings at the pleasure of the commission and serve as liaison between the commission and the public.

(b) The commission delegates to the executive director all powers conferred on the commission by the Act or other law, except for any power that requires a vote of the commission or approval of the chair. Any action taken by the executive director shall conform with all applicable law, including this Part [title] and other policies that may be adopted from time to time by the commission.

(c) The executive director shall attend commission meetings unless specifically excused by the commission and shall perform any duties or assignments established by the commission.

(d) The general counsel shall attend commission meetings unless specifically excused by the commission, shall provide legal advice to the commission and executive director, and shall perform any duties delegated by the executive director.

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

Filed with the Office of the Secretary of State on July 23, 2024.

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James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 463-5800

SUBCHAPTER C. COMMISSION MEETINGS

1 TAC §§6.35, 6.39, 6.43, 6.45, 6.47

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code.

§6.35. Called Meetings.

The executive director shall give notice to each commissioner of the date and time of each meeting. Notice under this section shall be provided a reasonable amount of time in advance of the meeting[, and may be by telephone, fax, or mail].

§6.39. Meeting Agenda.

(a) The agenda shall consist of agenda items proposed by the executive director prior to the meetings for which the agenda is specified. At a reasonable time before filing a copy of the agenda as required by the Open Meetings Law, the executive director shall provide a copy of the proposed agenda to the presiding officer. If the presiding officer is not reasonably available, the executive director shall [provide a copy of the proposed agenda to the vice-presiding officer. If the vice-presiding officer is not reasonably available, the executive director shall] provide a copy of the proposed agenda to any two commissioners.

(b) The presiding officer, a commission member with the consent of the presiding officer, or any two commissioners may direct the executive director to include an item on the agenda if it complies with the posting requirements specified by law. The presiding officer may direct the executive director to remove an item included on a proposed agenda unless that item is requested by two commission members other than the presiding officer.

(c) A member of the public may ask the executive director to place an item on a proposed agenda. The executive director shall advise

the commission of the request and may include the item on a proposed agenda.

§6.43. Speakers Addressing the Commission.

(a) The executive director shall prescribe a speaker registration form. Each person who wishes to speak at a commission meeting shall provide the following information:

(1) the speaker's name;

(2) the person or entity the speaker represents, if any;

(3) the agenda item the speaker wishes to address; and

(4) his or her mailing address and telephone number.

(b) Any person who addresses the commission shall state his or her name and the name of the person or entity the speaker represents, if any, for purposes of the [~~tape~~] recording under §6.47 of this title (relating to [~~Tape~~] Recording of Meeting; Minutes).

§6.45. Order and Conduct of Commission Meeting.

(a) The presiding officer shall preside at all meetings of the commission. The presiding officer shall direct the order of the meeting in accordance with its agenda, recognize persons to be heard, set reasonable and necessary time limits for speakers, maintain and enforce appropriate standards of conduct, and take any other action necessary in his or her discretion to clarify issues and preserve order. [~~When the presiding officer is absent, the vice-presiding officer shall perform all duties under this subsection.~~]

(b) Commission meetings shall be conducted in accordance with rules and procedures set forth in the most recently published edition of Robert's Rules of Order.

(c) With unanimous consent of all commissioners present, any provision or requirement of this section may be waived.

(d) No action of the commission that otherwise complies with law shall be void or invalid because the action was taken in violation of a rule or procedure established by this section.

§6.47. [~~Tape~~] Recording of Meeting; Minutes.

(a) All meetings of the commission shall be [~~tape~~] recorded. The [~~tape~~] recording shall be the official record of actions taken at the meeting.

(b) The presiding officer shall announce the names of each commissioner who makes or seconds a motion to be voted upon by the commission. After the vote has been taken, the presiding officer shall announce the vote in a manner that identifies how each commissioner voted, if a commissioner abstained, or if a commissioner was not present for the vote.

(c) The executive director shall prepare minutes after each meeting that reflect all commission votes and other actions taken during the meeting. The minutes shall be approved by vote of the commission at a subsequent commission meeting.

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

Filed with the Office of the Secretary of State on July 23, 2024.

TRD-202403291
James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 463-5800

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CHAPTER 6. ORGANIZATION AND ADMINISTRATION

The Texas Ethics Commission (the TEC) proposes the repeal of Texas Ethics Commission rules in Chapter 6.

Specifically, the TEC proposes the repeal of rules in Subchapter A of Chapter 6 (relating to General Rules), including §6.5 regarding Authority to Adopt Rules, and §6.7 regarding Actions That Require Six Votes.

The TEC also proposes the repeal of rules in Subchapter C of Chapter 6 (relating to Commission Meetings), including §6.31 regarding Quorum, and §6.33 regarding Frequency of Meetings.

This proposal, along with the contemporaneous proposal of amendments to certain other rules in Chapter 6, amends the rules used in the organization and administration of the TEC.

State law requires state agencies to "review and consider for readoption each of its rules...not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding its organization and administration, which are codified in Chapter 6. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on the TEC's organization and administration.

James Tinley, General Counsel, has determined that for the first five-year period the proposed repealed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repealed rules.

The General Counsel has also determined that for each year of the first five years the proposed repealed rules are in effect, the public benefit will be consistency and clarity in the Commission's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rules.

The General Counsel has determined that during the first five years that the proposed repealed rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed repealed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repealed rules may do so at any Commission meeting during the agenda item relating to the proposed repealed rules. Information concerning the date,

time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER A. GENERAL RULES

1 TAC §6.5, §6.7

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Chapter 571 of the Government Code.

§6.5. Authority to Adopt Rules.

§6.7. Actions That Require Six Votes.

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

Filed with the Office of the Secretary of State on July 23, 2024.

TRD-202403287
James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 463-5800

SUBCHAPTER C. COMMISSION MEETINGS

1 TAC §6.31, §6.33

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Chapter 571 of the Government Code.

§6.31. Quorum.

§6.33. Frequency of Meetings.

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

Filed with the Office of the Secretary of State on July 23, 2024.

TRD-202403288
James Tinley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 463-5800

CHAPTER 12. SWORN COMPLAINTS

The Texas Ethics Commission (the TEC) proposes new Chapter 12 in TEC Rules, regarding Sworn Complaints.

Specifically, the TEC proposes new rules in Subchapter A of Chapter 12 (relating to Respondent's Rights), including §12.1 regarding Notice, §12.2 regarding Representation by Counsel, §12.3 regarding *Ex Parte* Communications and §12.4 regarding Agreements to be in Writing.

The TEC also proposes new rules in Subchapter B of Chapter 12 (relating to Filing and Initial Processing of Complaint), including §12.11 regarding Deadline for Filing a Complaint, §12.12 regarding File Date for a Complaint, §12.13 regarding Description of Violation, §12.14 regarding Statement of Facts and §12.15 regarding Commission Initiated Complaint.

The TEC also proposes new rules in Subchapter C of Chapter 12 (relating to Investigation and Discovery), including §12.21 regarding Response to Notice of Complaint, §12.22 regarding Written Questions, §12.23 regarding Production of Documents During Preliminary Review, §12.24 regarding Proposed Settlement Before Preliminary Review Hearing, §12.25 regarding Subpoenas Issued by Commission, and §12.26 regarding Subpoenas Issued by Counsel for the Respondent.

The TEC also proposes new rules in Division 1 of Subchapter D of Chapter 12 (relating to Pleadings and Motions: General Rules), including §12.31 regarding Purpose and Effect of Motions, §12.32 regarding Required Form of Motions, §12.33 regarding Certificate of Conference, §12.34 regarding Motion Deadlines, §12.35 regarding Method of Filing, §12.36 regarding Service of Documents, §12.37 regarding Non-conforming Documents, §12.38 regarding Amended and Supplemental Filings, and §12.39 regarding Application of this Subchapter.

The TEC also proposes new rules in Division 2 of Subchapter D of Chapter 12 (relating to Pleadings and Motions: Types of Motions), including §12.41 regarding Motion to Extend Time, §12.42 regarding Motion for Continuance, §12.43 regarding Motion to Dismiss, §12.44 regarding Motion for Summary Disposition, and 12.45 regarding Motion for Sanctions.

The TEC also proposes new rules in Division 1 of Subchapter E of Chapter 12 (relating to Hearings: General Rules), including §12.51 regarding Conduct and Decorum, §12.52 regarding Private Deliberations, and §12.53 regarding Record of Rulings.

The TEC also proposes new rules in Division 2 of Subchapter E of Chapter 12 (relating to Hearings: Powers of the Presiding Officer), including §12.61 regarding Selection and Delegation of Presiding Officer, §12.62 regarding Set Hearing, §12.63 regarding Consolidate or Sever Matters for Hearing, §12.64 regarding Conduct Hearings, §12.65 regarding Rule of Evidentiary Matters and §12.66 regarding Sign Orders and Subpoenas.

The TEC also proposes new rules in Division 3 of Subchapter E of Chapter 12 (relating to Hearings: Preliminary Review Hearings), including §12.71 regarding Notice of Preliminary Review Hearing, and §12.72 regarding Preliminary Review Hearing.

The TEC also proposes new rules in Division 4 of Subchapter E of Chapter 12 (relating to Hearings: Formal Hearings), including §12.81 regarding Order of Formal Hearing, §12.82 regarding Notice of Formal Hearing, §12.83 regarding Formal Hearing: Venue, §12.84 regarding Presentation of Evidence, §12.85 regarding Rules of Evidence, and §12.86 regarding Number of Exhibits.

The TEC also proposes new rules in Subchapter F of Chapter 12 (relating to Resolutions), including §12.91 regarding Agreed Resolutions, §12.92 regarding Resolution of Technical or De Minimis Allegations, §12.93 regarding Default Proceedings and §12.94 regarding Final Orders After Formal Hearings.

This proposal, along with the contemporaneous proposal of the repeal of all existing rules in Chapter 12, amends the rules used in sworn complaint proceedings at the Ethics Commission.

State law requires state agencies to "review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code § 2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC started its comprehensive review with the TEC's rules regarding sworn complaint procedures, which are codified in Chapter 12. The repeal of existing rules and adoption of new rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on sworn complaint procedures.

James Tinley, General Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistency and clarity in the TEC's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

The General Counsel has determined that during the first five years that the proposed rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The TEC invites comments on the proposed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed rules may do so at any Commission meeting during the agenda item relating to the proposed rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the TEC's website at www.ethics.state.tx.us.

SUBCHAPTER A. RESPONDENT'S RIGHTS

1 TAC §§12.1 - 12.4

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.1. Notice.

(a) A notice required to be sent to a complainant under chapter 571 of the Government Code shall be sent to the address most recently provided to the commission by the complainant.

(b) A notice required to be sent to a respondent under chapter 571 of the Government Code shall be sent to the address provided to the commission by the complainant or, if the respondent has provided a different address, to the address most recently provided to the commission by the respondent.

(c) A person entitled to receive notice may waive that right by filing a written waiver with the executive director.

(d) A respondent or complainant in a complaint may waive the right under section 571.032 of the Government Code to receive written notices related to the complaint by registered or certified mail, restricted delivery, return receipt requested, and may agree to receive written notices related to the complaint by first class mail, electronic mail, or other means.

§12.2. Representation by Counsel.

(a) A respondent has the right to be represented by counsel retained by the respondent in any proceeding of a complaint.

(b) Counsel representing a respondent shall enter an appearance with the commission that contains the counsel's mailing address, email address, telephone number, and state bar number. If the respondent's counsel is not licensed to practice law in Texas, the representative must show authority to appear as the respondent's counsel.

(c) The commission may, through the approval of its executive director, admit an attorney who is a resident of and licensed to practice law in another state, and who is not an active member of the State Bar of Texas, to represent a respondent before the commission if the nonresident attorney complies with the requirements of Tex. Gov't Code §82.0361 and Rule XIX of the Rules Governing Admission to the Bar of Texas and files a motion, accompanied by proof of compliance with those provisions, with the commission requesting to be admitted to represent a respondent.

(d) This rule does not allow a person to engage in the unauthorized practice of law.

§12.3. Ex Parte Communications.

Neither commission enforcement staff nor respondents may communicate with commissioners or the general counsel outside the presence of the other party for the purpose of influencing a decision on a pending sworn complaint after the commission accepts jurisdiction over an allegation.

§12.4. Agreements to be in Writing.

No stipulation or agreement with respect to any matter in a complaint shall be effective unless it has been:

(1) reduced to writing and signed by each person making the stipulation or agreement, or by that person's authorized representative, and filed with the commission; or

(2) entered into the record during the course of a hearing.

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

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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.11 - 12.15

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.11. Deadline for Filing a Complaint.

(a) The commission has no jurisdiction over an alleged violation:

(1) if the alleged violation is also a criminal offense, and if, at the time the complaint is filed or at the time the commission would vote to initiate a preliminary review of a matter, the allegation would be barred from criminal prosecution by operation of the applicable statute of limitations; or

(2) if the alleged violation is not also a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed or the date the commission would vote to initiate a preliminary review of a matter.

(b) For purposes of this section, a complaint is not filed unless it complies with the requirements of section 571.122 of the Government Code.

§12.12. File Date for a Complaint.

The file date for a complaint is the date the complaint is received by the commission.

§12.13. Description of Violation.

(a) If a complaint does not include the specific rule or provision of law alleged to have been violated, the complaint must clearly and concisely describe facts that, if true, would constitute a violation of a law administered and enforced by the commission.

(b) A complaint that erroneously cites a specific rule or provision of law is nonetheless sufficient if the correct citation can reasonably be ascertained by the commission. When a complaint erroneously cites a specific rule or provision of law, the commission shall cite the correct rule or provision of law in the notice provided to the respondent.

§12.14. Statement of Facts.

(a) The alleged facts must provide sufficient detail to reasonably place the respondent on notice of the law violated and of the manner and means by which the violation allegedly occurred and to afford the respondent a basis on which to prepare a response.

(b) The facts alleged may adopt by reference the content of documents submitted with the complaint. However, the allegations must reasonably identify those portions of the document that are relevant to the alleged violation.

§12.15. Commission Initiated Complaint.

(a) Commission staff may gather or present documents or evidence, make recommendations, and otherwise communicate with commissioners in contemplation of, or in preparation for, a commission initiated preliminary review. Commissioners may request documents, evidence, or recommendations, and otherwise communicate with commission staff in contemplation of, or in preparation for, a commission initiated preliminary review.

(b) A preliminary review initiated by the commission under section 571.124(b) of the Government Code is deemed to be a complaint for purposes of all further proceedings under chapter 571 of the Government Code and of this chapter.

(c) Documents or evidence gathered by the commission and commission staff in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

(d) Discussions between the commission and commission staff regarding gathering documents or evidence in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

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SUBCHAPTER C. INVESTIGATION AND DISCOVERY

1 TAC §§12.21 - 12.26

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.21. Response to Notice of Complaint.

(a) The response required by section 571.1242 of the Government Code must:

(1) be in writing;

(2) admit or deny the allegations set forth in the complaint; and

(3) be signed by the respondent.

(b) If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the commission may issue an order imposing a civil penalty for failure to file a response.

(c) If a respondent does not submit a response that satisfies the requirements of subsection (a) of this section, the commission may issue an order imposing a penalty for failure to file a complete response.

§12.22. Written Questions.

(a) A complainant or respondent must respond to written questions not later than 15 business days after receiving the written questions.

(b) If the commission staff submits written questions to a respondent, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled beginning on the date the commission sends the written questions and resets on the date the commission receives the respondent's written response.

§12.23. Production of Documents During Preliminary Review.

(a) Before applying for the commission to issue a subpoena under §571.137(a-1) of the Government Code, commission staff must send to the person from whom records are sought a written request for the production or inspection of documents or other tangible things that:

(1) specifies the items to be produced or inspected, either by individual item or by category, and describes with reasonable particularity each item and category; and

(2) provides a reasonable amount of time, but not less than 30 days, to comply with the request.

(b) The person from whom records are sought must produce or allow the inspection of documents or other tangible things within the person's possession, custody or control within the time provided in the request, or submit in writing, as appropriate:

(1) objections to those records that are unreasonable, improper, or unnecessary to investigate the complaint; or

(2) that, after a diligent search, no items have been identified that are responsive to the request.

(c) Commission staff shall provide to the commission any response it receives to its request for production or inspection when applying for a subpoena under §571.137(a-1) of the Government Code.

(d) If the commission staff applies to the commission for the issuance of a subpoena pursuant to section 571.137(a-1) of the Government Code, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled beginning on the date the staff applies to the commission for the subpoena and resets on either:

(1) the date the commission rejects the staff's application for a subpoena;

(2) the date the person to whom the subpoena is directed complies with the subpoena; or

(3) the date the commissionreceives a final ruling on a person's failure or refusal to comply with a subpoena that is reportedto a district court pursuant to section 571.137(c) of the Government Code.

§12.24. Proposed Settlement Before Preliminary Review Hearing.

If commission staff proposes to a respondent an agreement to settle a complaint that would be effective upon approval by the commission and the respondent, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is met. If a respondent approves a proposed agreement, commission staff must submit the proposed agreement to the commission to seek final approval at the next scheduled commission meeting. If a respondent rejects a proposed agreement, the matter shall be set for a preliminary review hearing at the next commission meeting for which notice has not yet been posted. If a respondent rejects a proposed agreement within 45 days before the date of a commission meeting, the matter shall be set for a preliminary review hearing at the next commission meeting thereafter.

§12.25. Subpoenas Issued by Commission.

(a) A subpoena issued under §571.137 of the Government Code shall specify the date, time, place, and manner for execution of the subpoena.

(b) A subpoena issued under section 571.137 of the Government Code that requires a person to provide testimony shall be served on that person at least 10 business days before the date the subpoena is to be executed.

(c) A subpoena sought by commission staff under section 571.137(a) of the Government Code must be requested in writing and may be approved and issued by the unanimous agreement of the chair and vice chair. If either the chair or vice chair does not approve the request, then staff may seek approval through a vote of the commission, in which case the subpoena will be issued upon the affirmative vote of five commissioners.

§12.26. Subpoenas Issued by Counsel for the Respondent.

(a) This section applies only to subpoenas issued by a respondent's counsel under section 571.125(f) (concerning the issuance of a subpoena for a witness in a preliminary review hearing) or 571.130(f) (concerning the issuance of a subpoena for a witness in a formal hearing) of the Government Code.

(b) A subpoena must be issued in the name of "The State of Texas" and must:

(1) state the sworn complaint numbers for the sworn complaints at issue in the hearing at which the witness is summoned to appear;

(2) state that the subpoena pertains to a sworn complaint proceeding before the Texas Ethics Commission;

(3) state the date on which the subpoena is issued;

(4) identify the person to whom the subpoena is directed;

(5) state the time and place of the preliminary review hearing or formal hearing at which the subpoena directs the person to appear;

(6) identify the respondent at whose instance the subpoena is issued and the respondent's attorney of record;

(7) specify with reasonable particularity any documents with which the person to whom the subpoena is directed shall appear;

(8) state the text of §12.31(i) of this chapter (relating to Purpose and Effect of Motions); and

(9) be signed by the attorney issuing the subpoena.

(c) A subpoena must command the person to whom it is directed to appear and give testimony at:

(1) a preliminary review hearing; or

(2) a formal hearing.

(d) A subpoena may only direct a person to appear, with or without documents, and give testimony at a preliminary review hearing or formal hearing before the commission.

(e) A subpoena may be issued only by the counsel of record for a respondent in a sworn complaint proceeding before the commission against that respondent.

(f) Service.

(1) Manner of service. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the sworn complaint proceeding, the subpoena may be served on the witness's attorney of record.

(2) Deadline for service. A subpoena must be served upon the person required to appear at least 21 days before the preliminary review hearing or formal hearing at which the person is required to appear. The subpoena and proof of service must be filed with the commission within three days of its service on the person required to appear.

(3) Proof of service. Proof of service must be made by filing either:

(A) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(B) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

(g) Response.

(1) Except as provided in this subsection, a person served with a subpoena must comply with the command stated therein unless discharged by the commission or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of hearing from day to day until discharged by the commission or the party summoning the witness.

(2) If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(3) A person commanded to appear with documents must produce the documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

(4) A person commanded to appear at a hearing must file any motion to quash the subpoena or objection to a requirement to appear with certain documents with the commission no later than the 14th day before the hearing at which the person is directed to appear. Commission staff may move to quash a subpoena or object to appearance with certain documents in the same manner as the person commanded to appear by the subpoena. The filer of a motion to quash or objection to a requirement to appear with certain documents must serve the motion or objection on the proponent of the subpoena in person, by mail, by commercial delivery service, by fax, by email, or by other such manner as the presiding officer of the commission may direct, no later than the deadline for filing the motion to quash or objection to appearance with documents with the commission. After affording commission staff and the person commanded to appear an opportunity to move to quash the subpoena or object to appearance with certain documents, and affording the proponent of the subpoena an opportunity to respond to the motion to quash or objection to appearance with documents, the commission's presiding officer shall rule on a motion to quash or objection to appearance with documents.

(5) A person commanded to attend and give testimony, or to produce documents or things, at a preliminary review hearing or formal hearing may object to giving testimony or producing documents at the time and place specified for the hearing, rather than under paragraph (4) of this subsection.

(6) A party's appearance with a document in response to a subpoena directing the party to appear with the document authenticates the document for use against that party in any proceeding before the commission unless the party appearing with the document objects to the authenticity of the document, or any part of it, at the time of the party's appearance, stating the specific basis for objection. An objection must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity. The requirement that the commission provide a reasonable opportunity to establish the document's authenticity may be satisfied by the opportunity to present a witness to authenticate the document at a subsequent hearing before the commission.

(h) A counsel for a respondent issuing a subpoena must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on a motion to quash or objection to appearance with documents, the presiding officer must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The presiding officer may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

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SUBCHAPTER D. PLEADINGS AND MOTIONS

DIVISION 1. GENERAL RULES

1 TAC §§12.31 - 12.39

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.31. Purpose and Effect of Motions.

To make a request, including to obtain a ruling, order, or any other procedural relief, a party shall file a written motion. The motion shall describe specifically the action requested and the basis for the requested action. Unless otherwise specified in this chapter, a motion is not granted until it has been ruled on by the executive director, the presiding officer, or by vote of the commission, as applicable, even if the motion is uncontested or agreed.

§12.32. Required Form of Motions.

Written requests for commission action shall be typewritten or printed legibly on 8-1/2 x 11-inch paper and timely filed with the commission. Photocopies are acceptable if copies are clear and legible. All filings shall contain or be accompanied by the following:

(1) the name of the party seeking action;

(2) the sworn complaint number;

(3) the parties to the case and their status as commission staff or respondent;

(4) a concise statement of the type of relief, action, or order desired and identification of the specific reasons for and facts to support the action requested;

(5) the signature of the submitting party or the party's authorized representative;

(6) a proposed order sought by the moving party; and

(7) a reference in the motion's title to a request for a hearing on the motion if the moving party seeks a hearing.

§12.33. Certificate of Conference.

Except as provided in this chapter or unless otherwise ordered by the presiding officer, all motions shall include a certificate of conference that complies substantially with one of the following examples:

(1) Example one: "Certificate of Conference: I certify that I conferred with {name of other party or other party's authorized representative} on {date} about this motion. {Succinct statement of other party's position on the action sought and/or a statement that the parties negotiated in good faith but were unable to resolve their dispute before submitting it to the commission for resolution.} Signature."; or;

(2) Example two: "Certificate of Conference: I certify that I made reasonable but unsuccessful attempts to confer with {name of other party or other party's authorized representative} on {date or dates} about this motion. {Succinctly describe these attempts.} Signature."

§12.34. Motion Deadlines.

(a) The following deadlines apply to motions in which a hearing is either sought by a party or scheduled by the presiding officer:

(1) motions must be filed with the commission no later than 30 days before the date of the hearing;

(2) responses to motions must be filed with the commission no later than 14 days before the date of the hearing; and

(3) replies to responses must be filed with the commission no later than 7 days before the date of the hearing.

(b) A scheduling order containing the deadlines under this section shall be included with the notice required by section 571.126 of the Government Code. The presiding officer may amend a scheduling order upon the request of a party for good cause shown. A decision by the presiding officer to amend a scheduling order or to deny a motion, response, or evidence shall be issued to the parties to a hearing within 5 business days after the decision is made.

(c) Except as otherwise provided in this chapter or as ordered or allowed by the commission, responses to motions shall be in writing and filed by the applicable deadline. However, if the presiding officer finds good cause has been shown, responses to written motions may be presented orally at hearing.

(d) The presiding officer may deny a party's motions, responses, or replies or deny a party's evidence from being admitted into the record of the hearing if the party fails to timely file.

§12.35. Method of Filing.

(a) Motions, responses, and other documents in a sworn complaint proceeding must be filed with the commission by emailing it to sworncomplaints@ethics.state.tx.us and including the following information in the subject line:

(1) the sworn complaint number; and

(2) the title of the document.

(b) The time and date of filing is the electronic time stamp affixed by the commissions email system. Documents received when the commission is closed shall be deemed filed the next business day.

§12.36. Service of Documents.

(a) On the same date a document is filed with the commission, a copy shall also be sent to each party or the party's authorized representative by hand-delivery; by regular, certified, or registered mail; or by email, upon agreement of the parties.

(b) A person filing a document shall include a certificate of service that certifies compliance with this section.

(1) A certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on {date}, a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., email, regular mail, fax, certified mail.} {Signature}"

(2) If a filing does not certify service, the commission may:

(A) return the filing;

(B) send a notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served; or

(C) send a copy of the filing to all parties.

(c) The following rebuttable presumptions shall apply regarding a party's receipt of documents served by another party:

(1) If a document was hand-delivered to a party, the commission shall presume that the document was received on the date of filing at the commission.

(2) If a document was served by courier-receipted overnight delivery, the commission shall presume that the document was received no later than the next business day after filing at the commission.

(3) If a document was served by regular, certified, or registered mail, or non-overnight courier-receipted delivery, the commission shall presume that it was received no later than three days after mailing.

(4) If a document was served by fax or email before 5:00 p.m. on a business day, the commission shall presume that the document was received on that day; otherwise, the commission shall presume that the document was received on the next business day.

(d) The sender has the burden of proving date and time of service.

§12.37. Non-conforming Documents.

When a filed document fails to conform to the requirements of this subchapter, the executive director may either:

(1) reject the filing, identify the errors to be corrected and state a deadline for correction; or

(2) accept the filing.

§12.38. Amended and Supplemental Filings.

A party may amend or supplement its pleadings as follows:

(1) If a notice of a hearing or other documents provided to the complainant or respondent under section 571.126(b)(2) of the Government Code contain a material defect, the commission may correct the notice or other document and deliver it to the complainant and respondent as soon as practicable and in the same manner as the original notice. If the respondent does not receive the correction at least 10 days before the date of the hearing, the presiding officer may by order reschedule the hearing. The executive director shall notify the parties and the complainant of the date, time, and place of the hearing as soon as practicable.

(2) As to all other matters, an amendment or supplementation that includes information material to the substance of a hearing, requests for relief, changes to the scope of a hearing, or other matters that unfairly surprise other parties may not be filed later than seven days before the date of the hearing, except by agreement of all parties or by permission of the presiding officer.

§12.39. Application of this Subchapter.

If there is a conflict between this section and a requirement found in another section relating to a specific type of motion, the more specific provision applies.

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DIVISION 2. TYPES OF MOTIONS

1 TAC §§12.41 - 12.45

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.41. Motion to Extend Time.

(a) The executive director may extend a deadline pursuant to §571.136 of the Government Code.

(b) A request for more time to file a document or respond to discovery shall include:

(1) a statement of the number of extension requests previously sought in the case by the movant;

(2) the specific reason for the request; and

(3) a proposed date for the deadline the movant seeks to extend.

(c) Motions to extend time shall be filed no later than five days before the date of the deadline at issue or shall state good cause for presenting the motion after that time. If the executive director finds good cause has been demonstrated, the executive director may consider a motion filed after that time.

(d) Unless otherwise ordered by the executive director, responses to motions for extension of a deadline are due three days after receipt of the motion.

(e) A motion for continuance or extension of time is not granted until it has been ruled on by the executive director, even if the motion is uncontested or agreed.

§12.42. Motion for Continuance.

(a) The presiding officer may postpone or delay a hearing.

(b) A request to postpone or delay a hearing shall include:

(1) a statement of the number of motions for continuance previously filed in the case by the movant;

(2) the specific reason for the request; and

(3) whether the movant is available if the hearing or prehearing conference is continued to the next tentatively scheduled commission meeting.

(c) Motions for continuance shall be filed no later than five days before the date of the proceeding or shall state good cause for presenting the motion after that time. If the presiding officer finds good cause has been demonstrated, the presiding officer may consider a motion filed after that time.

(d) Responses to motions for continuance shall be in writing, except a response to a motion for continuance made on the date of the proceeding may be presented orally at the proceeding. Unless otherwise ordered or allowed by the presiding officer, responses to motions for continuance shall be made by the earlier of:

(1) three days after receipt of the motion; or

(2) the date and time of the proceeding.

(e) A motion for continuance is not granted until it has been ruled on by the presiding officer, even if the motion is uncontested or agreed.

§12.43. Motion to Dismiss.

(a) A party may move to dismiss a complaint in whole or in part on the grounds that an alleged violation has no basis in law or fact. An alleged violation has no basis in law if the allegations, if taken as true, together with inferences reasonably drawn from them do not constitute a violation of a rule adopted by or a law administered and enforced by the commission. An alleged violation has not basis in fact if no reasonable person could believe the facts alleged.

(b) A motion to dismiss must identify each alleged violation to which it is addressed, and must state specifically the reasons the alleged violation has no basis in law, no basis in fact, or both.

(c) The commission may, but is not required to, conduct an oral hearing on the motion to dismiss. The commission may not consider evidence in ruling on the motion and must decide the motion based solely on the facts alleged in the complaint, together with any complaint exhibits permitted by commission rule or statute.

§12.44. Motion for Summary Disposition.

(a) Summary disposition shall be granted on all or part of a complaint's allegations if the allegations, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. Summary disposition is not permitted based on the ground that there is no evidence of one or more

essential elements of a claim or defense on which the opposing party would have the burden of proof at the formal hearing.

(b) Unless otherwise ordered by the presiding officer:

(1) A party must file a motion for summary disposition at least 45 days before a scheduled hearing on the merits.

(2) The response and opposing summary disposition evidence shall be filed no later than 15 days after the filing of the motion.

(c) A motion for summary disposition shall include the contents listed below. A motion may be denied for failure to comply with these requirements.

(1) The motion shall state the specific issues upon which summary disposition is sought and the specific grounds justifying summary disposition.

(2) The motion shall also separately state all material facts upon which the motion is based. Each material fact stated shall be followed by a clear and specific reference to the supporting summary disposition evidence.

(3) The first page of the motion shall contain the following statement in at least 12-point, bold-face type: "Notice to parties: This motion requests the commission to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits."

(d) Responses to motions.

(1) A party may file a response and summary disposition evidence to oppose a motion for summary disposition.

(2) The response shall include all arguments against the motion for summary disposition, any objections to the form of the motion, and any objections to the summary disposition evidence offered in support of the motion.

(e) Summary disposition evidence.

(1) Summary disposition evidence may include deposition transcripts; interrogatory answers and other discovery responses; pleadings; admissions; affidavits; materials obtained by discovery; matters officially noticed; stipulations; authenticated or certified public, business, or medical records; and other admissible evidence. No oral testimony shall be received at a hearing on a motion for summary disposition.

(2) Summary disposition may be based on uncontroverted written testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the presiding officer must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(3) All summary disposition evidence offered in support of or in opposition to a motion for summary disposition shall be filed with the motion or response. Copies of relevant portions of materials obtained by discovery that are relied upon to support or oppose a motion for summary disposition shall be included in the summary disposition evidence.

(f) Proceedings on motions.

(1) The presiding officer may order a hearing on a motion for summary disposition and the commission may rule on the motion without a hearing.

(2) The affirmative vote of six commissioners is necessary to grant summary disposition finding a violation by a preponderance of the evidence.

(3) If summary disposition is granted on all contested issues in a case, the record shall close on the date ordered by the presiding officer or on the later of the filing of the last summary disposition arguments or evidence, the date the summary disposition response was due, or the date a hearing was held on the motion. The commission shall issue a final decision and written report, including a statement of reasons, findings of fact, and conclusions of law in support of the summary disposition rendered.

(4) If summary disposition is granted on some but not all of the contested issues in a case, the commission shall not take evidence or hear further argument upon the issues for which summary disposition has been granted. The commission shall issue an order:

(A) specifying the facts about which there is no genuine issue;

(B) specifying the issues for which summary disposition has been granted; and

(C) directing further proceedings as necessary. If an evidentiary hearing is held on the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly. After the evidentiary hearing is concluded, the commission shall include in the final decision a statement of reasons, findings of fact, and conclusions of law in support of the partial summary disposition rendered.

§12.45. Motion for Sanctions.

(a) The commission has the authority to impose appropriate sanctions against a party or its representative for:

(1) filing a motion or pleading that is deemed by the commission to be groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery;

(3) failure to comply with a commission order; or

(4) violating §12.51 of this chapter (relating to Conduct and Decorum).

(b) By record vote of at least six commissioners, the commission may issue an order imposing sanctions when justified by party or representative behavior described in subsection (a) of this section and after notice and opportunity for hearing. Sanctions may include:

(1) disallowing or limiting further discovery by the offending party;

(2) charging all or part of the expenses of discovery against the offending party or its representatives;

(3) deeming designated facts be admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a claim or defense or prohibiting the party from introducing designated matters into the record;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(6) striking motions or testimony in whole or in part.

(c) In deciding if a complaint is frivolous, the commission will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

(1) the timing of the complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;

(2) the nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed with the commission;

(3) the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;

(4) if respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;

(5) any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

(6) any evidence of the complainant's motives in filing the complaint.

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

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SUBCHAPTER E. HEARINGS
DIVISION 1. GENERAL RULES

1 TAC §§12.51 - 12.53

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.51. Conduct and Decorum.

(a) Parties, representatives, and other participants at a hearing shall conduct themselves with dignity, show courtesy and respect for one another and for the commission, and follow any additional guidelines of decorum prescribed by the presiding officer, including adherence to the amount of time allotted for the hearing. Attorneys shall adhere to the standards of conduct in the Texas Lawyer's Creed promulgated by the Supreme Court of Texas and the Court of Criminal Appeals and the Texas Disciplinary Rules of Professional Conduct promulgated by the Supreme Court of Texas.

(b) Attorneys should advise their clients and witnesses of the applicable rules of conduct and decorum.

(c) All objections, arguments, and other comments by parties shall be directed to the commission and not to an opposing party.

(d) While a party is addressing the commission or questioning a witness, any other party shall not interrupt for any purpose except to make a valid objection.

(e) Parties shall not approach the dais without leave of the presiding officer and must not lean on the dais.

(f) Parties shall remain seated at the counsel table at all times except:

(1) when addressing the commission; and

(2) whenever it may be proper to handle documents, exhibits, or other evidence.

(g) Parties must question witnesses and deliver arguments to the commission while seated at the counsel table or standing at the lectern. If a party seeks to question or argue from another location, leave of the presiding officer must be requested and granted.

(h) Parties must request leave of the presiding officer to conduct a demonstration.

(i) The presiding officer may take appropriate action to maintain and enforce proper conduct and decorum, including:

(1) issuing a warning;

(2) sanctioning a party pursuant to §12.33 of this chapter (relating to Certificate of Conference);

(3) excluding persons from the proceeding;

(4) recessing the proceeding; and

(5) clearing the hearing room of persons causing a disruption.

§12.52. Private Deliberations.

As provided by section 571.139 of the Government Code, the commission may deliberate in private regarding the resolution of a sworn complaint or motion, including a dismissal of a complaint, a determination of whether a violation within the jurisdiction of the commission has occurred, and an appropriate penalty upon a finding of a violation. As provided by section 2001.061 of the Government Code, the presiding officer may permit the executive director, general counsel, or other employee of the commission who has not participated in a hearing in the complaint for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

§12.53. Record of Rulings.

Rulings not made orally at a recorded hearing shall be in writing and issued to all parties of record.

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

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DIVISION 2. POWERS OF THE PRESIDING OFFICER

1 TAC §§12.61 - 12.66

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.61. Selection and Delegation of Presiding Officer.

(a) Except as otherwise provided in subsection (b), the commission's chair shall serve as the presiding officer for all hearings.

(b) The chair may appoint another commissioner to preside over a hearing held by the commission.

§12.62. Set Hearings.

The presiding officer may order that one or more hearings be held to address any matters pending in a sworn complaint proceeding, including motions to dismiss, motions for discovery or subpoenas, motions for sanctions, or any other matters related to the proceeding. The commission shall provide such an order to the parties and the complainant within five business days after the decision is made. The order shall include the date, time, and place of the hearing and a list of the matters to be addressed at the hearing.

§12.63. Consolidate or Sever Matters for Hearing.

(a) The presiding officer may order that cases be consolidated or joined for hearing if there are common issues of law or fact and consolidation or joint hearing will promote the fair and efficient handling of the matters.

(b) The presiding officer may order severance of issues if separate hearings on the issues will promote the fair and efficient handling of the matters.

§12.64. Conduct Hearings.

The presiding officer shall have the authority and duty to conduct a full, fair, and efficient hearing, including the power to:

(1) administer oaths;

(2) take testimony, including the power to question witnesses and to request the presence of a witness from a state agency;

(3) require the prefiling of exhibits and testimony;

(4) exclude irrelevant, immaterial, or unduly repetitious testimony;

(5) reasonably limit the time for presentations of evidence or argument;

(6) reopen the record when justice requires, if the commission has not issued a final order; and

(7) take other steps conducive to a fair and efficient formal hearing.

§12.65. Rule on Evidentiary Matters.

The presiding officer shall have the power to rule on admissibility and other questions of evidence.

§12.66. Sign Orders and Subpoenas.

The presiding officer may sign previously approved subpoenas and orders.

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

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DIVISION 3. PRELIMINARY REVIEW HEARINGS

1 TAC §12.71, §12.72

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.71. Notice of Preliminary Review Hearing.

(a) Commission staff shall provide notice of a preliminary review hearing to a respondent and complainant at least 30 days before the date of the hearing and must include:

(1) the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the factual matters asserted.

(b) Commission staff shall provide to a respondent at least 10 days before the date of the hearing:

(1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and

(2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(c) The respondent shall provide to commission staff the contents described by subsections (b)(1) and (b)(2) of this section at least 5 days before the date of the hearing. If a respondent or commission staff fail to comply with this section, the commission may reschedule the hearing or proceed with the hearing and exclude at the hearing evidence, documents, and testimony provided by the respondent or commission staff, as applicable, but such failure may be excused upon a showing of good cause.

§12.72. Preliminary Review Hearing.

(a) Commission staff and the respondent may present any relevant evidence at a preliminary review hearing, including examination and cross-examination of witnesses.

(b) Commission staff and the respondent may present an opening and closing statement at a preliminary review hearing.

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

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DIVISION 4. FORMAL HEARINGS

1 TAC §§12.81 - 12.86

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.81. Order of Formal Hearing.

As soon as practicable after the commission orders a formal hearing, the executive director shall provide to the parties to the complaint, and to the complainant, a copy of the commission's decision to order the hearing. The decision shall include the date, time, and place of the hearing and be signed by the presiding officer.

§12.82. Notice of Formal Hearing.

(a) Commission staff shall provide notice of a formal hearing to a respondent and complainant at least 60 days before the date of the hearing and must include, in addition to the contents required by section 571.126(b) of the Government Code:

(1) the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the factual matters asserted.

(b) Commission staff shall file and provide to a respondent and complainant at least 30 days before the date of the hearing:

(1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and

(2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(c) The respondent shall file and provide to commission staff at least 14 days before the date of the hearing:

(1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and

(2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(d) If a respondent or commission staff fail to comply with this section, the commission may reschedule the hearing or proceed with the hearing and exclude at the hearing evidence, documents, and testimony provided by the respondent or commission staff, as applicable, but such failure may be excused upon a showing of good cause.

§12.83. Formal Hearing: Venue.

When the commission orders a formal hearing the commission shall decide whether the formal hearing will be held before the commission or before the State Office of Administrative Hearings.

§12.84. Presentation of Evidence.

(a) After the resolution of all prehearing matters, each party shall make its presentation during the formal hearing. Commission staff shall make the first opening statement. The respondent or respondent's authorized representative shall then make an opening statement, should the respondent wish to do so at that time. The respondent may reserve the opening statement until the presentation of the respondent's case.

(b) Following opening statements, commission staff may present evidence in its case. At the conclusion of the presentation of the evidence, commission staff may rest. The respondent or the respondent's authorized representative may then make an opening statement, or, if an opening statement has already been made, present evidence in its defense of the allegations raised in the notice of formal hearing. At the conclusion of the presentation of evidence by the respondent, the respondent may rest.

(c) After both parties have rested their case, commission staff shall make a closing argument. The respondent may then make a closing argument. Commission staff may then make a reply.

(d) Unless otherwise ordered by the presiding officer, after closing arguments, evidence will be closed and the case will be turned over to the members of the commission for deliberation and decision.

§12.85. Rules of Evidence.

(a) The Texas Rules of Evidence as applied in a nonjury civil case in district court govern a formal hearing only to the extent consistent with Chapter 571 of the Government Code.

(b) Evidence may be admitted if it meets the standards set out in section 2001.081 of the Government Code.

§12.86. Numbering of Exhibits.

(a) Each exhibit to be offered shall first be numbered by the offering party.

(b) Copies of the original exhibit shall be furnished by the party offering the exhibit to the commission and to each party present at the hearing unless otherwise ordered by the presiding officer.

(c) An exhibit excluded from evidence will be considered withdrawn by the offering party and will be returned to the party.

(d) Pre-numbered exhibits may be filed with the commission prior to the formal hearing. Pre-numbered exhibits that are not offered and admitted at the hearing will be deemed withdrawn.

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

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SUBCHAPTER F. RESOLUTIONS

1 TAC §§12.91 - 12.94

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.91. Agreed Resolutions.

(a) Upon the affirmative vote of six commissioners, the commission may enter into an agreed resolution with a respondent to settle a complaint filed against the respondent, including an assurance of voluntary compliance, a notice of reporting error, or an agreed order.

(b) An assurance of voluntary compliance:

(1) resolves a sworn complaint:

(A) with no determination that a violation within the jurisdiction of the commission has occurred, if entered into before a preliminary review hearing is completed; or

(B) with a determination that all violations within the jurisdiction of the commission, when viewed as a whole in consideration of any mitigating action taken by the respondent, are technical or de minimis; and

(2) may include a civil penalty.

(c) A notice of reporting error resolves a complaint with a determination that all violations within the jurisdiction of the commission are reporting errors that do not materially defeat the purpose of disclosure and may include a civil penalty in the form of an assessment fee.

(d) An agreed order resolves a sworn complaint with a determination that one or more violations within the jurisdiction of the commission occurred and may include a civil penalty.

§12.92. Resolution of Technical or De Minimis Allegations.

(a) Technical, clerical, or de minimis violations for purposes of §§571.0631 and 571.140 of the Government Code means any violation of law under the TEC's jurisdiction that neither materially affects disclosure nor undermines public trust in government.

(b) Examples of technical, clerical, or de minimis violations include:

(1) Typographical or incomplete information on a campaign finance report that is not misleading and does not materially affect disclosure;

(2) Failure to include a disclosure statement or a highway right-of-way notice on political advertising;

(3) Failure of a non-incumbent to use the word "for" in a campaign communication that is not otherwise misleading;

(4) Failure to file a timely campaign finance report or campaign treasurer appointment if the alleged violations do not materially affect disclosure;

(5) Failure to timely respond to a sworn complaint if the respondent shows good cause for the late response.

(c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all of the alleged violations in the sworn complaint are technical or de minimis, the executive director may enter into an assurance of voluntary compliance with the respondent. Before entering into an assurance of voluntary compliance, the executive director may require a respondent to correct the violations.

§12.93. Default Proceedings.

(a) If a respondent fails to respond to a complaint by the deadline set by Section 571.1242 or fails to appear for a formal hearing, the commission may, upon notice and hearing, proceed on a default basis.

(b) A default proceeding under this section requires adequate proof of the following:

(1) the notice of hearing to the respondent stated that the allegations listed in the notice could be deemed admitted and that the relief sought in the notice of hearing might be granted by default against the party that fails to appear at the hearing;

(2) the notice of hearing satisfies the requirements of sections 2001.051 and 2001.052 of the Government Code; and

(3) the notice of hearing was:

(A) received by the defaulting party; or

(B) sent by regular mail or by certified mail, restricted delivery, return receipt requested, to the party's last known address as shown by the commission's records.

(c) In the absence of adequate proof to support a default, the presiding officer shall continue the hearing and direct commission staff to provide adequate notice of hearing. If adequate notice is unable to be provided, the commission may dismiss the complaint.

(d) Upon receiving the required showing of proof to support a default, the commission may by vote deem admitted the allegations in the notice of hearing and issue a default decision.

§12.94. Final Orders after Formal Hearings.

(a) The commission should issue a final order within 60 days after the conclusion of a formal hearing.

(b) The executive director shall dismiss a complaint if the commission fails to adopt a motion under section 571.132 of the Government Code. The dismissal shall state the complaint was dismissed because there were insufficient commission votes to find that there was or was not a violation of law.

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

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CHAPTER 12. SWORN COMPLAINTS

The Texas Ethics Commission (the TEC) proposes the repeal of all existing rules in Texas Ethics Commission Chapter 12.

Specifically, the Commission proposes the repeal of all rules in Subchapter A of Chapter 12 (relating to General Provision and Procedures), including §12.5, regarding Deadline for Filing a Complaint, §12.6 regarding File Date for Purposes of Commission Response Deadline, §12.7 regarding Confidentiality, §12.9 regarding Compliance with Open Meetings Law and Open Records Law, §12.11 regarding Delegation to Executive Director, §12.13 regarding Representation by Counsel, §12.15 regarding Appearance of Complainant at Hearing, §12.19 regarding Agreements to be in Writing, §12.21 regarding Notice, §12.23 regarding Hearing in Respondent's Absence, §12.25 regarding Waiver of Hearing, §12.27 regarding Deadline Extension, §12.28 regarding Production of Documents During Preliminary Review, §12.29 regarding Subpoenas Issued by Commission, §12.30 regarding Subpoenas Issued by Counsel for the Respondent, §12.31 regarding Conduct and Decorum, §12.33 regarding Sanctioning Authority, §12.34 regarding Agreed Orders, §12.35 regarding Frivolous Complaint, and §12.36 regarding Assessment of Civil Penalty.

The TEC also proposes the repeal of all rules in Subchapter B of Chapter 12 (relating to Filing and Initial Processing of a Complaint), including §12.51 regarding Non-Complying Complaint, §12.52 regarding Response to Notice of Complaint, §12.53 regarding Commission Initiated Complaint, §12.59 regarding Description of Violation, §12.61 regarding Statement of Facts, and §12.67 regarding Copies and Documents Provided by the Commission.

The TEC also proposes the repeal of all rules in Subchapter C of Chapter 12 (relating to Investigation and Preliminary Review), including §12.81 regarding Technical, Clerical, or De Minimis Violations, and §12.83 regarding Preliminary Review.

The TEC also proposes the repeal of all rules in Subchapter D of Chapter 12 (relating to Preliminary Review Hearing), including §12.84 regarding Notice of Preliminary Review Hearing, §12.85 regarding Preliminary Review Hearing, §12.86 regarding Motions for Continuance, and §12.87 regarding Resolution of Preliminary Review Hearing.

The TEC also proposes the repeal of all rules in Division 1 of Subchapter E of Chapter 12 (relating to Formal Hearing: General Procedures), including §12.101 regarding Application and Construction, §12.102 regarding Order of Formal Hearing, §12.103 regarding Notice of Formal Hearing, §12.117 regarding Formal Hearing: Venue, and §12.119 regarding Resolution after a Formal Hearing.

The TEC also proposes the repeal of all rules in Division 2 of Subchapter E of Chapter 12 (relating to Formal Hearing: Scheduling, Filing, and Service), including §12.121 regarding Prehearing Conferences, §12.123 regarding Scheduling Orders, §12.125 regarding Filing of Documents, and §12.127 regarding Service of Documents.

The TEC also proposes the repeal of all rules in Division 3 of Subchapter E of Chapter 12 (relating to Formal Hearing: Powers and Duties of Commission and Presiding Officer), including §12.131 regarding Powers and Duties of the Presiding Officer, and §12.133 regarding Orders From the Commission.

The TEC also proposes the repeal of all rules in Division 5 of Subchapter E of Chapter 12 (relating to Formal Hearing: Pleadings and Motions), including §12.151 regarding Required Form of Pleadings, §12.153 regarding Motions, Generally, and §12.155 regarding Motions for Continuance and to Extend Time.

The TEC also proposes the repeal of all rules in Division 6 of Subchapter E of Chapter 12 (relating to Formal Hearing: Hearings and Prehearing Conferences), including §12.161 regarding Time Allotted to Parties, §12.163 regarding Presentation of Evidence, §12.165 regarding Rules of Evidence, and §12.167 regarding Numbering of Exhibits.

The TEC also proposes the repeal of all rules in Division 7 of Subchapter E of Chapter 12 (relating to Formal Hearing: Disposition of Formal Hearing), including §12.171 regarding Standard of Proof, §12.173 regarding Default Proceedings, §12.174 regarding Summary Disposition, and §12.175 regarding Resolution of Formal Hearing.

This proposal, along with the contemporaneous proposal of new Subchapters and Divisions in Chapter 12, amends the rules used in sworn complaint proceedings at the Ethics Commission.

State law requires state agencies to "review and consider for readoption each of its rules . . . not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id*.

The TEC started its comprehensive review with the TEC's rules regarding sworn complaint procedures, which are codified in Chapter 12. The repeal of existing rules and adoption of new rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on sworn complaint procedures.

James Tinley, General Counsel, has determined that for the first five-year period the proposed repealed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repealed rules.

The General Counsel has also determined that for each year of the first five years the proposed repealed rules are in effect, the public benefit will be consistency and clarity in the TEC's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rules.

The General Counsel has determined that during the first five years that the proposed repealed rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The TEC invites comments on the proposed repealed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repealed rules may do so at any Commission meeting during the agenda item relating to the

proposed repealed rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §§12.5 - 12.7, 12.9, 12.11, 12.13, 12.15, 12.19, 12.21, 12.23, 12.25, 12.27 - 12.31, 12.33 - 12.36

§12.5. Deadline for Filing a Complaint.

§12.6. File Date for Purposes of Commission Response Deadline.

§12.7. Confidentiality.

§12.9. Compliance with Open Meetings Law and Open Records Law.

§12.11. Delegation to Executive Director.

§12.13. Representation by Counsel.

§12.15. Appearance of Complainant at Hearing.

§12.19. Agreements to be in Writing.

§12.21. Notice.

§12.23. Hearing in Respondent's Absence.

§12.25. Waiver of Hearing.

§12.27. Deadline Extension.

§12.28. Production of Documents During Preliminary Review.

§12.29. Subpoenas Issued by Commission.

§12.30. Subpoenas Issued by Counsel for the Respondent.

§12.31. Conduct and Decorum.

§12.33. Sanctioning Authority.

§12.34. Agreed Orders.

§12.35. Frivolous Complaint.

§12.36. Assessment of Civil Penalty.

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

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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.51 - 12.53, 12.59, 12.61, 12.67

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.51. Non-Complying Complaint.

§12.52. Response to Notice of Complaint.

§12.53. Commission Initiated Complaint.

§12.59. Description of Violation.

§12.61. Statement of Facts.

§12.67. Copies and Documents Provided by the Commission.

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

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SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.81, §12.83

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.81. Technical, Clerical or De Minimis Violations.

§12.83. Preliminary Review.

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

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SUBCHAPTER D. PRELIMINARY REVIEW HEARING

1 TAC §§12.84 - 12.87

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.84. Notice of Preliminary Review Hearing.

§12.85. Preliminary Review Hearing.

§12.86. Motions for Continuance.

§12.87. Resolution of Preliminary Review Hearing.

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

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SUBCHAPTER E. FORMAL HEARING
DIVISION 1. GENERAL PROCEDURES

1 TAC §§12.101 - 12.103, 12.117, 12.119

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.101. Application and Construction.

§12.102. Order of Formal Hearing.

§12.103. Notice of Formal Hearing.

§12.117. Formal Hearing: Venue.

§12.119. Resolution after a Formal Hearing.

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

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DIVISION 2. SCHEDULING, FILING, AND SERVICE

1 TAC §§12.121, 12.123, 12.125, 12.127

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.121. Prehearing Conferences.

§12.123. Scheduling Orders.

§12.125. Filing of Documents.

§12.127. Service of Documents.

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

Filed with the Office of the Secretary of State on July 23, 2024.

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

DIVISION 3. POWERS AND DUTIES OF COMMISSION AND PRESIDING OFFICER

1 TAC §12.131, §12.133

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.131. Powers and Duties of the Presiding Officer.

§12.133. Orders from the Commission.

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

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DIVISION 5. PLEADINGS AND MOTIONS

1 TAC §§12.151, 12.153, 12.155

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.151. Required Form of Pleadings.

§12.153. Motions, Generally.

§12.155. Motions for Continuance and to Extend Time.

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

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DIVISION 6. HEARINGS AND PREHEARING CONFERENCES

1 TAC §§12.161, 12.163, 12.165, 12.167

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.161. Time Allotted to Parties.

§12.163. Presentation of Evidence.

§12.165. Rules of Evidence.

§12.167. Numbering of Exhibits.

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

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DIVISION 7. DISPOSITION OF FORMAL HEARING

1 TAC §§12.171, 12.173 - 12.175

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.171. Standard of Proof.

§12.173. Default Proceedings.

§12.174. Summary Disposition.

§12.175. Resolution of Formal Hearing.

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

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER L. LOCAL FUNDS MONITORING

1 TAC §§355.8701 - 355.8705, 355.8707

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8701, concerning Purpose; §355.8702, concerning Definitions; §355.8703, concerning Applicability; §355.8704, concerning Reporting and Monitoring; §355.8705, concerning Post-Determination Review; and §355.8707, concerning Notification Requirements for the Creation of a Local Provider Participation Fund (LPPF).

BACKGROUND AND PURPOSE

The purpose of the proposal is to add and modify definitions and enhance clarity, consistency, and specificity of the rules. The amendments also reflect best practices learned after the completion of two Local Funding reporting periods and are based on an internal review of Local Funding's processes.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8701 replaces "local governmental entities" with "governmental entities;" as noted in the proposed amendment to §355.8702, the term "governmental entities" includes state agencies and "local governmental entities" (LGEs). The proposed amendment also replaces "HHSC" with "HHS" to specify which agencies collect the information to comply with state and federal law and associated reporting requirements.

The proposed amendment to §355.8702 modifies the definition of a governmental entity to distinguish between state agency and other political subdivisions of the state. The proposed amendment also adds two new definitions: Texas Health and Human Services system (HHS) and Local Education Agency (LEA) to conform to the term used by other state agencies to refer to this political subdivision of the state.

The proposed amendment to §355.8703 removes the staggered implementation of the rules, as reporting on all local funding provided to HHSC by governmental entities through Intergovernmental Transfer (IGT) or Certified Public Expenditure (CPE) for use as the non-federal share of Medicaid payments has begun. The proposed amendment also clarifies what HHSC will do if the electronic annual survey is not open at the start of the reporting period to ensure that governmental entities can provide any requested information or documentation relating to annual reporting and monitoring.

The proposed amendment to §355.8704 clarifies the processes HHSC uses to collect information from governmental entities for use in the annual survey as required by the 2024-25 General Appropriations Act, House Bill 1, 88th Legislature, Regular Session, 2023 (Article II, Health and Human Services Commission, Rider 15 (b)). Additionally, the proposed amendment reiterates HHSC's broad authority to refuse IGT used as the non-federal share of Medicaid at its discretion. Finally, the proposed amendment reflects best practices learned after implementing reporting for all funding sources and the completion of two fiscal years' reporting periods. This includes additional specification regarding the types of information and documentation HHSC collects and how HHSC uses the information collected to determine compliance, assess risk, and conduct in-depth reviews.

The proposed amendment to §355.8705 conforms rule reference in this subchapter regarding post-determination reviews. The proposed amendment specifies governmental entity representatives that may request a post-determination review.

The proposed amendment to §355.8707 provides updated and additional detail regarding the steps that a local governmental entity must complete regarding the submission of the required documentation prior to transferring local funds generated by a Local Provider Participation Fund (LPPF) to HHSC via IGT.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons; are necessary to receive a source of federal funds or comply with federal law; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be to ensure Texas meets oversight responsibilities related to the permissibility of local Medicaid funding sources. HHSC's oversight will reduce the potential likelihood of providers' recoupments from the Centers for Medicare & Medicaid Services (CMS), which helps ensure providers continue providing services to Medicaid beneficiaries.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules clarify existing processes for entities to meet the existing requirements of data submission and reporting system training.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to PFD Local Funding, 4601 Guadalupe Street, Mail Code H400, Austin, Texas 78751, or by email to PFD_LFM@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R065" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Human Resources Code §32.031(d), which authorizes the Executive Commissioner to pursue the use of local funds as part of the state share under the Medicaid program as provided by federal law and regulation; and Texas Health and Safety Code §300.0154 and §300A.0154, which require the Executive Commissioner of HHSC to adopt rules relating to LPPF reporting.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §32.021 and Texas Government

Code §531.021(a); Texas Human Resources Code §32.031(d); and Texas Health and Safety Code §300.0154 and §300A.0154.

§355.8701. Purpose.

(a) As part of the oversight required by federal and state law, the Texas Health and Human Services Commission (HHSC) requires all non-federal share funds that are provided by governmental entities [local governmental entities, including funds transferred or certified by governmental entities] as the non-federal share of Medicaid supplemental and directed payments, to report the source of such funds.

(b) HHSC will use the information reported under this subchapter along with information already collected by HHS [HHSC] to comply with state and federal law and associated reporting requirements. HHSC may publish the information on the HHSC website at HHSC's discretion.

§355.8702. Definitions.

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

(1) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid.

(2) Certified Public Expenditure (CPE)--An expenditure certified by a governmental entity to represent its contribution of public funds in providing services that are eligible for federal matching Medicaid funds.

(3) Federal Fiscal Year (FFY)--A 12-month period beginning October 1 and ending September 30.

(4) Governmental entity[Entity]--A governmental entity is defined as: [state agency or a political subdivision of the state, or a hospital authority, hospital district, health district, city, county, school district, or other unit of local government as established by Texas statute.]

(A) a state agency; or

(B) a political subdivision of the state, including a hospital authority, hospital district, health district, city, county, local education agency (as defined in paragraph (10) of this section), or other unit of local government as established by Texas statute; may also be referred to as a Local Governmental Entity (LGE).

(5) Health care provider--The individual or entity that receives a Medicaid payment or payments for health care items or services provided or an entity related to such a health care provider.

(6) HHS--The Texas Health and Human Services system. For the purposes of this subchapter, unless specifically stated otherwise, the HHS system includes HHSC and the Texas Department of State Health Services.

(7) [(6)] HHSC--The Texas Health and Human Services Commission.

(8) [(7)] Interested party--A governmental entity that has non-federal share funds under review, as contemplated by this chapter.

(9) [(8)] Intergovernmental Transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(10) Local Education Agency (LEA)--A Texas independent school district or public charter school.

(11) [(9)] Non-federal share--The portion of Medicaid program expenditures that is not federal funds. The non-federal share is equal to 100 percent minus the federal medical assistance percentage (FMAP) for Texas for the state fiscal year corresponding to the program year and for the population served.

(12) [(10)] Post-determination review--The informal verification [re-examination] of an action or determination by HHSC under this chapter requested by an interested party.

§355.8703. Applicability.

(a) This subchapter applies to local funding provided to HHSC by a governmental entity for use as the non-federal share of Medicaid payments through intergovernmental transfer (IGT) or Certified Public Expenditure (CPE). [the following categories of local funds:]

[(1) beginning April 1, 2022: intergovernmental transfer (IGT) of Local Provider Participation Funds (LPPFs) or other provider taxes;]

[(2) beginning October 1, 2022: in addition to paragraph (1) of this subsection, IGT of funds to support Medicaid payment programs for hospital services (other than funds from LPPFs or other provider taxes);]

[(3) beginning April 1, 2023: in addition to paragraphs (1) and (2) of this subsection, IGT of funds to support Medicaid payment programs for non-hospital services, including nursing facility services, intermediate care facility services, and other acute or long-term care services (other than funds from LPPFs or other provider taxes); and]

[(4) beginning October 1, 2023: in addition to paragraphs (1) - (3) of this subsection, certified public expenditures (CPEs).]

(b) To the extent that an electronic annual survey, detailed in §355.8704 of this subchapter (relating to Reporting and Monitoring), is not [yet] open for reporting at the applicable start date of the reporting period, governmental entities [for a given funding source, governmental entities] will be contacted by HHSC and given 30 days from the date of the notice to provide any requested information or documentation in a format prescribed by HHSC.

§355.8704. Reporting and Monitoring.

(a) A governmental entity that provides funds for use as the non-federal share in the Medicaid program must report information to the Texas Health and Human Services Commission (HHSC) in a form and format to be determined by HHSC.

(b) The information must be reported at least annually, no later than October 31 [October 31st], or upon request by HHSC.

(c) HHSC will [open the information reporting system prior to the end of the federal fiscal year and will] review reported information based on governmental entity funding sources, including:

(1) local provider participation funds (LPPFs) authorized by the Texas Health and Safety Code Chapter 288 *et seq.* or other provider tax structures;

(2) non-LPPF provider taxes;

(3) ad valorem tax revenue;

(4) patient revenue;

(5) donations; and

(6) [(5)] other local funding sources.[; and]

[(6) donations.]

(d) HHSC will use the information from the report to monitor each governmental entity's funding sources [governmental entity fund source] and determine the likelihood that the funds are permissible for use in the Medicaid program. The monitoring will include the following:

(1) Survey. An electronic annual survey that will request the following:

(A) a list of all Medicaid programs and health care providers (including name, type, and ownership status) [health care providers] for which the governmental entity transferred or certified funds as the non-federal share;

(B) the relationship between the governmental entity and each [the] health care provider, including a copy of any formal or informal agreements between the governmental entity [entity] and the health care provider [provider];

[(C) the type of health care provider (i.e. ambulance, dentist, hospital, intermediate care facilities for individuals with an intellectual disability, nursing facility, physician practice group) and ownership status;]

(C) [(D)] the source of the funds used as the non-federal share transferred by the governmental entity;

(D) [(E)] information on any debt instruments (i.e., bonds, loans, etc.) that a governmental entity utilizes and the relationship of the instrument to any transferred funds;

(E) [(F)] to the extent patient revenue is used, a description of payor mix (i.e., Medicaid, Medicare, commercial, uninsured, self-pay, etc.) during the federal fiscal year (FFY) and any anticipated changes;

(F) [(G)] any transfer of funds or provision of services from a health care provider or entity related to a health care provider to the governmental entity, including in-cash or in-kind donations, or any other transfer of value;

(G) [(H)] overview of funds received from all sources available to the governmental entity during the FFY [in its current fiscal year];

(H) [(I)] other information as determined necessary and appropriate to determine compliance with federal or state statutes and regulations, including attestations of compliance from the local government; and

(I) [(J)] any publicly available information, such as:

(i) [audio] recordings of discussions or written minutes from public meetings to set assessment rates or gather feedback from health care providers [providers] or their representatives;

(ii) [written] correspondence describing the governmental entity's funding transferred to HHSC for use in [dedicated to] the Medicaid program;

(iii) [URL] links to websites that describe the funds used [transferred or certified] as the non-federal share or any agreement between the governmental entity and a health care provider or entity related to a health care provider; and

(iv) copies of any public notices, local orders, announcements, or other related documentation.

(2) Risk Assessment.

(A) The risk assessment will include:

(i) a risk assessment score based on self-reported annual survey responses; and

(ii) any adjustments made at HHSC's discretion based on supplemental documentation and discussion with the impacted governmental entity and review of additional documentation requests as may be needed, in HHSC's sole discretion, to confirm, audit, or modify self-reported data and qualitative descriptions.

(B) The funds used as the non-federal share [Funding sources] will be categorized as likely permissible, further review required, or likely impermissible based on a review of a governmental entity's funding sources. HHSC may elect to [will] contact entities whose funding sources are categorized as further review required or likely impermissible to obtain additional information. The entity must furnish the requested information to HHSC within 10 [ten (10)] business days of the date of the request.

(i) Likely permissible. Funding source appears to comply with federal and state statutes and regulations.

(ii) Further review required. Funding source compliance with federal and state statutes and regulations is unclear.

(iii) Likely impermissible. Funding source does not appear to comply with federal or state regulations.

(3) In-depth Review. HHSC will select a sample of survey respondents for an in-depth review in which HHSC may examine supporting documentation, either on-site or electronically, at HHSC's discretion. HHSC will select a sample of survey respondents sufficient to result in a 95 percent confidence level with a 5 percent margin of error. HHSC will [initially] select entities based on an initial risk assessment, [that are in the likely impermissible and further review required categories,] and if additional entities are necessary to complete the required [a] sample size, they will be randomly selected [from the likely permissible category]. HHSC will notify a governmental entity if an on-site review will occur at least 10 [ten (10)] calendar days prior to the visit.

(4) Determination. HHSC will notify the governmental entity upon determination of the following: [Determination of completeness of reporting and HHSC's assigned risk assessment for each funding source.]

(A) reporting compliance;

(B) risk assessment score;

(C) funding source category pursuant to paragraph (2)(B) of this subsection.

(5) Post-Determination Review. Post-determination review will be conducted as outlined in §355.8705 of this subchapter (relating to Post-Determination Review) [this subchapter].

(6) Federal Reporting.

(e) If a governmental entity fails to submit the required information or supplemental documentation as requested by HHSC by the deadline specified in this section, HHSC may refuse [will not accept] further transfer of funds for any Medicaid program from the governmental entity until the reporting requirement is satisfied and may process recoupments for any payments resulting from funds transferred determined to be non-compliant.

(f) Prior to the applicable deadline, a governmental entity may request an extension of up to 10 [ten (10)] business days for any deadline contained in this subchapter. HHSC may grant or reject such request at its sole discretion.

[(g) HHSC will notify the governmental entity upon determination of:]

[(1) reporting compliance;]

[(2) permissibility of funds; and]

[(3) a risk assessment category for each funding source.]

(g) [(h)] After review of any additional information provided, HHSC may also seek input on the likely permissibility of the funds from the Centers for Medicare & [and] Medicaid Services (CMS). In the event HHSC elects to request input from CMS regarding the compliance of a specific funding source as contemplated by this subchapter, HHSC will notify the governmental entity prior to requesting such review. HHSC may, at its discretion, accept or reject local funds from any governmental entity [the governmental entity for such funding source while awaiting CMS input]; however, HHSC will reject funding and recoup all Medicaid payments supported by a governmental entity's [generated from a] funding source that CMS deems impermissible if CMS requires HHSC to do so [deemed impermissible by CMS at any time].

(h) If a governmental entity is determined not to have met the reporting requirements, or to have falsified any data in its reporting, HHSC may refuse transfers from the governmental entity, and payments to health care providers resulting from prior transfers may be recouped.

§355.8705. Post-Determination Review.

(a) An interested party who disputes a determination under §355.8704(d)(4) [§355.8704(g)] of this subchapter [chapter] (relating to Reporting and Monitoring) may request post-determination review under this section.

(b) The purpose of a post-determination review is to provide for the informal and efficient resolution of the matter(s) in dispute. A post-determination review is not a formal administrative hearing and is conducted according to the following procedures:

(1) The Texas Health and Human Services Commission (HHSC) must receive a request for a post-determination review electronically to PFD_LFM@hhs.texas.gov no later than 30 calendar days from the date of a notification under §355.8704(d)(4) [§355.8704(g)] of this subchapter [chapter]. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. HHSC will extend this deadline for an additional 15 days if it receives a request for the extension prior to the initial 30-day deadline. A request for a post-determination review or extension that is not received by the stated deadline will not be accepted.

(2) An interested party must, with its request for a post-determination review, submit a concise statement of the specific determinations it disputes, its recommended resolution, and any supporting documentation the interested party deems relevant to the dispute. It is the responsibility of the interested party to render all pertinent information at the time it submits its request for a post-determination review. A request for a post-determination review that does not meet the requirements of this subparagraph will not be accepted.

(3) The written request for the post-determination review or extension must be requested by an employee, board member, or elected official of the Local Governmental Entity (LGE) [signed by a legally authorized representative for the interested party]. A request for a post-determination review or extension that is not requested by an employee, board member, or elected official of the LGE [a legally authorized representative of the interested party] will not be accepted.

(4) On receipt of a request for post-determination review that meets the requirements of this section, HHSC will:

(A) acknowledge receipt of the request to the requestor; and

(B) coordinate the review of the information submitted by the interested party and may request additional information from the interested party, which must be received no later than 14 calendar days from the date of the written request for additional information.

(i) If the 14th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 14th calendar day is the final day the receipt of the additional information will be accepted.

(ii) Information received after 14 calendar days may not be used in the post-determination review decision unless the interested party requests an extension and receives written approval from HHSC staff to submit the information after 14 calendar days. HHSC must receive a request for an extension to the 14-calendar-day due date prior to the 14th calendar day.

(iii) HHSC may make subsequent requests for additional information. If HHSC makes a subsequent request for additional information, the timeframes for submission and receipt of the information apply just as they applied to the initial request for additional information.

(5) Upon [review and] receipt and review of all requested supplemental information, HHSC will provide a final decision no later than 180 days after receipt of the request or receipt of supplemental information, whichever is later. An interested party may request an update on the status of the post-determination review at any time.

§355.8707. Notification Requirements for the Creation of a Local Provider Participation Fund (LPPF).

(a) A local government, as defined in Texas Health and Safety Code Chapter 300, or a district, as defined in Texas Health and Safety Code Chapter 300A, that creates a new local provider participation fund (LPPF) as authorized by those chapters must send HHSC notice of the creation of a new LPPF according to the following procedures.

(1) HHSC must receive notice of a newly created LPPF electronically to PFD_LFM@hhs.texas.gov no later than 10 business days from the date of the local government or district's creation of the LPPF.

(2) The notice must contain the following.

(A) Contact information for at least two employees, board members, or elected officials of the local government or district authorized to implement an LPPF, as well as any individuals the local government or district authorizes to receive informational updates related to LPPF formation and reporting. Contact information shall include:

(i) full names;

(ii) titles and description of involvement with the LPPF (if not an employee, board member, or elected official of the local government or district);

(iii) email addresses; and

(iv) phone numbers.

(B) Audio recordings of discussions or written minutes from public meetings, such as commissioner's court meetings or hospital district board meetings, that document the approval of LPPF formation and any associated rate setting.

(C) Resolution approving rules and procedures for LPPF mandatory assessment payments.

(D) Resolution authorizing the formation of the LPPF, collection of a mandatory assessment payment, and use of funds from the mandatory assessment payments.

(E) Public notices from a hardcopy or digital source, such as a newspaper article, notifying providers in the jurisdiction of the intent to create an LPPF and set associated rates.

(F) Copies of written notice provided to the chief operating officer of each provider that will be required to pay a mandatory assessment.

(G) Invoices or other records of LPPF mandatory assessments and payments received from providers, if any, have been made at the time notice is provided to HHSC.

(H) Any agreements between the local government or district implementing the LPPF (including a local government that created the district under Texas Health and Safety Code §300A.0021) and a health care provider or entity related to a health care provider that is required to pay a mandatory assessment, if applicable.

(3) On receipt of a notice for the creation of an LPPF, HHSC:

(A) acknowledges receipt of the notice to the local government or district; and

(B) reviews the information submitted by the local government or district.

(i) HHSC may request additional information from the local government or district. The additional information must be received by HHSC no later than 10 business days from the date of the written request for additional information.

(ii) HHSC will extend this deadline for an additional 10 business days if it receives a request for the extension prior to the initial 10 business day due date. A request for an extension that is not received by the stated deadline will not be accepted.

(4) No local government or district may transfer local funds generated by an LPPF to HHSC via intergovernmental transfer (IGT) [~~IGT~~] until it has completed the following steps.

(A) Notify HHSC of the creation of the LPPF in accordance with this section and receive acknowledgment of receipt from HHSC.

(B) Provide HHSC documentation that the governmental entity has completed the following: [~~with any additional information requested by HHSC as provided in this section.~~]

(i) Established a distinct bank account for the LPPF that is not commingled with other funds of the governmental entity.

(ii) Established a unique TEXNET account for the LPPF through the Texas Comptroller of Public Accounts that allows transfers from only the distinct bank account identified in clause (i) of this subparagraph.

(iii) Emailed PFD_Payments@hhs.texas.gov to confirm that the bank account HHSC has on file for issuing LPPF account refunds matches the distinct bank account identified in clause (i) of this subparagraph.

(C) Provide HHSC with any additional information requested by HHSC as provided in this section. [~~Establish a unique TexNet Account through the Texas Comptroller.~~]

[~~(D) Establish a Texas Identifier Number (TIN) through the Provider Finance Department by emailing RAD_Payments@hhs.texas.gov.~~]

(b) Any local government or district that creates an LPPF is subject to annual reporting requirements under 1 TAC Chapter 355, Subchapter L (relating to Local Funds Monitoring).

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

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TRD-202403423
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (737) 867-7877

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER I. PUBLIC FACILITY CORPORATION COMPLIANCE MONITORING

10 TAC §10.1103

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC Subchapter I, Public Facility Corporation Compliance Monitoring, §10.1103. The purpose of the proposed amended rule is to provide compliance with Tex. Gov't Code §2306.053. The proposed amended rule codifies requirements on which Public Facility Corporation multifamily residential developments are required to submit audit reports to the Department by June 1 of each year.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the amendment would be in effect:

1. The proposed amendment to the rule will not create or eliminate a government program. The proposed amended rule provides an assurance that required monitoring requirements tasked to the Department are clearly relayed to Responsible Parties of Public Facility Corporations and their Sponsors.

2. The proposed amendment to the rule will require a change in the number of employees of the Department; the Compliance Monitoring Division will gain two additional full time employees through 2025.

3. The proposed amendment to the rule will not require additional future legislative appropriations.

4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed amendment to the rule will create a new regulation; which is created and codified because of HB 2071.

6. The proposed amendment to the rule will not repeal an existing regulation; but will expand the existing regulations on this

monitoring activity because the amendment is necessary to ensure ongoing compliance with HB 2071 and for the Department to amend rules to codify monitoring applicability.

7. The proposed amendment to the rule will increase the number of individuals subject to the rule's applicability because the rule is codifying that all Public Facilities Corporations must submit an annual audit to the Department.

8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be clarification of the audit report requirements for PFC multifamily residential developments. There will be a nominal economic cost to PFC entities required to comply with the amendment to engage in services with an independent auditor.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities because it applies to all Public Facilities Corporation multifamily residential developments regardless when approved.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from August 9, 2024, through September 9, 2024. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email wendy.quackenbush@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, September 9, 2024.

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

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

§10.1103. Reporting Requirements.

The following reporting requirements apply to all Developments owned by a Public Facility Corporation (PFC), subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code, and not eligible under Section 10(b) or (c) of [to be grandfathered under previous law pursuant to the criteria established by] House Bill 2071, 88th Texas Legislative Session, effective June 18, 2023, (the Act) for continuation of the former law in effect prior to the effective date of the Act. Pursuant to Section 10(d) of the Act, all Developments owned by a PFC as described in Tex. Local Gov't Code §303.0421(a), and with respect to which an exemption is sought or claimed under §303.042(c) - regardless of when the Development was acquired, approved, or occupied - must submit an Audit Report in accordance with §303.0426(b) as described below.

(1) No later than June 1 of each year, the Public Facility User will submit to the Department an Audit Report from an Auditor, obtained at the expense of the Public Facility User. Concurrently with submission of the Audit Report, the Operator will complete the contact information form available on the Department's website. For Developments eligible for continuation of the former law in effect prior to June 18, 2023, the first Audit Report (due no later than December 1, 2024), will satisfy the requirements of Tex. Local Gov't Code §303.0426(b)(1) (compliance with new statutory provisions) by demonstrating its eligibility to continue under the former law, but must still fully address the requirements of §303.0426(b)(2) (identifying the difference in rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions).

(2) The first Audit Report must include a copy of the Regulatory Agreement. The first Audit Report for a Development must be submitted no later than June 1 of the year following the first anniversary of:

(A) The date of the PFC acquisition for an occupied Development; or

(B) The date a newly constructed PFC Development first becomes occupied by one or more tenants.

(3) No later than 60 days after the receipt of the Audit Report, the Department will post a summary of the Audit Report on its website. A copy of the summary will also be provided to the Development and all Responsible Parties. The summary must describe in detail the nature of any noncompliance.

(4) If any noncompliance with Sections 303.0421 and 303.0425 are identified by the Auditor, no later than 45 days after receipt of the Audit Report the Department will notify the Public Facility User. The notification must include a detailed description of the noncompliance and at least one option for corrective action to resolve the noncompliance. The Public Facility User will be given 60 days to correct the noncompliance. At the end of the 60 days, the Department will post a final report on its website.

(5) If all noncompliance is not corrected within the 60 days, the Department will notify the Public Facility User, appropriate appraisal district, and the Texas Comptroller. The Department will also recommend a loss of tax-exempt status.

(6) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing housing compliance, a current Certified Occupancy Specialist (COS) certification or an equivalent certification, and resume. The Auditor may not be affiliated with or related to any Responsible Parties. Additionally, a current or previous Management Agent that has or had oversight of the Development or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules.

(7) The Public Facility User may not engage the same individual as Auditor for a particular Development for more than three consecutive years. After the third consecutive Audit Report by the same Auditor, the Public Facility User must engage a new Auditor for at least two reporting years before re-engaging with a prior Auditor.

(8) Audit Reports and supporting documentation and required forms must be submitted to the following email address: pfc.monitoring@tdhca.state.tx.us.

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

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

TRD-202403373
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 475-3959

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.14

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter A, §1.14, concerning negotiated rulemaking. Specifically, this repeal will remove a rule that is unnecessary because negotiated rulemaking procedures are laid out in Chapter 2008 of the Texas Government Code.

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

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

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

Nichole Bunker-Henderson, General Counsel, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the repeal of a rule that is unnecessary because negotiated rulemaking procedures are laid out in Chapter 2008 of the Texas Government Code. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

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

The proposed repeal affects Texas Administrative Code, Chapter 1, Subchapter A, Section 1.14, Negotiated Rulemaking.

§1.14. Negotiated Rulemaking.

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

Filed with the Office of the Secretary of State on July 29, 2024.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 427-6297

SUBCHAPTER W. OPPORTUNITY HIGH SCHOOL DIPLOMA ADVISORY COMMITTEE

19 TAC §§1.260 - 1.268

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in, Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter W, §§1.260 - 1.268, concerning the Opportunity High School Diploma Advisory Committee. Specifically, these new sections will establish an Advisory Committee to inform the administration and components of the Opportunity High School Diploma.

The Coordinating Board proposes the establishment of the Opportunity High School Diploma Advisory Committee to advise and counsel the Coordinating Board and its governing board on the administration of the Opportunity High School Diploma through ongoing, structured review and recommendation of program components. The proposed new rules provide clarity and guidance around committee membership, meeting cadence, and charges.

Specifically, these new sections will outline the authority and purpose, definitions, membership and officers, duration of the committee, meeting frequency, committee tasks, review requirement, committee recommendations, and the effective date of the rules.

Rule 1.260, Authority and Specific Purposes of the Opportunity High School Diploma Advisory Committee, authorizes the Coordinating Board to adopt rules under Texas Government Code, §2110.0012, and Texas Education Code ,chapter 130, subchapter O. It states that the purpose of this new rule is to create an Advisory Committee to advise and counsel the Commissioner and Board on the Opportunity High School Diploma.

Rule 1.261, Definitions, defines words and terms that are key to the understanding and administration of the Advisory Committee.

Rule 1.262, Committee Membership and Officers, outlines the members that will make up the Advisory Committee. It specifies total number of members, eligibility criteria, membership and officer appointments, and term durations.

Rule 1.263, Duration, sets the term for the Advisory Committee and allows for its re-establishment.

Rule 1.264, Meetings, specifies a minimum of one Advisory Committee meeting per year and allows for special meetings to be called by the presiding officer.

Rule 1.265, Tasks Assigned to the Committee, lists the charges placed on the Advisory Committee to provide to the Board and Commissioner including those relating to general administration of the Opportunity High School Diploma, study and recommendations on program components, and identification of funding to help propagate the program. It also allows for additional charges to be issued by the Board or the Commissioner.

Rule 1.266, Requirement to Review, details the process and cadence to be followed by the Advisory Committee to review the Opportunity High School Diploma instructional outcomes, performance expectations, and assessments.

Rule 1.267, Recommendations, instructs the Advisory Committee to provide recommendations to the Board and Commissioner that help improve the Opportunity High School Diploma program.

Rule 1.268, Effective Date of Rules, states the date when this subchapter becomes effective.

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

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

Lee Rector, Associate Commissioner for Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the establishing of an Opportunity High School Diploma Advisory Committee to advise and counsel the Texas Higher Education Coordinating Board and its governing board on the administration of the Opportunity High School Diploma through ongoing, structured review and recommendation of program components. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

(5) the rules will create a new rule;

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

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

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

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

The new sections are proposed under Texas Education Code, Section 130.001, which provides the Coordinating Board with the authority to adopt rules and regulations for public junior colleges; and §61.026, granting the Coordinating Board authority to establish advisory committees.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter W.

§1.260. Authority and Specific Purposes of the Opportunity High School Diploma Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in Texas Government Code. §2110.0012, and Texas Education Code, chapter 130, subchapter O.

(b) Purposes. The Opportunity High School Diploma Advisory Committee is created to provide the Commissioner and Board with advice and counsel with respect to the opportunity high school diploma program to achieve the goal of providing alternative means for students enrolled in a workforce education program at a junior college to earn a competency-based high school diploma.

§1.261. Definitions.

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

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Coordinating Board--Unless context indicates otherwise, the agency known as the Texas Higher Education Coordinating Board and staff employed by the agency to carry out assigned duties of the agency.

§1.262. Committee Membership and Officers.

(a) Membership shall consist of individuals with knowledge of high school completion competencies.

(b) Membership on the committee shall not exceed seven and should include:

(1) One member from the Texas Workforce Commission, as designated by the Executive Director of the Commission, and

(2) One member from the Texas Education Agency, as designated by the Commissioner of Education.

(c) The Commissioner shall recommend members to the Board for appointment.

(d) The Commissioner shall select the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board and the Commissioner.

(e) Each member shall serve a three-year staggered term, unless otherwise provided by the Commissioner.

§1.263. Duration.

The committee shall continue until October 31, 2028, and may be reestablished by the Board.

§1.264. Meetings.

The committee shall meet at least once a year. Special meetings may be called as deemed appropriate by the presiding officer.

§1.265. Tasks Assigned the Committee.

Tasks assigned to the committee include:

(1) Provide counsel to the Board and Commissioner on the administration of the Opportunity High School Diploma program;

(2) Study and make recommendation to the Board and Commissioner on the instructional outcomes and performance expectations;

(3) Study and make recommendations to the Board and Commissioner on assessments;

(4) Identify funding sources or mechanisms to encourage and facilitate participation in the Opportunity High School Diploma program; and

(5) Any other charges issued by the Board or the Commissioner.

§1.266. Requirement to Review.

The Advisory Committee shall convene a subject matter expert peer group not less than once every three years or as determined by the presiding officer to review the instructional outcomes, performance expectations, and assessments for each of the five core program competencies.

(1) Each peer group shall review the instructional outcomes and performance expectations associated with the core program competency and provide recommendations regarding proposed revisions to the Advisory Committee.

(2) Each peer group shall review the assessments associated with the core program competency and provide recommendations regarding proposed revisions to the approved list of assessments to the Advisory Committee.

§1.267. Recommendations.

The committee shall consider and make recommendations to the Board and Commissioner on policies and rule revisions to improve the Opportunity High School Diploma program.

§1.268. Effective Date of Rules.

This subchapter is effective November 1, 2024.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403442
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 427-6344

CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION
SUBCHAPTER G. APPROVAL PROCESS FOR NEW DOCTORAL AND PROFESSIONAL DEGREE PROGRAMS

19 TAC §2.143

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter G, §2.143, concerning the approval process for new doctoral and professional degree programs. Specifically, the proposed amendments provide an exception to the one-year waiting period after submitting a planning notification for professional programs if the institution has already received Board approval for the same degree or is acquiring the program from another public, private, or independent institution of higher education. This amendment would permit a faster path toward program approval for a program that has already been previously approved by the Board or is fully-accredited and currently operating. There is a reduced need for long-term planning for a program that is currently in existence or operating. An institution is unlikely to need a full-year to plan because it does not need to create the program, i.e. the program may require modification, but the essential elements required by board rule should already be in place for an approved or operating program.

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

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

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

David Troutman, Deputy Commissioner for Academic Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be streamlined approval of professional programs that have met certain criteria. The proposed amendments provide an exception to the one-year waiting period after submitting a planning notification for professional programs if the institution has already received Board approval for the same degree or is acquiring the program from another public, private, or independent institution of higher education. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

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

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

§2.143. Submission of Planning Notification.

(a) An institution of higher education must submit a Planning Notification to Board Staff in accordance with subchapter C, §2.41 of this chapter (relating to Planning Notification: Notice of Intent to Plan)[~~, at least one year prior to submitting an administratively complete request for a new doctoral or professional degree~~].

(b) An institution seeking approval for a new doctoral or professional degree program shall submit the required planning notification at least one year prior to submitting an administratively complete request for a new doctoral or professional degree.

(c) An institution seeking approval for a professional degree program meeting one of the following criteria is excepted from the requirement under subsection (b) of this section:

(1) The institution previously received Board approval for the same professional degree program;

(2) The institution is acquiring the proposed professional degree program from another institution of higher of education as defined in Texas Education Code, §61.003(8), and the program is currently accredited and previously received Board approval; or

(3) The institution is acquiring the proposed professional degree program from another private or independent institution of higher of education as defined in Texas Education Code, §61.003(15), and the program is currently fully accredited and in good standing with its institutional accreditor and discipline-specific accreditor, as applicable.

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

Filed with the Office of the Secretary of State on July 29, 2024.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 427-6431

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER G. STRATEGIC PLANNING AND GRANT PROGRAMS RELATED TO EMERGING RESEARCH AND/OR RESEARCH UNIVERSITIES

19 TAC §§5.120 - 5.122

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 5, Subchapter G, §§5.120 - 5.122, concerning the purpose and authority, definitions, and submission of a strategic plan for achieving recognition as a research university. Specifically, this repeal will remove these rules from Chapter 5 with the intent to place them in Chapter 15, Research Funds, to group rules related to research. The Coordinating Board intends to adopt a separate forthcoming subchapter relating to the submission of the required strategic plans and update the rules for clarity for the institutions.

The Coordinating Board has statutory authority to adopt rules relating to the submission of long-term strategic plans for research or emerging research universities under Texas Education Code, Section 51.358.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to improve readability of the rules through reorganization, by categorizing rules related to research programs in a forthcoming separate subchapter. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The repeal is proposed under Texas Education Code, Section 51.358, which provides the Coordinating Board with the authority to adopt rules to administer the submission of long-term strategic plans for research or emerging research universities.

The proposed repeal affects Texas Education Code, Section 51.358.

§5.120. Purpose and Authority.

§5.121. Definitions.

§5.122. Submission of a Strategic Plan for Achieving Recognition as a Research University.

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

Filed with the Office of the Secretary of State on July 29, 2024.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 427-6344

CHAPTER 12. OPPORTUNITY HIGH SCHOOL DIPLOMA PROGRAM

SUBCHAPTER A. OPPORTUNITY HIGH SCHOOL DIPLOMA PROGRAM

19 TAC §§12.3, 12.5, 12.7, 12.8, 12.10 - 12.12

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments and new sections in Texas Administrative Code, Title 19, Part 1, Chapter 12, Subchapter A, §§12.3, 12.5, 12.7, 12.8, and 12.10 - 12.12, concerning the Opportunity High School Diploma program. Specifically, these amendments will provide additional information and guidance on program components, institutional requirements, and administration of the program.

The Coordinating Board proposes amendments to the Opportunity High School Diploma program rules to provide additional guidance regarding the program application and approval processes for institutions seeking to offer the Opportunity High School Diploma program; detail the instructional outcomes and performance expectations for the five competencies listed in §12.5(c) of this subchapter; provide clarity on the approval and publishing of assessments to determine student achievement; list institutional reporting requirements; establish ongoing review and revision of the program; and outline program revocation guidelines.

Rule 12.3, Definitions, is amended to add definitions for Application and Career and Technical Education, and to update the definition for Public School District.

Rule 12.5, Program Requirements, is amended to clarify the type of career and technical education programs that are permissible for concurrent enrollment purposes. The amendment also specifies where the required instructional outcomes and performance expectations for each of the five core program competencies will be detailed and establishes the approved assessments.

Rule 12.7, Program Approval Process, is amended to provide additional information on the application process that eligible entities must follow to qualify for consideration to offer the Opportunity High School Diploma. The amendment also notes that the maximum number of program approvals shall not exceed what is set forth in Texas Education Code, §130.454(c).

Rule 12.8, Required Reporting, is amended to detail the required reporting a participating public junior college will have to submit to the Coordinating Board including data and information requirements, additional reports, and report submission schedule.

Rule 12.10, Approval of a Request to Deliver an Opportunity High School Diploma Program, details the approval process that the Coordinating Board must follow once an application to offer an Opportunity High School Diploma program has been received. It sets forth a timeline for Assistant Commissioner and Commissioner approval, denial, or allowance for an institution to address deficiencies in a proposed diploma program. The rule also outlines an appeals process and respective timeline for denied applications and sets forth an implementation period for approved programs.

Rule 12.11, Program Review and Revision, instructs the Coordinating Board to convene the Opportunity High School Diploma Advisory Committee no less than one time per year to review and recommend revisions to the instructional outcomes, performance expectations, and assessments. It details where the Coordinating Board shall list approved revisions and instructs approved colleges to update or revise their programs accordingly and provide documentation of such within ninety days.

Rule 12.12, Revocation of Authorization, states the Commissioner's authority to revoke a college or consortium's authorization to offer an Opportunity High School Diploma. It lists the factors that can lead to revocation, sets a requirement for a written notice of proposed revocation or revocation status, grants the right to a hearing and details the process and timelines for such, and allows for appeal of a revocation to the Board.

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

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

Lee Rector, Associate Commissioner for Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of adopting this rule will be additional clarity on the application, approval, reporting, and revocation processes for public junior colleges seeking to offer, or approved to offer, the Opportunity High School Diploma program; increased detail on pro-

gram components such as instructional outcomes, performance expectations, and approved assessments to determine student achievement; and actions relating to the review and revision of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendments and new sections are proposed under Texas Education Code, Section 130.458, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Opportunity High School Diploma Program.

The proposed amendments and new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 12, Subchapter A, Sections 12.3, 12.5, 12.7, 12.8, and 12.10 - 12.12.

§12.3. Definitions.

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

(1) Application--An approved form adopted by the Commissioner that an institution shall use to seek approval to offer the Opportunity High School Diploma program.

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

(3) Career and Technical Education Certificate--A post-secondary credential, other than a degree, which a student earns upon successful completion of a career and technical education (CTE) workforce or continuing education program offered by an institution of higher education.

(4) [2] Commissioner--The Commissioner of Higher Education.

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

(6) [(4)] General Academic Teaching Institution or General Academic Institution--Any college, university, or institution so classified in Texas Education Code, §61.003(3), or created and so classified by law.

(7) [(5)] Nonprofit Organization--Nonprofit means the entity, usually a corporation, is organized for a nonprofit purpose and designated as a 501(c)(3). This designation means a nonprofit organization that has been recognized by the Internal Revenue Service as being tax-exempt by virtue of its charitable programs.

(8) [(6)] Opportunity High School Diploma Program, Opportunity Diploma Program, or Program--Unless context indicates otherwise, means the Opportunity High School Diploma Program established under this subchapter.

(9) [(7)] Public Junior College--A public institution of higher education as defined in Texas Education Code, §61.003(2).

(10) [(8)] Public School District--A public school district is a local governmental entity created in accordance with the laws of the state of Texas having the primary responsibility for implementing the state's system of elementary and/or secondary education [geographical unit for the local administration of elementary or secondary schools. It is a special-purpose government entity that can be administered independently or be dependent on the local government, such as a city or county].

§12.5. Program Requirements.

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

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

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

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

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

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

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

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

(d) [(c)] Prior Learning and Program Completions. A public junior college approved to offer this program shall [must] determine

each student's competence in each of the five core program competencies set out in subsection (c) [(b)] of this section prior to enrolling the student in the program of instruction and upon the student's completion of the program of instruction.

(1) The program of instruction assigned to each student will be based on the student's prior learning and assessments of the student's competencies for each of the five core program competencies set out in subsection (c) of this section. An institution may determine that a [A] student has [may be determined to have] satisfied required learning outcomes for one or more core program competencies based on the student's prior learning.

(2) An institution may use any of the following methods as documentation [Documentation] of a student's prior learning in the five core program competencies: [may include the following: transcripted high school grades; transcripted college credit; achievement on a national standardized test such as the SAT or ACT; credit earned through military service as recommended by the American Council on Education; or demonstrated success on pre-program assessments.]

(A) transcripted high school grades;

(B) transcripted college credit;

(C) achievement on a national standardized test such as the SAT or ACT;

(D) credit earned through military service as recommended by the American Council on Education; or

(E) demonstrated success on pre-program assessments.

(3) The Commissioner shall identify, consider, and approve assessments, in consultation with the Texas Workforce Commission, to be used by a public junior college to determine a student's successful achievement of the five core program competencies and completion of the program.

(4) Assessments approved by the Commissioner are listed in Figure 1 [The Coordinating Board will publish a list of the approved assessments on the agency's website].
Figure: 19 TAC §12.5(d)(4)

(5) A public junior college that is approved to offer the program shall [must] use an approved assessment to evaluate each student's competence in the five core program competencies as required under subsection (c) [(b)] of this section.

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

(f) Performance Expectations. A public junior college that is approved to offer the program shall embed the performance expectations into their curriculum as required under subsection (c) of this section.

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

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

§12.7. Program Approval Process.

(a) Application Process. An eligible entity shall complete and submit an application to the Coordinating Board. Each application must:

(1) Be submitted electronically in a format and location specified in the application;

(2) Adhere to the program requirements specified in rule; and

(3) Be submitted on or before the day and time specified in the application.

(b) [(a)] Required Elements of Program Approval Application. Unless otherwise specified in the application, an [An] eligible public junior college must submit the following elements in a complete application for approval to offer this program:

(1) A description of the program's design demonstrating compliance with program requirements listed under §12.5 of this subchapter (relating to Program Requirements), including the assessment to be used under §12.5(d)(4) [§12.5(c)(3)] of this subchapter.

(2) Documentation of consultation with local employers and Workforce Development Boards in development of the program's curriculum.

(3) For public junior colleges proposing to offer the program in consortium with one or more partners under §12.6(a)(2) of this subchapter (relating to Eligible Institutions and Students):

(A) a memorandum of agreement with each member of the consortium; and

(B) a description of the role that each member of the consortium will play in delivery of the Program.

(c) [(b)] Process for Approval.

(1) An eligible public junior college may submit an application to participate in the Opportunity High School Diploma Program to the Coordinating Board. The Coordinating Board will review submitted applications for completeness of the elements required under §12.5 of this subchapter.

(2) The Commissioner shall review the staff recommendation and any input by other entities and make the determination whether to approve the program.

(3) The Commissioner may not approve more than the number of public junior colleges or consortia set forth in Texas Education Code, §130.454(c), to offer the Opportunity High School Diploma Program.

(4) [(3)] The Coordinating Board shall notify the public junior college of program approval and post a list of approved programs on the Coordinating Board website.

§12.8. Required Reporting.

(a) Each participating public junior college or consortia approved to offer this program shall report to the Coordinating Board via a form and on a schedule approved by the Commissioner for data collection required under this section [student enrollments and completions to the Coordinating Board through the Education Data System, in compliance with the data reporting standards established for that system]. Each participating public junior college shall provide disaggregated data and information including, but not limited to, the following:

(1) Student enrollment data;

(2) Student completion data; and

(3) Any other data or attributes as determined by the Commissioner.

(b) Each participating public junior college or consortia approved to offer this program shall provide any additional reports certified in accordance with Coordinating Board data reporting requirements.

(c) [(b)] The Board shall submit to the Legislature a progress report on the effectiveness of this program and recommendations for legislative or other action no later than December 1, 2026.

§12.10. Approval of a Request to Deliver an Opportunity High School Diploma Program.

(a) An institution shall submit an application prior to offering an Opportunity High School Diploma program.

(b) The Assistant Commissioner will make the determination of administrative completeness of the application in accordance with §12.5 and §12.7 of this subchapter (relating to Program Requirements and Program Approval Process, respectively) within sixty days of receiving the application. In this subchapter, Assistant Commissioner means the Assistant, Associate, or Deputy Commissioner designated by the Commissioner.

(c) The Assistant Commissioner may allow an institution the opportunity to cure deficiencies in the proposed program application prior to making a recommendation to the Commissioner.

(d) The Assistant Commissioner will make a recommendation to the Commissioner to:

(1) Deny the proposed diploma program; or

(2) Approve the proposed diploma program.

(e) If the Assistant Commissioner recommends denial of approval, the institution may appeal that decision to the Commissioner in writing with all supporting documents within sixty days of notice of the denial of approval.

(f) The Commissioner may, within sixty days of receiving a recommendation for approval from the Assistant Commissioner or an appeal from an institution, and at his or her sole discretion:

(1) Determine if the application is complete and meets the requirements set out in this subchapter; and

(2) Approve the proposed diploma program; or

(3) Deny the proposed diploma program.

(g) Decisions by the Commissioner regarding appeals are final and not subject to further appeal.

(h) An institution shall implement an approved new Opportunity High School Diploma program within twelve months of the implementation date stated in the Coordinating Board approval letter or approval is withdrawn. The Commissioner may give one twelve-month extension of approval if an institution demonstrates good cause for the additional time and the delay will not harm students.

§12.11. Program Review and Revision.

(a) The Coordinating Board shall convene the Opportunity High School Diploma Advisory Committee not less than annually to review the instructional outcomes, performance expectations, and assessments for each of the five core program competencies.

(b) The Advisory Committee shall recommend revisions to the instructional objectives, performance expectations, and assessments to the Commissioner.

(c) The Commissioner shall consider the Advisory Committee's recommendations.

(1) Upon approval by the Commissioner, the revised instructional outcomes and performance expectations pertaining to §12.5(c) of this subchapter (relating to Program Requirements) shall include the date of approval and be posted at https://reportcenter.highered.texas.gov/contracts/opportunity-high-school-diploma-instructional-outcomes-and-performance-expectations/.

(2) Upon approval by the Commissioner, the revised list of assessments pertaining to §12.5(d)(4) of this subchapter shall include the date of approval and be detailed in Figure 1 of this subchapter.

(d) A public junior college approved to offer the Opportunity High School Diploma shall update or revise its program as necessary to meet any approved revisions and provide documentation to Coordinating Board of such revisions within ninety days of the effective date.

§12.12. Revocation of Authorization.

(a) The Commissioner may revoke authorization of an Opportunity High School Diploma program based on the following factors:

(1) noncompliance with application and/or the provisions of this subchapter;

(2) lack of program success as evidenced by reports; or

(3) failure to provide accurate, timely and complete information as required by §12.10 of this subchapter (relating to Approval of a Request to Deliver an Opportunity High School Diploma Program).

(b) The Commissioner shall provide written notice of a proposed revocation, including the reason or reasons for the proposed revocation.

(1) An institution offering an approved Opportunity High School Diploma program has thirty days to request a hearing on the proposed revocation. Such hearing request shall be submitted in writing and include copies of any documents that support the hearing request. A hearing shall be scheduled not later than sixty days from the date of Coordinating Board receipt of the hearing request, unless otherwise agreed.

(2) The Commissioner will provide written notice of the proposed revocation no later than thirty days from the date of the hearing, or if no hearing is requested once the period to request a hearing has elapsed. Such notice shall provide for a reasonable period for students currently enrolled in the Opportunity High School Diploma program to be taught-out.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6344

CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER M. TOTAL RESEARCH EXPENDITURES

19 TAC §§13.302 - 13.305

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter M, §§13.302 - 13.305, concerning Total Research Expenditures. Specifically, this amendment will make clarifying amendments to the reporting of total research expenditures to the Coordinating Board for use in state research funding allocations for the Comprehensive Research Fund, National Research Support Fund, Texas University Fund (TUF), and certain health related institution funding formulas (e.g., research enhancement formula and certain mission specific performance based research formulas). The rules will provide direction to general academic teaching institutions with a health related institution that submit a singular annual financial report on how to allocate their research expenditures. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 13.302, Definitions, lists definitions pertinent to research expenditure reporting. The addition of paragraph (10), "Health Related Institutions," adds a more commonly used term for this category of institutions, improving the readability of the rule, using this term throughout the rules in place of "medical and dental units."

Paragraph (11), "Institutional Fund Expenditures," adds additional detail on Institutional Fund Expenditure sources (tobacco settlement receipts and patient income) and removes language about unrecovered indirect costs. This had been included to align reporting with the National Science Foundation Higher Education Research and Development survey. However, due to institutions' concerns about disclosure of information that could be confidential under state or federal law, the amendment deletes the mandatory collection of data on unrecovered indirect cost.

Paragraph (15), "Private Expenditures," removes language about ineligible expenditures because this is addressed in the research expenditure survey definition in paragraph (19).

Revisions to paragraphs (16), "Research and Development (R&D)," and (18), "Research Expenditures or Expenditures," clarify the language but do not change the meaning.

The amendments to paragraph (19), "Research Expenditures or Expenditures," remove duplicative language, add adjustments for ineligible expenditures, remove unrecovered indirect expenditures, and clarify that the pass-throughs referred to occur in Texas.

A statutory citation is added to paragraph (21), "Sources and Uses Template," for clarity.

Paragraph (23), "State and Local Government Expenditures," is amended to add patient income and its statutory citation because there have been questions about how patient income is categorized.

Paragraph (24), "State of Texas Contracts and Grants," is clarified with the addition of grants to the listing of expenditures in this category.

Rule 13.303, Standards and Accounting Methods for Determining Total Research Expenditures, amendments reorganize the section to clarify that the new subsection (a) applies to all institutions of higher education, replaces expenses with expenditures in all instances, and adds clarifying detail on types of eligible expenditures, such as capital outlay for research equipment. New subsection (b) applies to the general academic teaching institutions with a health related institution that submit a singular annual financial report and provides detail on how to allocate their research expenditures. This methodology takes into account stakeholder feedback, basing the reporting of research expenditures on the appointment of the investigators, and will go into effect beginning with fiscal year 2025. Subsection (c) is the previous subsection (a) language with no substantive change.

Rule 13.304, Reporting of Total Research Expenditures, removes the word "public," since the statutory definition of institution of higher education is a Texas public institution (Texas Education Code, §61.003(8)).

Rule 13.305, Institutional Reporting of Total Research Expenditures by Funding Source, clarifies certain terms, removes the concept of a "narrow" definition of research and development expenditures, and removes reference to unrecovered indirect costs.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the clarification of reporting of research expenditures. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendment is proposed under Texas Education Code, Section 62.053, which provides the Coordinating Board with the au-

thority to prescribe standards and accounting methods for determining the amount of total research funds expended.

The proposed amendment affects Texas Education Code Sections 61.0662, 62.053, 62.095, 62.134, 62.1482.

§13.302. Definitions.

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

(1) All Other Expenditures--Expenditure [~~Expenditures~~] of all other funds not reported under the expenditure categories of Business, Nonprofit Organizations, Institutional Funds, State and Local Government or Federal Expenditures, as defined in this section. All Other Expenditures includes funds from foreign universities, foreign governments, portions of gifts designated for research by the donors (including from the reporting institution's 501(c)(3)), and nonfederal and nonstate funds received from other institutions of higher education.

(2) Annual Financial Report (AFR)--Institutional financial report for one fiscal year as required by Texas Education Code, §51.005.

(3) Areas of Special Interest--Major research topics important to the public, or required by statute, as listed in the Research Expenditure Survey.

(4) Board--The governing body of the Texas Higher Education Coordinating Board.

(5) Business Expenditures--Expenditure [~~Expenditures~~] of funds from domestic or foreign for-profit organizations.

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

(7) Coordinating Board Staff or Board Staff--Agency staff acting under the direction of the Board or [~~and~~] the Commissioner.

(8) Federal Expenditures--Expenditure [~~Expenditures~~] of funds received by the reporting institution from any agency of the United States government for research and development. These include reimbursements, contracts, grants, and any identifiable amounts spent on research and development from Federal programs including Federal monies passed through state agencies to the reporting institution and federal funds that were passed through to the reporting institution from another institution.

(9) General Academic Teaching Institution--Any public general academic teaching institution as defined in Texas Education Code, §61.003(3).

(10) Health Related Institution--Any medical and dental unit as defined in Texas Education Code, §61.003(5).

(11) [~~(10)~~] Institutional Fund Expenditure [~~Expenditures~~]--This includes funds expended for R&D that are controlled at the institutional level, such as Available University Fund (AUF), Tobacco Settlement Receipts, patient income (unless defined by Texas Education Code, §51.009(c)), or other funding held locally used for R&D, excluding institution research administration and support. This category includes cost sharing from unrestricted sources (cost sharing from restricted sources should be classified according to the underlying source) and [~~,~~] unrestricted funds from the reporting institution's 501(c)(3)[~~, and unrecovered indirect costs. Unrecovered indirect costs may not exceed the institution's federally negotiated Facilities and Administrative rate~~].

[~~(11) Medical and Dental Unit--Any public health related institution as defined in Texas Education Code, §61.003(5).~~]

(12) Nonprofit Organization Expenditures--Expenditure [~~Expenditures~~] of funds from domestic or foreign non-profit foundations and organizations, except universities and colleges.

(13) Other Agency of Higher Education--Any public agency of higher education as defined in Texas Education Code, §61.003(6).

(14) Pass-through to Sub-recipient--Sponsored project funds that are passed from one entity to a sub-recipient. The sub-recipient expends the funds to carry out part of the sponsored project on behalf of the pass-through entity.

(15) Private Expenditures--Expenditure [~~Expenditures~~] of funds reported as Business Expenditures, Non-profit Organization Expenditures, and All Other Expenditures. [~~Amounts exclude R&D expenditures that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey.~~]

(16) Research and Development (R&D)--Research and Development [~~R&D~~] activity is creative and systematic work undertaken in order to increase the stock of knowledge "including knowledge of humankind, culture, and society" and to devise new applications of available knowledge. R&D covers three activities: basic research, applied research, and experimental development. R&D does not include public service or outreach programs, curriculum development (unless included as part of an overall research project), or non-research training grants. R&D excludes [~~does not include~~] capital projects (i.e., construction or renovation of research facilities).

(17) R&D Training--Activities involving the training of individuals in research techniques are included in R&D, where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(18) Research Expenditures or Expenditures--In a specific fiscal year, expenditure [~~expenditures~~] of funds paid out by an institution to support institutional Research and Development activities. Expenditures exclude [~~do not include~~] in-kind donations.

(19) Research Expenditure Survey--The mandatory survey instrument administered by the Coordinating Board pursuant to Texas Education Code, §61.0662, that establishes total R&D expenditures for each institution by research field and areas of special interest, both accounted by funding source. [~~The survey includes a Research Expenditure Survey, specific definition of R&D, and reporting guidelines for R&D activities.~~] The survey includes specific adjustments to account for ineligible R&D expenditures and separately accounts for [~~unrecovered indirect costs and~~] pass-through expenditures to other general academic teaching institutions, health related institutions [~~medical and dental units~~], or other agencies of higher education in Texas, by funding source.

(20) Research fields--Subject areas for R&D, as listed in the Research Expenditure Survey.

(21) Sources and Uses Template--An annual survey of Texas general academic and health-related institutions, administered by the Coordinating Board pursuant to Texas Education Code, §61.065, and §13.63 of this chapter (relating to Additional Financial Information Reporting), to detail financial information and provide specific information about revenues and expenditures.

(22) Sponsored Projects--Sponsored projects include grants, contracts, cooperative agreements and other legally binding means of transfer under which an entity provides a return benefit to,

or agrees to provide a defined deliverable or complete a specified set of activities for, an external sponsor in exchange for funds. External sponsors are those that are not part of the entity.

(23) State and Local Government Expenditures--Expenditure [Expenditures] of funds received for R&D via appropriations from the state of Texas, including non-formula support items, patient income as defined in Texas Education Code, §51.009(c), and funds received from any state, county, municipality, or other local government entity in the United States, including state health agencies. Expenditures include state funds that support R&D at agricultural and other experiment stations.

(24) State of Texas Contracts and Grants--A subset of State and Local Government Expenditures that includes only expenditures of interagency contracts, contracts with Texas local governments, and other such state funding sources for R&D, including grants.

(25) State of Texas Source Expenditures--A subset of State and Local Government Expenditures that includes only expenditures of funds appropriated by the state of Texas for research, including state appropriated research non-formula support items and research formula funding.

§13.303. Standards and Accounting Methods for Determining Total Research Expenditures.

[(a) R&D expenditures for Texas A&M University include consolidated expenses from Texas A&M University and its service agencies.]

(a) [(b)] Research expenditure reporting for all institutions of higher education. Each institution shall reconcile its research expenditures [Research expenses] from the AFR [shall be reconciled] to the total R&D expenditures of the Research Expenditure Survey by a:

(1) Decrease of the AFR total by the amount of R&D expenditures [expenses] that do not meet the [narrow] definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey, such as pass-throughs[. Pass-throughs] to other general academic teaching institutions, health related institutions [medical or dental units], and other agencies of higher education in Texas [do not meet the narrow definition of R&D expenditures].

(2) Increase of the AFR total by the amount of recovered indirect costs associated with expenditures [expenses] for R&D as reported through the Research Expenditure Survey.

(3) Increase of the AFR total by the amount of capital outlay for research equipment, not including R&D plant expenditures [expenses] or construction.

(4) Increase of the AFR total by the amount of expenditures for conduct of R&D made by an institution's research foundation, or 501(c) corporation on behalf of the institution, and not reported in the institution's AFR, including recovered indirect costs and capital outlay for research equipment.

(5) Increase of the AFR total to include expenditures, including recovered indirect costs and capital outlay for research equipment [expenses] related to research performed by the agency or institution but reported by [recognized on the AFR of] a separate agency or institution that [who] received and expended the funding. The agency or institution that [who] received and expended the funding but did not perform the research must make a corresponding decrease of its AFR total for this amount. This accounting event is not a pass-through to subrecipient as defined in §13.302(14) of this subchapter (relating to Definitions).

(b) This subsection applies to the general academic teaching institutions with a health related institution that submit a singular annual financial report.

(1) Research expenditures shall be reported separately by the general academic teaching institution and health related institution using a methodology that allocates amounts to the general academic teaching institution and health related institution according to the proportion of the expenditures attributed to the principal investigator and any co-investigators.

(2) The primary appointment of each investigator shall determine to which entity (the general academic teaching institution or health related institution) the investigator's allocated expenditures are assigned and reported.

(3) Subsection (b) of this section will take effect beginning with the reporting of expenditures made during fiscal year 2025.

(c) R&D expenditures for Texas A&M University include consolidated expenditures from Texas A&M University and its service agencies.

§13.304. Reporting of Total Research Expenditures.

(a) The Coordinating Board [staff] shall annually post a report of total research expenditures of all [public] institutions of higher education on its website.

(b) Not later than January 1 of each year, the Board shall submit to the legislature information regarding human stem cell research reported by the institutions to the Coordinating Board in the Research Expenditure Survey from reports required by this subsection.

§13.305. Institutional Reporting of Total Research Expenditures by Funding Source.

(a) Each institution [Institutions] shall report all research expenditures on the Research Expenditure Survey using the following categories:

(1) Federal Expenditures;

(2) State and Local Government Expenditures;

(3) Business Expenditures;

(4) Nonprofit Organization Expenditures;

(5) Institutional Fund Expenditures; and

(6) All Other Expenditures.

(b) Each institution [Institutions] shall report State of Texas Source Expenditures and State of Texas Contracts and Grants as subsets of State and Local Government Expenditures.

(c) Each institution [Institutions] shall report the original source of expenditures, unless the institution lacks source information [when possible]. Institutions shall report each category and show adjustments by the amount of R&D expenditures [expenses] that do not meet the [narrow] definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey, as defined in §13.302(19) of this subchapter (relating to Definitions), such as[. Unrecovered indirect costs and] pass-throughs to other general academic teaching institutions, health related institutions [medical and dental units], and other agencies of higher education in Texas [do not meet the narrow definition of R&D expenditures].

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

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Texas Higher Education Coordinating Board
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CHAPTER 15. RESEARCH FUNDS
SUBCHAPTER C. STRATEGIC PLANNING RELATED TO EMERGING RESEARCH AND RESEARCH UNIVERSITIES

19 TAC §§15.50 - 15.52

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 15, Subchapter C, §§15.50 - 15.52, concerning Strategic Planning Related to Emerging Research or Research Universities. Specifically, the new subchapter will replace the repealed Title 19, Part 1, Chapter 5, Subchapter G, §§5.120 - 5.122, concerning Strategic Planning and Grant Programs Related to Emerging Research and/or Research Universities. The new language will update certain definitions and give authority to the Commissioner to determine the requirements for research strategic plans submitted to the Coordinating Board.

Rule 15.50, Purpose and Authority, describes the purpose and authority of the subchapter.

Rule 15.51, Definitions, defines the terms used in the rule. Revisions update certain definitions to the most current terminology. Paragraph (3) is a new definition for the Coordinating Board to specify distinct actions taken by the agency or staff that are separate from actions taken by the governing board of the Texas Higher Education Coordinating Board. Paragraph (4), Research Strategic Plan, modifies the definition to prescribe that the specifications of the plan are approved by the Commissioner of Higher Education, per the delegation of the Board in rule 15.52(a).

Rule 15.52, Submission of a Strategic Plan for Achieving Recognition as a Research University, describes the process, required minimum elements of a plan, and timing for submission of a research strategic plan. The amendments to previous rule language clarify that the Board delegates authority to the Commissioner to determine the required elements of the plan. The rule prescribes that, at a minimum, the plan must include elements relating to an institution's research enterprise, doctoral programs, and faculty. These elements provide a broad guideline for the Commissioner to then approve additional or more specific requirements for the institutions. By providing the authority for the Commissioner to designate the required elements of the report, the Commissioner may consider current statewide needs and trends rather than maintaining a static list of elements.

The rule prescribes that these elements be approved by the Commissioner by October 1 the year prior to the required submission date, which is set at April 1, 2025. Setting a starting date for the submission of plans and a future schedule within the rule provides clarity for institutions on when the reports are due on a standard timeline.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved clarity on requirements related to research strategic plans. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The new section is proposed under Texas Education Code, Section 51.358 Long-Term Strategic Plan for Research University or Emerging Research University, which provides the Coordinating Board with the authority to adopt rules for the administration of the section.

The proposed new section affects Texas Education Code, Section 51.358.

§15.50. Purpose and Authority.

(a) The purpose of this subchapter is to require each institution of higher education designated as a research university or emerging research university as designated in the Board's accountability system to have a long-term strategic plan for achieving recognition as a research university or enhancing the institution's reputation as a research university.

(b) This rule is adopted under the authority of Texas Education Code, §51.358.

§15.51. Definitions.

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

(1) Board--The governing body of the Texas Higher Education Coordinating Board.

(2) Commissioner--The Texas Commissioner of Higher Education who serves as the chief executive officer of the agency known as the Texas Higher Education Coordinating Board.

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

(4) Emerging Research University--A public institution of higher education designated as an emerging research university under the Board's accountability system.

(5) Governing board--The Board of Regents of a research or emerging research university.

(6) Research Strategic Plan--A document to be prepared by the institution which provides a detailed, long-term plan to show how the institution will achieve or enhance its recognition as a research university. The form, manner, standards, and minimum required content for the report will be prescribed by the Commissioner.

(7) Research University--A public institution of higher education designated as a research university under the Board's accountability system.

§15.52. Submission of a Strategic Plan for Achieving Recognition as a Research University.

(a) The Commissioner shall prescribe the form, length, manner, and minimum required content in guidelines published by the Coordinating Board by October 1 in the year prior to submission.

(b) At a minimum, the guidelines in subsection (a) of this section will require information on the following topics:

(1) A plan to elevate the institutions' research enterprise, including its goals and priorities, collaborations and partnerships, and a discussion of economic impact; and

(2) A plan to increase research funding and productivity, including the role of external funding, research facilities, and commercialization; and

(3) A description of its doctoral programs, including plans for research doctorates, supports for doctoral candidates, and the areas of academic emphasis; and

(4) A plan for faculty recruitment, support, and development.

(c) The governing board of each research or emerging research university shall submit its approved strategic plan to the Coordinating Board by April 1, 2025. Each institution shall submit an updated strategic plan not later than April 1, 2030.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403447
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 427-6548

CHAPTER 17. RESOURCE PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.3

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter A, §17.3, concerning Definitions, to be replaced with forthcoming rulemaking. Specifically, the Coordinating Board intends to adopt a separate rule relating to definitions to reorganize and improve readability and accuracy of the definitions used for resource planning. The Coordinating Board has statutory authority to adopt rules relating to resource planning and facilities under Texas Education Code, §§61.0572 and 61.058.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is to improve readability of the rules through the repeal and subsequent replacement of Chapter 17, Subchapter A, §17.3. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The repeal is proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The proposed repeal affects Texas Administrative Code, Chapter 17, Section A, §17.3, Definitions.

§17.3. Definitions.

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

Filed with the Office of the Secretary of State on July 29, 2024.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6548

19 TAC §17.3

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter A, §17.3, concerning Definitions. Specifically, this new rule will provide better organization and readability of definitions pertaining to resource planning.

The new section is proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

Changes from existing definitions include the removal of the following definitions:

Educational and General (E&G) Building Replacement Estimate (existing paragraph (11)) and Institution-Wide Building Replacement Estimate (existing paragraph (12)), as these will now be included with the definition for the Building Replacement Estimate Report (as listed below).

Campus Master Plan (existing paragraph (14)), as the current methodology for capturing capital planning is within the Capital Expenditure Plan definition.

Committee (existing paragraph (19)) as the Board no longer has a Committee review facilities projects.

Energy Systems (existing paragraph (27)) as no longer in use.

Project Review (existing paragraph (47)) as the Board does not conduct project reviews.

Proposed rules add the following new definitions:

Paragraphs (8) and (20) specify two distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board and "Coordinating Board," meaning the state agency, including agency staff, as a whole. Separating these terms improves the readability and precision of the rules contained in Chapter 17 and allows the Coordinating Board to make a distinction between actions taken by the governing body and the agency, including agency staff, as a whole.

Paragraph (31), Health-related institution, adds a definition for a health-related institution as defined by Texas Education Code, §61.003(5).

Paragraph (51), Space Projection Model, adds a definition for the Space Projection Model, as it is a required report under rule 17.100(1) and is currently used by the Legislature for formula funding and facilities related purposes. It also is used as a standard by which a facilities project is reviewed by an institution's Board of Regents.

Proposed amendments to existing definitions include the following:

Paragraph (10), Building Efficiency, and paragraph (52), Space Use Efficiency, amend the definitions of both rules to specify the language use of the word "efficiency", since the term is used in two different ways. Paragraph (10) adds the word "building" to specify that this definition is referring to building efficiency, whereas, paragraph (52) adds the word "efficiency" to clarify that this definition is referring to "space usage efficiency", a report that is a required under rule 17.100(2).

Paragraph (11), Building Replacement Estimate Report, adds more detail as to whom the audience of the report is and how the report Is calculated.

Paragraph (12), Campus Condition Report, adds more detail as to whom institutions should provide the report to in accordance with Texas Education Code, §61.05821.

Paragraph (14), Capital Expenditure Plan (MP1), includes an additional project type (information resource project) to match projects as listed in rule 17.101, regarding Institutional Reports.

Paragraph (27), Facilities Audit, redefines the definition of an audit to clarify what is included and the authority reference that audits fall under.

Paragraph (13), Capital Construction Assistance Projects, renames the former Tuition Revenue Bonds Project to Capital Construction Assistance Projects as provided for in Texas Education Code, §55.111 and §§55.171 - 55.17991.

Proposed changes to the Texas Administrative Code, Chapter 17, Section A, §17.3, also provides subsequent reorganization and renumbering.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of administering the section will be the replacement of nomenclature in existing Chapter 17, Subchapter A, §17.3, with a new §17.3 due to multiple updates and reorganization of existing definitions. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The new section is proposed under Texas Education Code, Sections 61.0572 and 61.058, which provides the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The proposed new section affects Texas Administrative Code, Chapter 17, Subchapter A, §17.3.

§17.3. Definitions.

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

(1) Academic Facilities--Facilities used for primary instruction, research, and public service functions of the institution. Academic facilities typically would include classrooms, libraries, administrative and faculty offices, and student and research laboratories.

(2) Acquisition--To come into possession or control of real property or facilities. This includes the acceptance, purchase, lease-purchase, transfer, or exchange of land or facilities.

(3) Addition--Expansion or extension of an existing facility that increases its size or capacity.

(4) Assignable Area of a Building--The sum of all areas within the interior walls of rooms on all floors of a building assigned to, or available for assignment to, an occupant or use, excluding unassigned space. This is also referred to as net assignable square feet (NASF).

(5) Athletic Facilities--Facilities used for athletic programs, including intercollegiate athletics, intramural athletics, and athletically oriented academic programs.

(6) Auditorium or Assembly--A room, hall, or building designed and equipped for the assembly of large groups for such events as dramatic and musical productions, devotional activities, livestock judging, faculty/staff meetings, or commencement. Included are theaters, concert halls, arenas, chapels, and livestock judging pavilions. Assembly facilities may also serve instructional purposes to a minor or incidental extent.

(7) Auxiliary Enterprise Buildings or Space--Income-generating structures and space such as dormitories, cafeterias, student union buildings, stadiums, athletic facilities, housing or boarding facilities used by a fraternity, sorority, or private club, and alumni centers used solely for those purposes. Auxiliary space is not supported by state appropriations.

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

(9) Building--A structure with at least two walls for permanent or temporary shelter of persons, animals (excluding animal caging equipment), plants, materials, or equipment that is attached to a foundation, roofed, serviced by a utility (exclusive of lighting), is a source of maintenance and repair activities, and is under the control or jurisdiction of the institution's governing board, regardless of its location.

(10) Building Efficiency--The proportion of the gross square feet that can be assigned. This is determined by dividing the net assignable square feet by the gross square feet of a building.

(11) Building Replacement Estimate Report--A report that provides an overall estimate of the campus' buildings replacement cost. The Coordinating Board produces this report to aid institutions in reporting their deferred maintenance needs as a percentage of the total campus' replacement value to the Board of Regents. Building Replacement Estimates are calculated for Educational and General space and Institution-Wide space. A twenty-five percent add-on is included to account for the cost of necessary infrastructure. These are not to be used for insurance purposes.

(12) Campus Condition Report--A report outlining facility maintenance needs in the areas of deferred maintenance and critical deferred maintenance. Institutions are to provide this report to their Board of Regents, and a copy is to be provided to the Coordinating Board.

(13) Capital Construction Assistance Project--A project for which an institution has legislative authority to finance a construction, renovation, or land acquisition project as provided for in Texas Education Code, §55.111 and §§55.171 - §55.17991.

(14) Capital Expenditure Plan (MP1)--A detailed formulation of institutional programs to address repairs, renovations, deferred maintenance, critical deferred maintenance, facilities construction, demolition, property acquisitions, major information resources projects, or infrastructure.

(15) Certification--Institutional attestation of reports or other submissions as being true as represented.

(16) Classroom--A room used for scheduled classes. These rooms may be called lecture rooms, lecture-demonstration rooms, seminar rooms, or general-purpose classrooms. A classroom may contain multimedia or telecommunications equipment, such as those used for distance learning. A classroom may be furnished with special equipment (e.g., globes, maps, pianos) appropriate to a specific area of study. A classroom does not include a conference room, meeting room, auditorium, or class laboratory.

(17) Class Laboratory--A room used primarily by regularly scheduled classes that require special-purpose equipment for student participation, experimentation, observation, or practice in a field of study. Class laboratories may be referred to as teaching laboratories, instructional shops, computer laboratories, drafting rooms, band rooms, choral rooms, group studios. Laboratories that serve as individual or independent study rooms are not included.

(18) Clinical Facility--A facility often associated with a hospital or medical school that is devoted to the diagnosis and care of patients in the instruction of health professions and allied health professions; medical instruction may be conducted, and patients may be examined and discussed. Clinical facilities include patient examination rooms, testing rooms, and consultation rooms.

(19) Commissioner--The Texas Commissioner of Higher Education who serves as the chief executive officer of the agency known as the Texas Higher Education Coordinating Board.

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

(21) Cost--The portion of the total project costs that are reported by the institution as being for the actual cost of construction, repair/renovation, or the actual purchase price for improved real property purchases. Not included are costs associated with site acquisition (for construction projects), closing costs (for improved real property purchases) fixed equipment, site development, furniture and moveable equipment, construction services, life safety compliance, professional services fees, demolition costs, eminent domain costs, environmental development, or contingency amounts.

(22) Critical Deferred Maintenance--Any deferred maintenance that if not corrected in the current budget cycle places its building occupants at risk of harm or the facility at risk of not fulfilling its functions.

(23) Deferred Maintenance--The accumulation of facility components in need of repair or replacement brought about by age, use, or damage, for which remedies are postponed or considered backlogged, that is necessary to maintain and extend the life of a facility. This includes repairs postponed due to funding limitations.

(24) Educational and General (E&G) Space--Space used for teaching, research, or the preservation of knowledge, including the proportional share used for those activities in any building or facility used jointly with auxiliary enterprise, or space that is permanently unassigned. E&G space may be supported by state appropriations.

(25) E&G Cost--E&G Space/Total Space x Cost. The costs associated with the E&G space included in a project. This is determined by dividing the E&G assignable square feet by the total project assignable square feet and then multiplying the result by the cost.

(26) Energy Savings Performance Contract--A contract for energy or water conservation measures to reduce energy or water consumption or operating costs of institutional facilities in which the estimated savings in utility costs resulting from the conservation measures is guaranteed to offset the cost of the measures over a specified period.

(27) Facilities Audit--An audit of an institution of higher education's facilities inventory records and submission of required facilities development projects as required by Texas Education Code, §61.0583.

(28) Facilities Inventory--A collection of building and room records that reflects institutional space and how it is being used. The records contain codes that are uniformly defined by the Board and the United States Department of Education and reported by the institutions on an ongoing basis to reflect a current facilities inventory. The facilities inventory includes a record of property owned by or under the control of the institution.

(29) Gift--A donation or bequest of money or another tangible item, a pledge of a contribution, or the acquisition of real property or facilities at no cost to the state or to the institution. It may also represent a method of finance for a project.

(30) Gross Square Feet (GSF)--The sum of all square feet of floor areas within the outside faces of a building's exterior walls. This includes the areas, finished and unfinished, on all floors of an enclosed structure, i.e., within the environmentally controlled envelope, for all stories or areas which have floor surfaces.

(31) Health-Related Institution--A medical or dental unit as defined by the Texas Education Code, §61.003(5).

(32) Improved Real Property--Real property on which there are buildings or facilities.

(33) Information Resource Project--Projects related to the purchase or lease-purchase of computer equipment, purchase of computer software, purchase or lease-purchase of telephones, telephone systems, and other telecommunications and video-teleconferencing equipment.

(34) Infrastructure--The basic physical structures needed for the operation of a campus to include roads, water supply, sewers, power grids, telecommunications, and so forth. Systems within five feet of a building are considered building systems and are not infrastructure.

(35) Institution or Institution of Higher Education--A Texas public institution of higher education as defined in Texas Education Code, §61.003(8), except a community/junior college.

(36) Lease--A contract by which real estate, equipment, or facilities are conveyed for a specified term and for a specified rent. Includes the transfer of the right to possession and use of goods for a term in return for consideration. Unless the context clearly indicates otherwise, the term includes a sublease.

(37) Lease-Purchase--A lease project that includes the acquisition of real property by purchase, gift, or any other voluntary transaction at some future time.

(38) Legislative Authority--Specific statutory authorization.

(39) Mixed Use--Facilities that have a mixture of uses. These may include facilities that are E&G and non-E&G.

(40) Net Assignable Square Feet (NASF)--The sum of all areas within the interior walls of rooms on all floors of a building assigned to, or available for assignment to, an occupant or use, excluding unassigned areas. NASF includes auxiliary space and E&G space.

(41) New Construction--The creation of a new building or facility, the addition to an existing building or facility, or new infrastructure that does not currently exist on campus. New construction would add gross square footage to an institution's existing space.

(42) Parking Structure--A facility or garage used for housing or storing vehicles. Included are garages, boathouses, airport hangars, and similar buildings. Barns or similar field buildings that house farm implements and surface parking lots are not included.

(43) Phased Project--A project that has more than one part, each one having fixed beginning and ending dates, specified cost estimates, and scope. Phased projects consider future phase needs in the project plan; each phase is able to stand alone as an individual project.

(44) Project--The process that includes the construction, repair, renovation, addition, alteration of a campus, building, or facility, or its infrastructure, or the acquisition of real property.

(45) Purchase--The acquisition of and interest in real property in exchange for valuable consideration.

(46) Real Property--Land with or without improvements such as buildings.

(47) Repair and Renovation (R&R)--Construction upgrades to an existing building, facility, or infrastructure that currently exists on campus; this includes the finish-out of shell space. R&R may add E&G NASF space.

(48) Research Facility--A facility used primarily for experimentation, investigation, or training in research methods, professional research and observation, or a structured creative activity within a specific program. Included are laboratories used for experiments or testing in support of instructional, research, or public service activities.

(49) Shell Space--An area within a building with an unfinished interior designed to be converted into usable space at a later date.

(50) Space Need--The result of the comparison of an institution's actual space to the predicted need as calculated by the Space Projection Model.

(51) Space Projection Model--An assessment of space needs at institutions of higher education based on factors such as semester credit hours, programs, level of instruction, faculty, and E&G and research expenditures.

(52) Space Use Efficiency--A report that determines the efficiency of space use in existing classrooms and class labs as determined by an institution's performance in three areas: facilities demand, utilization, and average percent fill.

(53) Standard--Basis, criteria, or benchmark used for evaluating the merits of a project or an institutional comparison to a benchmark.

(54) Technical Research Building--Space used for research, testing, and training in a mechanical or scientific field. Special equipment is required for staff and/or student experimentation or observation. Included are specialized laboratories for new technologies that have stringent environmental controls on air quality, temperature, vibration, and humidity. Facilities generally include space for specialized technologies, semiconductors, biotechnology, advanced materials, quantum computing and advanced manufacturing quantum computing technology, nanoscale measurement tools, integrated microchip-level technologies for measuring individual biological molecules, and experiments in nanoscale disciplines.

(55) Unimproved Real Property--Real property on which there are no buildings or facilities.

(56) University System--The association of one or more public senior colleges or universities, medical or dental units, or other agencies of higher education under the policy direction of a single governing board.

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

Filed with the Office of the Secretary of State on July 29, 2024.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6548

SUBCHAPTER B. REPORTING REQUIREMENTS

19 TAC §17.20, §17.21

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter B, §17.20 and §17.21, concerning Reporting Requirements. Specifically, the proposed amendment will clarify terminology used in this subchapter and align the rule more closely with statute and practice.

Rule 17.20(a) and (b) and rule 17.21(1), (2), and (4) add the term "Coordinating" before the existing nomenclature of "Board" to align with proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff. This amendment clarifies the roles and responsibilities of each entity in rule.

Rule 17.20(a)(3) updates the property purchases reporting threshold from $1 million to $5 million to align with the reporting threshold update established in Section 11.03 of the FY 2024-25 General Appropriations Act.

Rule 17.21, Submission Procedures, is amended by removing "and the project complies with applicable state and federal requirements as listed on the form," since the authority to approve a facilities project rests with an institution's Board of Regents under Texas Education Code, Chapter 51, Subchapter T. The Coordinating Board's authority rests in a permissive review of purchases of improved real property (Texas Education Code, §61.0572(d)) and construction, repair, or rehabilitation of buildings and facilities (Texas Education Code, §61.058(b)). The Coordinating Board currently does not review these projects and solely collects data on the facilities projects at institutions of higher education.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is clarity on the distinction between actions taken by the governing body, agency staff, and the agency as a whole and updates to facility submission requirements. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov.

Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Texas Administrative Code, Title 19, Part 1, Chapter 17.

The proposed amendments affect the reporting threshold for improved real property purchases and align Coordinating Board referencing language in congruency with other Board rules.

§17.20. Facility Projects to Be Submitted to the Coordinating Board.

(a) Institutions shall submit data on the following projects to the Coordinating Board:

(1) New construction of building and facilities and/or additions to buildings and facilities having an E&G project cost of $10 million or greater;

(2) Repair and renovation projects for buildings and facilities having an E&G project cost of $10 million or greater;

(3) Improved real property purchases that the institution intends to include in the E&G buildings and facilities inventory if the purchase price is more than §5,000,000 [~~$1,000,000~~];

(4) Energy Savings Performance Contract projects; and

(5) Projects financed by Capital Construction Assistance Projects pursuant to Texas Education Code, §61.0572 and §61.058.

(b) Projects not specifically described in this rule, including but not limited to the following types of projects, are EXEMPT from Coordinating Board submission.

(1) Projects at The University of Texas at Austin, Texas A&M University, and Prairie View A&M University financed more than 50 percent with Permanent University Fund bond proceeds or Available University Fund funds;

(2) New Construction, repair, or rehabilitation of privately-owned buildings and facilities on land leased from an institution if the new construction, repair, or rehabilitation is financed entirely from funds not under the control of the institution;

(3) Gifts, grants, or lease-purchase arrangements intended for clinical or research facilities;

(4) New construction, repair, or rehabilitation projects to be undertaken pursuant to specific legislative authority;

(5) Lease of property or facilities;

(6) Acquisitions of unimproved real property;

(7) Acquisitions of improved real property that the institution does not intend to include in its E&G buildings and facilities inventory;

(8) New Construction, repair, renovation, or acquisition of buildings and facilities that are to be used exclusively for auxiliary enterprises and will not require appropriations from the legislature for operations, maintenance, or repair; and

(9) All gifts and grants of improved real property.

§17.21. Submission Procedures.

Institutions shall submit the following materials to the Coordinating Board:

(1) a signed Board of Regents Certification form certifying that the institution's Board of Regents or its delegated authority has approved the project [~~and that the project complies with applicable state and federal requirements as listed on the form~~] shall be submitted to the Coordinating Board before the start of the project.

(2) Institutions shall submit a completed project application electronically through the Coordinating Board's website once completed project costs are known, but no later than 90 days after the project has been added to the Facilities Inventory.

(3) For Real Property Purchase Projects, in addition to paragraphs (1) and (2) of this section, institutions shall submit appraisals in accordance with the below:

(A) An institution shall provide two current appraisal reports providing a current value of the property. The most recent appraisal of the local property tax appraisal district may be used for one of these reports.

(B) Appraisals shall be considered current if the appraisal was completed no more than two years prior to the date the project application is submitted to the Coordinating Board.

(4) Appraiser Credentials. Any appraisal report provided to the Coordinating Board under this section shall certify that the appraiser(s) meets one of the following requirements:

(A) Is designated an Accredited Senior Appraiser by the American Society of Appraisers (A.S.A.) with the professional designation in real estate;

(B) Is a member of the Appraisal Institute designated M.A.I. by the Appraisal Institute and is experienced in the valuation and evaluation of commercial, industrial, residential, and other types of properties, and who advise clients on real estate investment decisions;

(C) Is a member of the Appraisal Institute designated S.R.P.A. and is experienced in the valuation of commercial, industrial, residential, and other types of property;

(D) Is a member of the Appraisal Institute designated S.R.A. and is a real estate solutions provider who is experienced in the analysis and valuation of residential real property;

(E) Is a senior member of the National Association of Independent Fee Appraisers designated IFAS;

(F) Is an appraiser-counselor member of the National Association of Independent Fee Appraisers designated IFAC;

(G) Is a licensee of the Texas Appraiser Licensing and Certification Board in good standing and certified or licensed at the appropriate level for the project and must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser must also state that they have the knowledge and experience to complete the assignment competently; or

(H) Is a member of the American Society of Farm Managers and Rural Appraisers (ASFMRA) designated as an Appraisal Rural Appraiser, or ARA, who is experienced to value rural property matters as they relate to rural property acquisitions, dispositions or condemnation needs.

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

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SUBCHAPTER C. PROJECT STANDARDS

19 TAC §§17.30 - 17.32

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter C, §§17.30, 17.31, and 17.32, concerning Project Standards. Specifically, changes throughout this subchapter will align terminology with forthcoming new definitions in proposed subchapter A, which will separate out the meaning of "Board," "Coordinating Board," and "Coordinating Board Staff or Board Staff." Separate definitions will improve clarity of roles and responsibilities in Coordinating Board rules.

Rule 17.30(2) and 17.31(2) adds the term "Coordinating" to the existing term "Board" to align with proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff.

Rule 17.30(4)(B)(ii), deletes the term "THECB" and replaces the term with "Board" to align with proposed definition changes in Subchapter A.

Rule 17.30(1), 17.31(1), and 17.32(1) deletes the specificity of the use of "Board's" as it relates to the space projection model, which is defined in Subchapter E under Board reports.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is clarity on the distinction between actions taken by the governing body, agency staff, and the agency as a whole. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendments are proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Texas Administrative Code, Title 19, Part 1, Chapter 17.

The proposed amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter B, Sections 17.30, 17.31, and 17.32.

§17.30. Standards for New Construction and/or Addition Projects.

The established project standards for New Construction and Addition projects are as follows:

(1) Space Need--The project shall not create a campus space surplus, or add to an existing surplus, as determined by the [~~Board's~~] space projection model report, required by §17.100 of this title (relating to Board Reports).

(2) Cost--The construction building cost per gross square foot shall not exceed one standard deviation above the mean of similar projects received by the Coordinating Board within the last seven years, adjusted for inflation as described in the Coordinating Board's Construction Cost report, §17.100 of this title.

(3) Building Efficiency--The ratio of NASF to GSF for the space in projects for classrooms and general-purpose facilities shall be 0.60 or greater. Where the following specialized space is predominant in the project, the ratios of NASF to GSF shall be as follows:

(A) Office space: 0.65 or greater;

(B) Clinical facility; 0.50 or greater;

(C) Diagnostic support laboratories: 0.50 or greater;

(D) Technical research buildings: 0.50 or greater; and

(E) For mixed-use facilities, the ratio of NASF to GSF shall be calculated for each space type and considered separately.

(4) Space Usage Efficiency--The use of existing classroom and class laboratory facilities will be considered when the project includes Education & General (E&G) square footage.

(A) Classroom space usage efficiency--

(i) A score of 75 points or higher is considered as meeting the standard; and

(ii) The classroom score will determine compliance for projects involving the following facility types: classroom, general; auditorium/theater; other facility types that appear to contain classrooms or similar space.

(B) Class laboratory space usage efficiency--

(i) A score of 75 points or higher is considered as meeting the standard; and

(ii) The class laboratory score will determine compliance for projects involving facility type laboratory, general and other facility types that appear, as determined by the Board [~~THECB~~] staff, to contain class laboratories or similar space.

(C) Overall space usage efficiency--

(i) Overall score is a function of the classroom and class laboratory scores. A combined score of 150 or higher, as determined by summing the classroom and class laboratory scores, is considered as meeting the overall standard; and

(ii) The overall score is applicable for projects involving the following facility types: athletic; office, general; office, high rise; student center; other; and projects that cannot clearly be classified in a single category of facility type.

§17.31. Standards for Repair & Renovation Projects.

The established project standards for Repair and Renovation projects are as follows:

(1) Space Need--The project shall not create a campus space surplus, or add to an existing surplus, as determined by the [~~Board's~~] space projection model report, required by §17.100 of this title (relating to Board Reports).

(2) Cost--The construction building cost per gross square foot shall not exceed one standard deviation above the mean of similar projects received by the Coordinating Board within the last seven years, adjusted for inflation as described in the Coordinating Board's Construction Cost report, §17.100 of this title.

(3) Building Efficiency--The institution shall demonstrate that the project does not reduce the existing ratio of NASF to GSF for the building by more than 10 percent. If the project renovation is required to comply with federal or state requirements, the institution shall explain any reduction in the ratio of NASF to GSF for the building.

§17.32. Standards for Improved Real Property Purchase Projects.

The established project standards for Improved Real Property Purchase projects are as follows:

(1) Space Need--The project shall not create a campus space surplus, or add to an existing surplus, as determined by the [~~Board's~~] space projection model report, required by §17.100 of this title (relating to Board Reports).

(2) Cost--The proposed purchase price should not exceed the higher of two appraisal values. If the purchase price is greater than the highest appraised value, the institution shall demonstrate the need for purchasing the property at the greater value.

(3) Repair and Renovation--If the project includes repair and renovation of any improvements on the property, the standards in §17.31 of this title (relating to Standards for Repair & Renovation Projects) shall apply.

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

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SUBCHAPTER E. REPORTS

19 TAC §17.100, §17.101

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter E, §17.100 and §17.101, concerning Board and Institutional Reports related to facilities, space need, and efficiency. Specifically, these changes align rules with current agency practices related to producing reports for resource planning.

Rule 17.100 provides that the Board delegates to the Commissioner of Higher Education to approve the required reports listed, including the space projection model, space usage efficiency, and construction costs, as required under Texas Education Code, §§61.0572 and 61.058.

Rule 17.100(1), (2), and (3) amend language to define each of the reports and delete unnecessary language related to each of the reports.

Rule 17.100(1)(A) provides that the existing General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee and Health-Related Institutions Formula Advisory Committee may review the space projection model as part of tasks assigned to the committees in rule 1.169 and 1.176 as the model is currently in use by the legislature in making appropriations to these institutions of higher education. This replaces a provision currently in the rule providing that the Commissioner may convene a separate committee to review the model and streamlines the process using standing advisory committees.

Rule 17.100(2) deletes duplicative language pertaining to the space usage efficiency report.

Rule 17.100(3) adds the term "Coordinating" to the existing term "Board" to align with proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff.

Rule 17.101 amends terminology throughout the rule to align with the proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff. This allows for the specific identification of responsible parties completing each specified action or report.

Rule 17.101(1)(B) includes an additional use of the data, noting that the facilities inventory data may also be used to calculate the construction cost standard.

Rule 17.101(2)(A)(i) - (iv) removes reporting based on specific dollar thresholds with new language that aligns the thresholds in accordance with language from Article IX, General Provisions, Section 11.03, Statewide Capital Planning, of the Fiscal Year 2024-25 General Appropriations Act.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is clarity on approval of facilities reports and on the distinction between actions taken by the governing body, agency staff, and the agency as a whole. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendments are proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The proposed amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 17.

§17.100. Coordinating Board Reports.

The Commissioner [~~Board~~] shall annually approve [~~prepare~~] the following reports:

(1) Space Projection Model. [~~The Board, in consultation with the institutions, shall develop~~] A space planning model [~~models~~] to estimate the NASF of E&G space needed at institutions of higher education.

(A) Periodic Review. The General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee and Health-Related Institutions Formula Advisory Committee established under chapter 1, subchapter L of this title (relating to Formula Advisory Committee-General Academic Institutions, Technical Colleges, and State Colleges) and chapter 1, subchapter M, of this title (relating to Formula Advisory Committee-Health-Related Institutions) may [~~Each biennium, the Commissioner may convene an advisory committee of institutional representatives to~~] review the model and recommend changes.

(B) Use. The Board may [~~shall~~] use the models developed under this section to determine the need for space on campuses, as a component of recommended funding formulas for public institutions of higher education [~~other than community colleges~~], and as standards for facilities development projects.

(2) Space Usage Efficiency (SUE). An annual report on [~~The Board shall collect data and publish reports designed to inform the public and other state agencies of~~] the intensity of use of E&G facilities at institutions of higher education for classrooms and class laboratories. Classroom and class lab utilization data are not calculated for health-related institutions.

[~~(A) Periodic Review. The Board shall annually calculate the utilization of classrooms and class laboratories for the institutions.~~]

[~~(B) Use. The Board shall use the models developed under this section to determine the utilization of classrooms and class laboratories for the institutions.~~]

(3) Construction Costs. A calculation of [~~The Board shall annually calculate and report~~] the mean and one standard deviation above the mean for construction building costs per square foot. The costs shall be based on similar projects reported to the Coordinating Board, within the immediate prior seven years, annually adjusted for inflation for the region of the state where the project is located. As a minimum, the calculations shall be developed for both new construction/addition and repair and renovation for all facility types available and shall be published on the agency website.

§17.101. Institutional Reports.

Institutions of higher education shall submit current data to the Coordinating Board for the following reports:

(1) Facilities Inventory.

(A) Periodic Review. Institutions shall report a record of all property, buildings, and rooms occupied or in the control of an institution in a format specified by the Coordinating Board.

(i) The institution shall update its inventory of facilities on an ongoing basis.

(ii) The inventory is subject to periodic audits.

(iii) The inventory shall be certified by the institution annually on or before November 1, or as specified by the Board staff.

(B) Use. The Coordinating Board shall use the data reported in the facilities inventory for the facilities audit program and for other required or requested analyses. The facilities inventory shall be used to complete the following reports:

(i) the Space Projection Model;

(ii) calculation of an institution's Building Replacement Estimate Report; [~~and~~]

(iii) calculation of the Space Usage Efficiency (SUE) report; and[~~.~~]

(iv) calculation of the construction cost standard.

(2) Facilities Development Reports.

(A) Capital Expenditure Plan (MP1). On or before July 1 of every year, beginning in 2004, an institution shall submit an update to its Capital Expenditure Plan (MP1) on file with the Coordinating Board, as required by Texas Education Code, §61.0572(b)(4). In every even-numbered year, the Commissioner [~~Board~~] shall provide Facilities Development Plan data to the Bond Review Board for inclusion in the Capital Expenditure Report. This report may include planned maintenance, facilities adaptation, and deferred maintenance projects. The data may be used by the Coordinating Board to respond to legislative requests, predictions of future space need, and similar analyses. The report shall include projects that are planned [~~or may be submitted to the Board~~] within the next five years, regardless of funding source, in

alignment with dollar thresholds established by the most recent General Appropriations Act and Bond Review Board guidelines:

(i) new construction projects [~~$1,000,000 or more~~];

(ii) repair and rehabilitation projects [~~$1,000,000 or more~~];

(iii) information resource projects [~~that cumulatively would total $1,000,000 or more in one year~~];

(iv) property purchases that cumulatively would total more than the dollar thresholds established by the most recent General Appropriations Act and Bond Review Board guidelines [~~$1,000,000 or more in one year~~] (the actual property address or location for individual property acquisitions may be, but are not required to be, identified in a single proposed project entitled "property acquisitions" with a total cost of all purchases or acquisitions projected over the reporting period);

(v) the funding source for any planned project identified in clauses (i), (ii), (iii), and (iv) of this subparagraph; and

(B) Campus Condition Report. Annually, an institution shall provide a copy of its Campus Condition Report to the Coordinating Board, as supplied to their Governing Board.

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

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SUBCHAPTER F. FACILITIES AUDIT

19 TAC §§17.110 - 17.114

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter F, §§17.110 - 17.114, concerning Facilities Audits. Specifically, the amendments update verbiage in the sections listed individually below.

Rules 17.110 and 17.114 update nomenclature from "THECB staff" to "Board staff" and from "THECB" to "Coordinating Board" in alignment with proposed changes to definitions in Subchapter A. The amendments allow for the specific identification of responsible parties completing each specified action or report.

Rule 17.110(a) removes the use of "approved" from facilities development projects as the Coordinating Board does not approve projects and solely collects data on the projects, in accordance with Texas Education Code, §§61.0572 and 61.058. Additional revisions correct terminology related to educational and general facilities.

Rules 17.111(1), 17.112, and 17.113(a) add the term "Coordinating" to the existing term "Board" to align with proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff. The amendments allow for the specific identification of responsible parties completing each specified action or report.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is clarity on the distinction between actions taken by the governing body, agency staff, and the agency as a whole. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendments are proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The proposed amendments affect Title 19, Part 1, Chapter 17, Subchapter F, §§17.110 - 17.114.

§17.110. General Provisions.

(a) [~~The~~] Board staff shall periodically conduct a comprehensive audit of all educational [~~education~~] and general facilities on the campuses of institutions to verify the accuracy of the institutional facilities inventory and [~~approved~~] facilities development projects for each of those institutions.

(b) No later than 30 days after Board [~~THECB~~] staff has presented the Facilities Audit Report to the Board (or appropriate standing committee of the Board), Board staff [~~the Board~~] files a copy of the report with the institution and the Legislative Budget Board.

(c) Institutions that conduct regularly scheduled self-audits may be exempted from the on-site review providing that:

(1) The institution presents to the Coordinating Board [THECB] a copy of the formal report of the audit and its documented processes that demonstrate the accuracy of the data; and

(2) confirmation that the review includes consideration of the facilities audit objectives stated in §17.111 of this title (relating to Facilities Audit Objectives).

§17.111. Facilities Audit Objectives.

The objectives of the audit are to determine whether selected institutions of higher education:

(1) are accurately reporting their facilities inventory data to the Coordinating Board; and

(2) have followed the Board rules and received approval where such approval was required.

§17.112. Data Sources.

The Coordinating Board may use the following data sources in the course of the audit:

(1) Institutional Capital Expenditure Plans (MP1);

(2) Campus Condition Report as submitted to the governing board;

(3) Space Model Projection Reports;

(4) Reports required by the Educational Data Center;

(5) Facilities Inventory Reports;

(6) Facilities Development and Improvement Applications and Reviews;

(7) Classroom and Class Laboratory Utilization Reports;

(8) Energy Savings Performance Contracts;

(9) Governing Board facilities approvals; and

(10) Any other institutional data deemed appropriate by the Coordinating Board staff.

§17.113. Institutional Audit Cycle.

(a) The Coordinating Board shall determine the frequency and the scope of the audits authorized by this section; audits shall be limited to objectives stated in §17.111 of this title (relating to Facilities Audit Objectives).

(b) The Board may conduct an audit of an institution more often than every five years upon the request of the institution, the Board, the Legislature, or another agency within revenue appropriated for this purpose.

(c) [Staff of the] Board staff shall publish a schedule of audits for the succeeding fiscal year.

§17.114. Audit Components.

Audits consist of two components:

(1) On-Site Audit of an Institution's Facilities Inventory:

(A) Institutions may participate in the Peer Review Team (PRT) process, by which institutions aid in auditing one another, with the participation of Board [THECB] staff. Institutions participating in the PRT program must provide one or more qualified individuals with facilities management for the PRT pool maintained by the Board [THECB] Staff; or

(B) Institutions choosing not to participate in the PRT audit process are required to conduct self-audits in accordance with §17.110(c) of this chapter (relating to General Provisions) [Subchapter F, 17.110(c)].

(2) Audit of an Institution's Facilities Development Projects:

(A) The Internal Auditor of an institution (or its System Office) may determine if facilities projects were submitted to the Coordinating Board in accordance with §17.20 of this title (relating [Relating] to Facility Projects to Be Submitted to the Coordinating Board) and submit a report to the Coordinating Board [THECB].

(B) Board staff [The THECB] shall publish a Facilities Audit Protocol on the agency's website, including details on the process and timing of these components.

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

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SUBCHAPTER G. TEXAS STATE TECHNICAL COLLEGE SYSTEM ACQUISITIONS OF LAND AND FACILITIES

19 TAC §17.200

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter G, §17.200, concerning Texas State Technical College System Acquisitions of Land and Facilities. Specifically, this new section will establish the Texas State Technical College land and facilities projects requiring Coordinating Board approval and the method by which the Coordinating Board would review and consider the projects for approval.

Rule 17.200 ensures a documented approval process for certain Texas State Technical College System land and facilities purchases if the combined value is more than $300,000, in accordance with Texas Education Code, §135.02(c). This differs from facilities related projects at other institutions of higher education for which an institution's Board of Regents has sole authority to approve and the Coordinating Board only receives information on the project.

The rule requires the institution to submit the project in accordance with §17.21, Submission Procedures, and the Coordinating Board to assess the project in accordance with the standards provided under §17.32, Standards for Improved Real Property Purchase Projects.

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

are no estimated losses or increases in revenue to the state or local governments as a result of enforcing or administering the rule.

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is to codify approval requirements in accordance with Texas Education Code, §135.02(c), which requires the Coordinating Board to approve certain Texas State Technical College System land and facilities purchases if the combined value is more than $300,000. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

(5) the rules will create a new rule;

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

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

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

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

The new section is proposed under Texas Education Code, §135.02(c), which requires the Coordinating Board to approve certain Texas State Technical College System land and facilities purchases.

The proposed new section would affect Title 19, Part 1, Chapter 17, by adding Subchapter G, §17.200.

§17.200. Projects Requiring Board Approval.

(a) Notwithstanding any other part of chapter 17, the Commissioner must review and approve the acceptance or acquisition of any land and facilities for Texas State Technical College System if it meets the following requirements:

(1) the board of regents of the Texas State Technical College System requests to place the land and facilities on its E&G space inventory; and

(2) the combined value of the land and facilities is more than $300,000.

(b) For all real property acquisitions, Texas State Technical College System shall comply with §17.21 of this chapter (relating to Submission Procedures) for reporting related information to the Board.

(c) If the property has improvements, the Commissioner will assess the project in accordance with project standards for Improved Real Property Purchase Projects in §17.32 of this chapter (relating to Standards for Improved Real Property Purchase Projects).

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

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER O. TEXAS LEADERSHIP RESEARCH SCHOLARS PROGRAM

19 TAC §22.301, §22.310

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter O, §22.301 and §22.310, concerning the Texas Leadership Research Scholars Program. Specifically, this amendment will clarify the type of institutions eligible to participate and how the allocation of funds is determined.

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

Rule 22.301, Definitions, provides definitions for words and terms within Texas Leadership Research Scholars rules. The definitions provide clarity for words and terms that are integral to the understanding and administration of the Texas Leadership Research Scholars rules. Specifically, the amended section clarifies that general academic institutions are eligible to participate in the Texas Leadership Research Scholars Program.

Rule 22.310, Scholarship Amounts and Allocation of Funds, outlines the scholarship amounts and how the Coordinating Board will allocate the funds to institutions. The rule provides clarification of the statutory requirements related to the minimum amount of the award and how the amount will be calculated to provide clarity for the annual allocation formula for each institution. Specifically, the amended section outlines how the allocation of initial awards will be determined between eligible institutions, clarifying the data used to determine each eligible institution's share of awarded research doctoral degrees, and if there is insufficient funding to award more than seventy-five initial scholarships the awards will be split between public research and emerging institutions. This calculation ensures that initial scholarship awards are being allocated to institutions successfully graduating research doctorates.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has determined that for each of the first five years the

sections are in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rules for the Texas Leadership Research Scholars program. However, participation in the program is voluntary for institutions of higher education. Fiscal implication of the potential for increased funding to institutions of higher education is funded as part of the Texas Leadership Research Scholars program in statute and the General Appropriations Act. Additional ancillary costs to institutions that choose to participate are assumed within the fiscal note for the legislation. The rules do not impose additional costs of compliance beyond those provided in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

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

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

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

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

§22.301. 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. In the event of conflict, the definitions in this subchapter shall control.

(1) Administrator--The institution of higher education contracted by the Coordinating Board to administer the Program.

(2) Eligible Institution--A general academic teaching institution as defined by Texas Education Code, §61.003(3) [~~section 61.003(3) of the Texas Education Code and designated as either a public research university or public emerging research university under the Coordinating Board's accountability system~~].

(3) Leadership Scholarship--The scholarship awarded to an undergraduate student in the program under subchapter N of this chapter (relating to Texas Leadership Scholars Grant Program).

(4) Program--The Texas Leadership Research Scholars Grant Program.

(5) Research Doctoral Degree--In this subchapter, Research Doctoral Degree means a research doctoral degree that is included on the list of research doctoral degrees published annually by Coordinating Board staff on March 1 of each fiscal year. The list of research doctoral degrees shall be annually updated by Coordinating Board staff to reflect all degree titles included in the most recently published National Science Foundation Survey of Earned Doctorates and any additional degree titles identified by the Commissioner.

(6) Research Scholar--An eligible graduate student who was nominated and selected to participate in the Texas Leadership Research Scholars Grant Program.

(7) Research Scholarship--The scholarship awarded to a graduate student in the Program.

§22.310. Scholarship Amounts and Allocation of Funds.

(a) Funding. The Coordinating Board may not award through this Program an amount that exceeds the amount of state appropriations and other funds that are available for this use.

(b) Scholarship Amounts.

(1) The Commissioner shall establish the amount of each Research Scholarship in an academic year that is 150% of the average of the amount of the Leadership Scholarships awarded across public research and public emerging research institutions under subchapter N of this chapter (relating to Texas Leadership Scholars Grant Program), based on available appropriations for the Program. The Scholarship may be applied toward housing, food, or other costs of attendance allowed under the Program, at the participating eligible institution as approved by the Coordinating Board.

(2) An Eligible institution may not reduce the amount of a scholarship by any gift aid for which the Research Scholar receiving the scholarship is eligible unless the total amount of a Research Scholar's scholarship plus any gift aid received exceeds the Research Scholar's cost of attendance.

(3) An Eligible institution shall ensure each Research Scholar receives the scholarship awarded under the program for four (4) years so long as the scholar maintains eligibility set forth in §22.303(b) of this subchapter (relating to Eligible Students).

(c) Allocation of Funds.

(1) The Commissioner shall determine and announce the number of initial scholarships available to each participating eligible institution by January 31 of the prior fiscal year set forth in §22.303(a) of this subchapter, based on the following criteria:

(A) If there is sufficient funding to award more than seventy-five (75) initial Scholarships in a given fiscal year, the Co-

ordinating Board shall award initial Scholarships to each eligible institution based on each eligible institution's share of awarded research doctoral degrees calculated using the most recent year available of data reported by the National Science Foundation in the annual Survey of Earned Doctorates; and

(B) If there is funding to award seventy-five (75) initial Scholarships or fewer in a given fiscal year, the Coordinating Board shall divide the initial Scholarships in the following way:

(i) 50% of available initial Scholarships will be allocated among public research universities based on each institution's share of awarded research doctoral degrees calculated using the most recent year available of data reported by the National Science Foundation in the annual Survey of Earned Doctorates; and

(ii) 50% of available initial Scholarships will be allocated among emerging research universities based on each institution's share of awarded research doctoral degrees calculated using the most recent year available of data reported by the National Science Foundation in the annual Survey of Earned Doctorates.

[~~(A) 50% of available initial Scholarships will be allocated among public research universities based on the institution's share of the number of research doctoral degrees awarded by public research universities in the prior academic year, as determined by the commissioner; and~~]

[~~(B) 50% of available initial Scholarships will be allocated among emerging research universities based on each institution's share of the number of research doctoral degrees awarded by public emerging research universities in the prior academic year, as determined by the commissioner.~~]

(2) The number of Scholarships allocated to each participating eligible institution for returning Research Scholars will be the number of Scholars eligible to receive the Scholarship set forth in §22.303(b) of this subchapter.

(3) Each participating eligible institution will receive an annual allocation equal to the number of Scholarships allocated to the institution times the amount established in subsection (b) of this section.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403455
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 427-6537

CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS
SUBCHAPTER D. [~~LOAN REPAYMENT ASSISTANCE PROGRAM FOR~~] MENTAL HEALTH PROFESSIONALS LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.93, 23.94, 23.96, 23.97, 23.100 - 23.102

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules and amendments to Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter D, §§23.93, 23.94, 23.96, 23.97, and 23.100 - 23.102, concerning the Mental Health Professionals Loan Repayment Assistance Program. Specifically, the amendments will align the subchapter with others in Chapter 23 regarding structure, form, and language; eliminate duplicative provisions; and clarify potential ambiguities in existing rules. The new sections will consolidate provisions from other rules related to program limitations and specific provisions affecting persons who first established eligibility for the program prior to September 1, 2024. The Coordinating Board is authorized to adopt rules as necessary for the administration of the program by Texas Education Code (TEC), Section 61.608.

The subchapter is retitled to conform with the titles of the other subchapters in Chapter 23.

Rule 23.93 is amended to make conforming changes to the subchapter title.

Rule 23.94 is amended by removing three unnecessary definitions and unnecessary portions of another definition. After the creation of a definition for "Coordinating Board" in §23.1 (relating to Definitions) in the general provisions for this chapter, the definition of "Board staff" in §23.94 is redundant, with all references to "Board staff" throughout the subchapter changed to "Coordinating Board." The terms "Local Mental Health Authority" and "Title I school" are used only once each in rule, so the definitions are eliminated and have been incorporated contextually when the terms appear. The definition of "full-time service" is amended to eliminate the listed conditions that constitute eligible service (existing subparagraphs (4)(A) - (D)). These conditions are included in the eligibility criteria described in §23.96 (relating to Eligible Applicants).

Rule 23.94 is further amended by expanding the existing definition of "service period." Specifically, an alternate definition is provided that allows service for at least 9 months of a 12-month academic year by a licensed specialist in school psychology. The existing definition conflicts with the typical employment contract for these individuals, inadvertently disqualifying some otherwise eligible applicants from receiving loan repayment funds. The expanded definition remedies this.

Rule 23.96 is amended to simplify program eligibility rules so they more clearly reflect Coordinating Board practice. The rule is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. Historically, eligibility for this program has been a two-step process, with applicants establishing initial eligibility for the program and then, after completing a service period, becoming eligible for disbursement of funds. These processes have since been combined, with applicants establishing eligibility after their first service period. Accordingly, subsection (a) of this section and repealed §23.98 (related to Eligibility for Disbursement of Loan Repayment Assistance) are consolidated into the amended subsection (a) and the new subsection (b). Eligible practice specialties, previously listed in repealed §23.95, also are incorporated in paragraph (a)(3). Further edits are made to clarify certain eligibility criteria, but the proposed rule changes will not substantively change program requirements. The existing subsection (b) is eliminated and reconstituted within the new §23.102 (relating to Provisions Specific to Mental Health Professionals Who Established Eligibility for the Program Before September 1, 2023).

Rule 23.97 is amended to clarify how the Coordinating Board prioritizes disbursement in the event that available funds are insufficient to offer loan repayment assistance to all eligible applicants. The rule is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. Existing subsections (b) and (c) are removed and reconstituted in §23.101 (relating to Limitations). The prioritization process in new subsection (b), which consolidates existing subsections (d), (e), and (f), is slightly amended in three substantive ways. First, subparagraph (b)(1)(C) is clarified to align with current practice that "MHPSA scores that reflect the highest degrees of shortage" means that the Coordinating Board ranks applications by MHPSA score in descending order, starting with applications with the highest score. Also, subparagraph (b)(1)(E) is amended to reflect that "rural area," which previously was not defined in rule, means a county with a population of less than 50,000 persons, which is the Coordinating Board's operational definition for the term in all loan repayment programs. Finally, paragraph (b)(2) is added based on the existing subsection (f) but further clarified that renewal applications from licensed marriage and family therapists will be prioritized over initial applications. Existing subsection (g) is removed and reconstituted in §23.100 (relating to Amount of Repayment Assistance).

Rule 23.100 is amended by adding some provisions that previously existed elsewhere in the subchapter and removing provisions that are relocated to other rules. Existing subsection (a) is redundant with provisions within §23.3 (relating to Methods of Disbursement) in the general provisions of this chapter and is removed. Existing subsection (b) and paragraph (e)(1) are removed and relocated to new §23.102 (relating to Provisions Specific to Mental Health Professionals Who Established Eligibility for the Program Before September 1, 2023). New subsection (a) has "on or after September 1, 2023" language removed to make it the clear default state and is rephrased to combine the provisions of existing subsection (c) and paragraph (e)(2). Existing subsection (d) is removed and reconstituted in §23.101 (relating to Limitations). New subsection (d) is the reconstituted §23.97(g).

Rule 23.101 is created to consolidate various program limitations that previously were spread throughout the subchapter. Paragraphs (1) and (2) are the reconstituted §23.97(b) and (c); paragraph (3) is the reconstituted §23.100(d); and paragraph (4) codifies existing Coordinating Board practice that loan repayment assistance amounts may never exceed unpaid principal and interest owed on eligible education loans.

Rule 23.102 is created to consolidate provisions that specifically apply to providers who established eligibility for the program prior to September 1, 2023. Subsections (a) and (b) are the reconstituted §23.96(b), (c), and (d), with changes to reflect the elimination of the outdated "two-step" eligibility process in rule; and subsection (c) is the reconstituted and consolidated §23.100(b) and (e)(1).

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

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

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the establishment of rules that more clearly articulate Coordinating Board policy and better align with rules governing the Coordinating Board's other loan repayment assistance programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendments and new sections are proposed under Texas Education Code, Section 61.608, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the Loan Repayment Program for Mental Health Professionals.

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

§23.93. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, chapter [~~Chapter~~] 61, subchapter [~~Subchapter~~] K, Repayment of Certain Mental Health Professional Education Loans. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.601 - 61.609.

(b) Purpose. The purpose of the Mental Health Professionals Loan Repayment Assistance Program [~~for Mental Health Professionals~~] is to encourage qualified mental health professionals to provide services to designated recipients in a mental health professional shortage area or state hospital, through a mental health authority, or to students in eligible schools.

§23.94. Definitions.

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

[(1) Board Staff--The staff of the Texas Higher Education Coordinating Board.]

(1) [(2)] CHIP--The Children's Health Insurance Program, authorized by the Texas Health and Safety Code, Chapter 62.

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

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

[(A) in a mental health professional shortage area:]

[*(i)* Medicaid recipients;]

[*(ii)* CHIP enrollees;]

[*(iii)* persons in facilities operated by or under contract with the Texas Juvenile Justice Department; and/or]

[*(iv)* persons in facilities operated by or under contract with the Texas Department of Criminal Justice; or]

[(B) patients in state hospitals;]

[(C) individuals receiving community-based mental health services from a local mental health authority; and/or]

[(D) students enrolled in an eligible district or school.]

[(5) Local Mental Health Authority--As defined in Texas Health and Safety Code, §531.002.]

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

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

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

(7) [(8)] Psychiatrist--A licensed physician who is a graduate of an accredited psychiatric residency training program.

(8) Service Period--A period of:

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

(B) for a mental health professional described by §23.96(a)(3)(F) of this subchapter (relating to Applicant Eligibility), at least nine (9) months of a 12-month academic year qualifying the professional for loan repayment assistance.

[(9) Service Period--A period of 12 consecutive months qualifying a mental health professional for loan repayment.]

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

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

[(12) Title I School--Texas public school that receives federal funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. §6301 et seq.).]

§23.96. Applicant Eligibility [for Conditional Approval of Applications].

(a) To be eligible to receive loan repayment assistance, an applicant [for the Board staff to reserve loan repayment funds, a mental health professional] must:

(1) submit a [ensure that the Board staff has received the] completed application to the Coordinating Board by the established deadline, which will be posted on the program web page;

(2) be a U.S. citizen or a Legal Permanent Resident and have no license restrictions;

(3) currently be employed as one of the following eligible practice specialties: [not be currently fulfilling another obligation to provide mental health services as part of a scholarship agreement, a student loan agreement, or another student loan repayment agreement.]

(A) a psychiatrist;

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

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

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

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

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

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

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

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

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

(i) Medicaid enrollees;

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

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

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

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

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

(b) Notwithstanding subsection (a)(4) of this section, to be eligible to receive loan repayment assistance as a specialist in school psychology as outlined under subsection (a)(3)(F) of this section, the applicant must:

(1) have completed one, two, or three consecutive service periods of employment in:

(A) a school district which is located partially or completely in a MHPSA;

(B) an open-enrollment charter school located in a MHPSA; or

(C) a Texas public school that receives federal funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. §6301 et seq.); and

(2) have provided mental health services to students enrolled in that district or school during that time of employment.

[(b) For applicants who first establish eligibility for the program before September 1, 2023, a mental health professional must:]

[(1) agree to provide five consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and]

[(2) agree to provide mental health services to:]

[(A) Individuals enrolled in Medicaid or CHIP or both; or]

[(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.]

[(c) For applicants who first establish eligibility for the program on or after September 1, 2023, a mental health professional must:]

[(1) agree to provide three consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and]

[(2) agree to provide mental health services to:]

[(A) Individuals enrolled in Medicaid or CHIP or both; or]

[(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.]

[(d) Notwithstanding subsection (c), for applicants who first establish eligibility for the program on or after September 1, 2023, who provide mental health services to patients in state hospitals, individuals receiving community-based mental health services from a local mental health authority, or students enrolled in an eligible district or school, a mental health professional must agree to provide three consecutive years of eligible service as outlined in §23.98 of this subchapter (relating to Eligibility for Disbursement of Loan Repayment Assistance).]

§23.97. Applicant Ranking Priorities [Selection of Eligible Applicants and Limitations].

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

(b) If there are not sufficient funds to offer loan repayment assistance for all eligible providers, applications shall be prioritized as follows:

(1) Applications from eligible providers from practice specialties described in §23.96(a)(3)(A) - (G) of this subchapter (relating to Applicant Eligibility), ranked by the following criteria:

(A) renewal applications;

(B) applications from providers who sign SLRP contracts;

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

(D) applications from providers in state hospitals;

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

(F) applications received on the earliest dates; and

(2) Applications from eligible providers from the practice specialty described in §23.96(a)(3)(H) of this subchapter, ranked by the following criteria:

(A) renewal applications; and

(B) applications received on the earliest dates.

[(b) Not more than 10 percent of the number of repayment assistance grants paid under this subchapter each year may be awarded to mental health professionals providing mental health services to persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice. Applications from these professionals will be selected on a first-come-first-served basis.]

[(c) Not more than 30 percent of the number of repayment assistance grants paid under this subchapter each fiscal year may be awarded to mental health professionals in any one of the eligible practice specialties, unless excess funds remain available after the 30 percent maximum has been met.]

[(d) For practice specialties outlined in §23.95(1) - (7) of this subchapter (relating to Eligible Practice Specialties), applications will be ranked in order of the following priorities:]

[(1) providers who benefitted from awards the previous year;]

[(2) providers who sign SLRP contracts;]

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

in multiple MHPSAs having different degrees of shortage, the location having the highest MHPSA score shall apply;]

[(4) providers in state hospitals;]

[(5) providers whose employers are located in rural areas, if, in the case of providers serving at multiple sites, at least 75% of their work hours are spent serving in those areas; and]

[(6) providers whose applications were received on the earliest dates.]

[(e) If funds remain available after loan repayment awards have been reserved for applicants selected according to the criteria stated in subsection (d) of this section, applications for practice specialties outlined in §23.95(1) - (7) of this subchapter will be ranked in order of the following priorities, regardless of the applicant's practice specialty:]

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

[(2) providers whose employers are located in rural areas, if, in the case of providers serving at multiple sites, at least 75% of their work hours are spent serving in those areas; and]

[(3) providers whose applications were received on the earliest dates; and]

[(4) providers eligible under subsection in §23.95(8) of this subchapter.]

[(f) If funds remain available after loan repayment awards have been reserved for applicants selected according to the criteria stated in subsection (e) of this section, applications for practice specialties outlined in §23.95(8) of this subchapter, will be ranked in order of the providers whose applications were received on the earliest dates.]

[(g) If state funds are not sufficient to allow for maximum award amounts stated in §23.100 of this subchapter (relating to Amount of Repayment Assistance) for all eligible applicants, the Board staff may adjust in an equitable manner the state-funded distribution amounts for a fiscal year, in accordance with TEC 61.607(d).]

§23.100. Amount of Repayment Assistance.

[(a) Loan repayment awards will be disbursed directly to lenders on behalf of eligible mental health professionals.]

[(b) Repayment assistance for each year of full-time service for mental health professionals who first established eligibility for the program before September 1, 2023, will be in an amount determined by applying the following applicable percentage to the maximum total amount of assistance allowed for the professional:]

[(1) for the first year, 10 percent;]

[(2) for the second year, 15 percent;]

[(3) for the third year, 20 percent;]

[(4) for the fourth year, 25 percent; and]

[(5) for the fifth year, 30 percent.]

(a) [(c)] Repayment assistance for each service period [year of full-time service for mental health professionals who first established eligibility for the program on or after September 1, 2023,] will be [in an amount] determined by applying the following applicable percentage to the lesser of the maximum total amount of assistance allowed for the provider's practice specialty, as established by §23.101 of this subchapter (relating to Limitations), or the total student loan debt owed at the time the provider established eligibility for the program [professional]:

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

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

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

[(d) The total amount of state appropriated repayment assistance received by a mental health professional under this subchapter may not exceed:]

[(1) $160,000, for a psychiatrist;]

[(2) $80,000, for:]

[(A) a psychologist;]

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

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

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

[(3) $60,000, for an advanced practice registered nurse;]

[(4) $40,000, for a licensed specialist in school psychology, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional counselor who has not received a doctoral degree related to social work or counseling; and]

[(5) $10,000, for assistance received by a licensed chemical dependency counselor, if the chemical dependency counselor has received an associate degree related to chemical dependency counseling or behavioral science.]

[(e) If a mental health provider's total student loan indebtedness is less than the total amount of repayment assistance allowed for the provider's practice specialty, the annual loan repayment award amounts based on full-time service will be the following percentages of the student loan debt owed at the time of application for enrollment in the program:]

[(1) For mental health professionals who first established eligibility for the program before September 1, 2023, amounts are 10% for year one, 15% for year two, 20% for year three, 25% for year four, and 30% for year five.]

[(2) For mental health professionals who first established eligibility for the program on or after September 1, 2023, amounts are 33.33% for year one, 33.33% for year two, and 33.34% for year three.]

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

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

(d) If state funds are not sufficient to allow for maximum loan repayment assistance amounts stated in this section for all eligible applicants, the Coordinating Board may adjust in an equitable manner the state-funded distribution amounts for a fiscal year, in accordance with Texas Education Code, §61.607(d).

§23.101. Limitations.

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

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

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

(3) The total amount of state appropriated repayment assistance received by a provider under this subchapter may not exceed:

(A) $160,000, for a psychiatrist;

(B) $80,000, for:

(i) a psychologist;

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

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

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

(C) $60,000, for an advanced practice registered nurse;

(D) $40,000, for a licensed specialist in school psychology, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional counselor who has not received a doctoral degree related to social work or counseling; and

(E) $10,000, for assistance received by a licensed chemical dependency counselor, if the chemical dependency counselor has received an associate degree related to chemical dependency counseling or behavioral science.

(4) A provider's loan repayment assistance amount may not exceed the unpaid principal and interest owed on one or more eligible education loans, as described in §23.2 of this chapter (relating to Eligible Lender and Eligible Education Loan).

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

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

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

(2) be a U.S. citizen or a Legal Permanent Resident and have no license restrictions;

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

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

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

(c) Amount of Repayment Assistance. Notwithstanding §23.100(a) of this subchapter (relating to Amount of Repayment Assistance), for providers who first established eligibility for the program before September 1, 2023, repayment assistance for each service period will be determined by applying the following applicable percentage to the lesser of the maximum total amount of assistance allowed for the provider's practice specialty, as established by §23.101 of this subchapter (relating to Limitations), or the total student loan debt owed at the time the provider established eligibility for the program:

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

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

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

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

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

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

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

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is

"cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §229.1(c) is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 9, 2024, issue of the Texas Register.)

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§229.1, 229.2, 229.3, 229.4, 229.6, and 229.9, concerning accountability system for educator preparation programs. Chapter 229 establishes the performance standards and procedures for educator preparation program (EPP) accountability. The proposed amendments would provide for adjustments to the 2023-2024 *Accountability System for Educator Preparation (ASEP) Manual;* would clarify and streamline language and definitions; would organize the rule text by subchapter; and would include technical updates.

BACKGROUND INFORMATION AND JUSTIFICATION: EPPs are entrusted to prepare educators for success in the classroom. Texas Education Code (TEC), §21.0443, requires EPPs to adequately prepare candidates for certification. Similarly, TEC, §21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. TEC, §21.045, also requires SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC rules in 19 TAC Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs to comply with these provisions of the TEC and to ensure the highest level of educator preparation, which is codified in the SBEC Mission Statement.

Following is a description of the topics for the SBEC's consideration for proposed amendments to 19 TAC Chapter 229.

Subchapter A. Accountability System for Educator Preparation Program Procedures

Proposed new Subchapter A and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC in the future.

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

Update of ASEP Manual:

The proposed amendment to Figure: 19 TAC §229.1(c) would update the ASEP manual as follows:

Updates to the table of contents would provide consistent descriptive language for the Principal Survey and Teacher Survey throughout the manual.

Updates to Chapter 1 would remove the date to future updates and to provide consistent descriptive language for the Principal Survey and Teacher Survey.

Updates to Chapter 3 would simplify the description of included individuals to clearly align with 19 TAC §229.4(a)(1)(A). The update would also remove the exception language related to the Performance Assessment for School Leaders, as starting in the 2023-2024 academic year. It is included in Indicator 1A, as prescribed by 19 TAC §229.2(27). Updates to the example also remove this exception. Finally, updates are made to the example to minimize the inclusion of test 291 and to remove 2 of the 3 examples, since it has expired and the procedure for combining the results is now rare. This provides clarity to the field about the calculations.

Updates to Chapter 4 would provide consistency to how the manual refers to the Appraisal of First-Year Teachers by Administrators, including the parenthetical language "Principal Survey," which is in general usage in the field. This will provide clarity to stakeholders. Further updates will provide clearer language related to the inclusion criteria for teachers in the survey population, including the requirements of employment at the time of the PEIMS snapshot date and holding of their first certificate. This will provide transparency to the field. The worked example would also be updated to reflect these changes.

Updates to Chapter 5 would replace the term "STAAR progress measure" with "STAAR Annual Growth Points" to follow the language in use in 19 TAC Figure: §97.1001(b). This will provide a clear match between the ASEP manual and the data source. The updates would clarify the included individuals, adding a requirement of being enrolled or finishing an EPP within five years prior to their first year employed as a certified teacher of record. This follows inclusion criteria for the principal survey and teacher survey and ensures a clear boundary for the included population. The updates would also clarify the included subject areas and certificate requirements. This would provide transparency as to how these calculations are conducted. The section about included assessments would be updated to match 19 TAC Figure: §97.1001(b), which would provide an accurate description of the data. The section about the scoring approach would be updated to better describe the process used to do the calculation, based on the data that are available. The worked example would be updated based on these changes.

Updates to Chapter 6 would specify that beginning in the 2024-2025 academic year, certificate deactivations must meet the requirements in the newly adopted Chapter 228, Requirements for Educator Preparation Programs. This will provide transparency to the field about this requirement. Updates would also note the timeline for the evaluation of the new observations in adopted new 19 TAC Chapter 228, Subchapter F, Support for Candidates During Required Clinical Experiences, with the new requirements first being used in the 2025-2026 academic year. This includes a requirement that beginning in the 2025-2026 academic year, only candidates that began their clinical experiences after the effective date of the rule would be included in the evaluation. This provides EPPs the opportunity to update their practices while ensuring that the evaluation for this indicator is based on the rules that were in place for the duration of the clinical experience. Additional updates would clarify that observations must occur within the date range of the clinical experience, providing clarity to the field. Updates would also remove the exclusion of demographic data for indicator 4b. This exclusion is no longer needed because the data is now collected and can be used. This update would increase the total amount of data used in the determination of ASEP statuses and align indicator 4b with the other indicators. An update to the worked example would correct the language used, for clarity.

Updates to Chapter 7 would provide consistency to how the manual refers to the Evaluation of Educator Preparation Programs by Teachers, including the parenthetical languages "Teacher Survey," which is in general usage in the field. This will provide clarity to stakeholders. Further updates would provide clearer language related to the inclusion criteria for teachers in the survey population, including the requirements of employment at the time of the PEIMS snapshot date and holding their first certificate. Updates would also remove outdated language. This will provide transparency to the field. The worked example would also be updated to reflect these changes.

Updates to Chapter 8 would remove the EPP commendations for the 2023-2024 academic year. This will provide a pause while Texas Education Agency (TEA) staff work with the Board and stakeholders to update the commendation system aligned with new requirements in Chapter 228.

Updates to Chapter 9 would update the examples to include the language about the surveys updated earlier in the rule. This would provide consistency in usage. Updates would also provide an additional year for programs to make improvements on specific indicators by increasing the number of years in a row necessary for a negative value to be introduced into the Index system from two consecutive years to three consecutive years. Currently, if a program fails the same indicator for the same demographic group or at the aggregated "all" level for two years in a row, the weight assigned to the point value is -1, which has a greater impact on the overall score than missing in the first year, where the weight assigned is a 0. The update would change the timeline so that if a program were to miss in the second year, the value would also be 0, and if the program were to miss for the third year consecutively, then the negative weight would be introduced. This is aligned with discussion from the Board and recommended by stakeholders. The worked example would be updated to reflect this change.

Update to Commendations

The update to §229.1(d) would simplify the language related to commendations and note that commendations will not be designated for the 2023-2024 reporting year. This will provide a pause while TEA staff work with the Board and stakeholders to update the commendation system aligned with new requirements in Chapter 228.

§229.2. Definitions.

The proposed amendment to §229.2(5) "Beginning teacher" would clarify the certification status for a beginning teacher. This would align the definition with the requirements used for the sample population for ASEP indicator 3, which is where the definition is used.

The proposed amendment to §229.2(6) "Candidate" would clarify the enrollment status for a candidate and provide a technical edit to remove a reference that is no longer used. This would align the definition with how it is used elsewhere in the chapter.

The proposed amendment to §229.2(9) "Clinical teaching" would include a technical cross-reference edit to reflect the newly adopted Chapter 228 to change references from §228.35 to §228.2.

The proposed amendment to §229.2(13) "Cooperating teacher" would align the wording to reflect the wording in the newly adopted Chapter 228.

The proposed amendment to §229.2(24) "Internship" would include a technical cross-reference edit to reflect the newly adopted Chapter 228 to change references from §228.35 to §228.2.

The proposed amendment to §229.2(25) "Mentor" would align the wording to reflect the wording in the newly adopted Chapter 228.

The proposed amendment to §229.2(26) would strike the definition of "New Teacher" because it is not used in the rules. Subsequent definitions would be renumbered.

The proposed amendment to §229.2(28), renumbered to §229.2(27)), "Practicum" would include a technical cross-reference edit to reflect the newly adopted Chapter 228 to change references from §228.35 to §228.2.

The proposed amendment to §229.2(30), (renumbered to §229.2(29)), "Site Supervisor" would align the wording to reflect the wording in the newly adopted Chapter 228.

§229.3. Required Submissions of Information, Surveys, and Other Data.

The proposed amendment to §229.3(a) would remove "new teachers" because there is no longer a separate requirement for "new teachers" and "first-year teachers" related to data collection. The proposed amendment to §229.3(e) and (f) would provide consistent language, removing the only use of "participant" in the chapter, and shift the language from "new" teacher to "first-year" teacher since the survey requirement is now applicable to first-year teachers. This streamlines the language used in the rule and aligns the language in this section with the teacher survey population.

Subchapter B. Accountability System for Educator Preparation Accreditation Statuses

Proposed new Subchapter B and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC in the future.

§229.4. Determination of Accreditation Status.

The proposed amendment to §229.4(a)(1)(B) would strike the exception for the Performance Assessment for School Leaders because it is now expired. The subsequent provisions would be relettered.

The proposed amendment to §229.4(a)(3) would replace the term "STAAR Annual Progress Measure" with "STAAR Annual Growth Points" to follow the language in use in 19 TAC Figure: §97.1001(b). The amendment would also provide the 2023-2024 academic year as a report only year, because the processes used by TEA to generate the underlying data has shifted, and a report-only year will allow the Board and stakeholders to review results from this new model prior to the data being used for accountability.

The proposed amendment to §229.4(a)(4) and §229.4(a)(4)(A) would remove the general reference to Chapter 228 and replace it with the specific reference in §229.4(a)(4)(A)(1) and §229.4(a)(4)(A)(2). This would provide a clear timeline for when the evaluation of observations will use the current standard and when the evaluation of the observations will use the updated standard in newly adopted 19 TAC Chapter 228, Subchapter F, with the new requirements first being used in the 2025-2026 academic year. This provides EPPs the opportunity to update their practices while ensuring that the evaluation for this indicator is based on the rules that were in place for the duration of the clinical experience.

The proposed amendment to §229.4(a)(5) would update the language from "new" teacher to "first-year" teacher since the teacher survey population has been updated to match that definition. This will provide clarity and streamline the language used in the rule.

Subchapter C. Accreditation Sanctions

Proposed new Subchapter C and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC

in the future. Section 229.5, currently in effect, would be organized under new Subchapter C, but no rule changes are proposed.

Subchapter D. Continuing Approval Procedures

Proposed new Subchapter D and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC in the future.

§229.6. Continuing Approval.

The proposed amendment to §229.6(a) and (b) would include a technical cross-reference edit to reflect the newly adopted Chapter 228.

Subchapter E. Review Procedures

Proposed new Subchapter E and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC in the future. Sections 229.7 and 229.8, currently in effect, would be organized under new Subchapter E, but no rule changes are proposed.

Subchapter F. Required Fees

Proposed new Subchapter F and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC in the future.

§229.9. Fees for Educator Preparation Program Approval and Accountability.

The proposed amendment to §229.9(2) and (3) would include a technical cross-reference edit to reflect the newly adopted Chapter 228.

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit, expand, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. McLoughlin has determined that for the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be an accountability system that informs the public of the quality of educator preparation provided by each SBEC-approved EPP. There is no anticipated cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no additional data and reporting impact and would strike the data requirement in §229.3(f)(3) as it was never utilized to measure Indicator 3 in ASEP.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins August 9, 2024, and ends September 9, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal during the September 20, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

SUBCHAPTER A. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAM PROCEDURES

19 TAC §§229.1 - 229.3

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately

prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

(a) The State Board for Educator Certification (SBEC) is responsible for establishing standards to govern the continuing accountability of all educator preparation programs (EPPs). The rules adopted by the SBEC in this chapter govern the accreditation of each EPP that prepares individuals for educator certification. No candidate shall be recommended for any Texas educator certification class or category except by an EPP that has been approved by the SBEC pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs) and is accredited as required by this chapter.

(b) The purpose of the accountability system for educator preparation is to assure that each EPP is held accountable for the readiness for certification of candidates completing the programs.

(c) The relevant criteria, formulas, calculations, and performance standards relevant to subsection (d) of this section and §229.4 of this title (relating to Determination of Accreditation Status) are prescribed in the *Texas Accountability System for Educator Preparation (ASEP) Manual* provided as a figure in this subsection.

Figure: 19 TAC §229.1(c)

[~~Figure: 19 TAC §229.1(c)~~]

(d) An accredited EPP that is not under an active SBEC order or otherwise sanctioned by the SBEC may receive commendations for success as [~~in the following four dimensions identified by the SBEC and~~] prescribed in the figure in subsection (c) of this section. Commendations will not be awarded for the 2023-2024 reporting year. [~~:~~]

[~~(1) Rigorous and Robust Preparation;~~]

[~~(2) Preparing the Educators Texas Needs;~~]

[~~(3) Preparing Educators for Long-Term Success; and~~]

[~~(4) Innovative Educator Preparation.~~]

§229.2. Definitions.

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(3) ACT®--The college entrance examination from ACT®.

(4) Administrator--For purposes of the surveys and information required by this chapter, an educator whose certification would entitle him or her to be assigned as a principal or assistant principal in Texas, whether or not he or she is currently working in such an assignment.

(5) Beginning teacher--For purposes of the Texas Education Code, §21.045(a)(3), and its implementation in this chapter, a classroom teacher with fewer than three years of experience as a certified classroom teacher.

(6) Candidate--An individual who has been formally or contingently admitted into an educator preparation program (EPP) who has not yet completed or exited the EPP.[~~; also referred to as a participant.~~]

(7) Certification category--A certificate type within a certification class, as described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(8) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics; may contain one or more certification categories, as described in Chapter 233 of this title.

(9) Clinical teaching--An assignment, as described in §228.2 [~~§228.35~~] of this title (relating to Definitions [~~Preparation Program Coursework and/or Training~~]).

(10) Completer--A person who has met all the requirements of an approved educator preparation program. In applying this definition, the fact that a person has or has not been recommended for a standard certificate or passed a certification examination shall not be used as criteria for determining who is a completer.

(11) Consecutively measured years--Consecutive years for which a group's performance is measured, excluding years in which the small group exception applies, in accordance with §229.4(c) of this title (relating to Determination of Accreditation Status).

(12) Content Pedagogy Test--Examination listed in the column labeled "Required Content Pedagogy Test(s)" in Figure 19 TAC §230.21(e).

(13) Cooperating teacher--An individual, as described in §228.2 of this title (relating to Definitions), who [~~guides, assists, and~~] supports a candidate during a candidate's clinical teaching experience [~~assignment~~].

(14) Demographic group--Male and female, as to gender; and African American, Hispanic, White, and Other, as to race and ethnicity.

(15) Educator preparation program--An entity approved by the State Board for Educator Certification to recommend candidates in one or more educator certification classes or categories.

(16) Educator preparation program data--Data reported to meet requirements under the Texas Education Code, §21.045(b) and §21.0452.

(17) Examination--An examination or other test required by statute, or any other State Board for Educator Certification rule codified in the Texas Administrative Code, Title 19, Part 7, that governs

an individual's admission to an educator preparation program, certification as an educator, continuation as an educator, or advancement as an educator.

(18) Field supervisor--An individual, as described in §228.2 of this title (relating to Definitions), who is hired by an educator preparation program to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators.

(19) First-year teacher--For purposes of the Texas Education Code, §21.045(a)(2), and its implementation in this chapter, an individual in his or her first year of employment as a classroom teacher.

(20) GPA--Grade point average.

(21) GRE®--Graduate Record Examinations®.

(22) Higher Education Act--Federal legislation consisting of the Higher Education Act of 1965 (20 United States Code, §1070 et seq.) and its subsequent amendments, which requires reports of educator preparation program performance data.

(23) Incoming class--Individuals contingently or formally admitted between September 1 and August 31 of each year by an educator preparation program.

(24) Internship--An assignment, as described in §228.2 [~~§228.35~~] of this title (relating to Definitions [~~Preparation Program Coursework and/or Training~~]).

(25) Mentor--An individual, as described in §228.2 of this title (relating to Definitions), who [~~guides, assists, and~~] supports a candidate during a candidate's internship experience [~~assignment~~].

[~~(26) New teacher--For purposes of the Texas Education Code, §21.045(a)(5), and its implementation in this chapter, an individual in his or her first year of employment as a classroom teacher under a standard certificate.~~]

(26) [~~(27)~~] Pedagogy Test--Examination listed in the column labeled "Pedagogical Requirement(s)" in Figure: 19 TAC §230.21(e).

(27) [~~(28)~~] Practicum--An assignment, as described in §228.2 [~~§228.35~~] of this title (relating to Definitions [~~Preparation Program Coursework and/or Training~~]).

(28) [~~(29)~~] SAT®--The college entrance examination from the College Board.

(29) [~~(30)~~] Site supervisor--An individual, as described in §228.2 of this title (relating to Definitions), who [~~guides, assists, and~~] supports a candidate during a candidate's practicum experience [~~assignment~~].

(30) [~~(31)~~] Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

§229.3. Required Submissions of Information, Surveys, and Other Data.

(a) Educator preparation programs (EPPs), EPP candidates, first-year teachers, [~~new teachers,~~] beginning teachers, field supervisors, administrators, mentors, site supervisors, and cooperating teachers shall provide to the Texas Education Agency (TEA) staff all data and information required by this chapter, as set forth in subsections (e) and (f) of this section.

(b) Any individual holding a Texas-issued educator certificate who fails to provide information required by this chapter and the Texas Education Code (TEC), §21.045 and §21.0452, as set forth in subsection (e) of this section, may be subject to sanction of his or her certificate, including the placement of restrictions, inscribed or non-inscribed reprimand, suspension, or revocation.

(c) Any Texas public school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions upon its accreditation status be imposed for failure to comply with this section and the TEC, §21.0452.

(d) Any open-enrollment charter school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions be imposed for failure to comply with this section and the TEC, §21.0452.

(e) All required EPP data for an academic year shall be submitted to the TEA staff annually by September 15 following the end of that academic year. All surveys and information required to be submitted pursuant to this chapter by principals shall be submitted by June 15 of any academic year in which an administrator has had experience with a first-year teacher who was a candidate or completer at [~~participant in~~] an EPP. All surveys and information required to be submitted pursuant to this chapter by first-year [~~new~~] teachers shall be submitted by June 15 of the first full academic year after the teacher completed the requirements of an EPP. All surveys and information required to be submitted pursuant to this chapter by EPP candidates shall be submitted by August 31 of the academic year in which the candidate completed the requirements of an EPP.

(f) The following apply to data submissions required by this chapter.

(1) EPPs shall provide data for all candidates as specified in the figure provided in this paragraph.
Figure: 19 TAC §229.3(f)(1) (No change.)

(2) Candidates in an EPP shall complete a survey, in a form approved by the State Board for Educator Certification (SBEC), evaluating the preparation he or she received in the EPP. Completion and submission to the TEA of the survey is a requirement for completion of an EPP.

(3) Administrators in Texas public schools and open-enrollment charter schools shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success based on experience with first-year teachers who were candidates or completers [~~participants~~] in an EPP.

(4) First-year [~~New~~] teachers in a Texas public school, including an open-enrollment charter school, shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success.

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

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SUBCHAPTER B. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION ACCREDITATION STATUSES

19 TAC §229.4

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.4. Determination of Accreditation Status.

(a) Accountability performance indicators. The State Board for Educator Certification (SBEC) shall determine the accreditation status of an educator preparation program (EPP) at least annually, based on the following accountability performance indicators, disaggregated by demographic group and other requirements of this chapter and determined with the formulas and calculations included in the figure provided in §229.1(c) of this title (relating to General Provisions and Purpose of Accountability System for Educator Preparation Programs). Data will be used only if the following indicators were included in the accountability system for that academic year. Except for the 2019-2020 and 2020-2021 academic years, when the data described in paragraphs (1)-(5) of this subsection will be reported to EPPs and will not be used to determine accreditation statuses, EPP accreditation statuses shall be based on:

(1) the EPP candidates' performance on pedagogy tests and content pedagogy tests. The EPP candidates' performance on pedagogy tests and content pedagogy tests shall provide separate accountability performance indicators for EPPs;

(A) For both pedagogy tests and content pedagogy tests, the performance standard shall be the percent of individuals admitted after December 26, 2016, who passed an examination within the first two attempts, including those examinations attempted after the individual has completed the EPP or when the EPP has not recommended the individual for a standard certificate. The pass rate is based solely on the examinations approved by the EPP. Examinations taken before admission to the EPP or specific examinations taken for pilot purposes are not included in the pass rate.

[~~(B) For the 2021-2022 and 2022-2023 academic years, the Performance Assessment for School Leaders (PASL) shall be treated as a content pedagogy test.~~]

(B) [~~(C)~~] For pedagogy tests, the performance standard shall be a pass rate of 85%.

(C) [~~(D)~~] For content pedagogy tests, the performance standard shall be a pass rate of 75%.

(2) the results of appraisals of first-year teachers by administrators, based on a survey in a form to be approved by the SBEC. The performance standard shall be 70% of first-year teachers from the EPP who are appraised as "sufficiently prepared" or "well prepared";

(3) the growth of students taught by beginning teachers as indicated by the STAAR Annual Growth Points [~~Progress Measure~~], determined at the student level as described in Figure: 19 TAC §97.1001(b) of Part II of this title (relating to Accountability Rating System), and aggregated at the teacher level as described in Figure: 19 TAC §229.1(c) of this title. The performance standard shall be 70% of beginning teachers from the EPP reaching the individual performance threshold. For the 2023-2024 academic year, [~~The first two academic years for which the Texas Education Agency (TEA) has data necessary to calculate~~] this performance standard [~~following the 2019-2020 academic year~~] will be a reporting year [~~years~~] only and will not be used to determine accreditation status;

(4) the results of data collections establishing EPP compliance with SBEC requirements [~~specified in §228.35(g) of this title (relating to Preparation Program Coursework and/or Training),~~] regarding the frequency, duration, and quality of field supervision to candidates completing clinical teaching or an internship. The frequency and duration of field supervision shall provide one accountability performance indicator, and the quality of field supervision shall provide a separate accountability performance indicator;

(A) The performance standard as to the frequency, duration, and required documentation of field supervision shall be that the EPP meets the requirements [~~of documentation of §228.35(g) of this title~~] for 95% of the EPP's candidates. EPPs that [~~who~~] do not meet the standard of 95% for the aggregated group or for any disaggregated demographic group but have only one candidate not meet the requirement in the aggregated or any disaggregated group has met the standard for that group.

(i) For the 2023-2024 and 2024-2025 academic years, individuals will be evaluated against the frequency and duration requirements in Chapter 228, Subchapter F, of this title (relating to Support for Candidates During Required Clinical Experiences) that were effective August 31, 2024.

(ii) Beginning in the 2025-2026 academic year, individuals will be evaluated against the frequency and duration requirements in Chapter 228, Subchapter F, of this title that were effective beginning September 1, 2024.

(B) The performance standard for quality shall be 90% of candidates rating the field supervision as "frequently" or "always or almost always" providing the components of structural guidance and ongoing support; and

(5) the results from a teacher satisfaction survey, in a form approved by the SBEC, of first-year [~~new~~] teachers administered at the end of the first year of teaching as a teacher of record [~~under a standard certificate~~]. The performance standard shall be 70% of teachers responding that they were "sufficiently prepared" or "well prepared" by their EPP.

(b) Accreditation status assignment. All approved EPPs may be assigned an accreditation status based on their performance in the Accountability System for Educator Preparation Programs (ASEP) Index system, as described in Figure: 19 TAC §229.1(c) of this title.

(1) Accredited status. An EPP shall be assigned an Accredited status if the EPP has met the standard of 85% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title and has been approved by the SBEC to prepare, train, and recommend candidates for certification.

(2) Accredited-Not Rated status. An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.

(3) Accredited-Warned status.

(A) An EPP shall be assigned Accredited-Warned status if the EPP accumulates 80% or greater but less than 85% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title.

(B) An EPP may be assigned Accredited-Warned status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or Texas Education Code (TEC), Chapter 21.

(4) Accredited-Probation status.

(A) An EPP shall be assigned Accredited-Probation status if the EPP accumulates less than 80% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title.

(B) An EPP may be assigned Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.

(5) Not Accredited-Revoked status.

(A) An EPP shall be assigned Not Accredited-Revoked status and its approval to recommend candidates for educator certification revoked if it is assigned Accredited-Probation status for three consecutively measured years.

(B) An EPP may be assigned Not Accredited-Revoked status if the EPP has been on Accredited-Probation status for one year, and the SBEC determines that revoking the EPP's approval is reasonably necessary to achieve the purposes of the TEC, §21.045 and §21.0451.

(C) An EPP may be assigned Not Accredited-Revoked status if the EPP fails to pay the required ASEP technology fee by the deadline set by TEA as prescribed in §229.9(7) of this title (relating to Fees for Educator Preparation Program Approval and Accountability).

(D) An EPP may be assigned Not Accredited-Revoked status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.

(E) An assignment of Not Accredited-Revoked status and revocation of EPP approval to recommend candidates for educator certification is subject to the requirements of notice, record review, and appeal as described in this chapter.

(F) A revocation of an EPP approval shall be effective for a period of two years, after which a program may reapply for approval as a new EPP pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(G) Upon revocation of EPP approval, the EPP may not admit new candidates for educator certification but may complete the training of candidates already admitted by the EPP and recommend them for certification. If necessary, TEA staff and other EPPs shall cooperate to assist the previously admitted candidates of the revoked EPP to complete their training.

(c) Small group exception.

(1) For purposes of accreditation status determination, the performance of an EPP candidate group, aggregated or disaggregated by demographic group, shall be measured against performance standards described in this chapter in any one year in which the number of individuals in the group exceeds 10. The small group exception does not apply to compliance with the frequency and duration of field supervisor observations.

(2) For an EPP candidate group, aggregated or disaggregated by demographic group, where the group contains 10 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year based on only that year's group performance.

(3) If the current year's EPP candidate group, aggregated or disaggregated by demographic group, contained between one and 10 individuals, that group performance shall be combined with the group performance from the next most recent prior year subsequent to the 2020-2021 academic year for which there was at least one individual, and if the two-year cumulated group contains more than 10 individuals, then the two-year cumulated group performance must be measured against the standards in the current year. The two-year cumulated group shall not include group performance from years prior to the 2021-2022 academic year.

(4) If the two-year cumulated EPP candidate group described in subsection (c)(3) of this section, aggregated or disaggregated by demographic group, contains between one and 10 individuals, then the two-year cumulated group performance shall be combined with the next most recent group performance subsequent to the 2020-2021 academic year for which there was at least one individual. The three-year cumulated group performance must be measured against the standards in the current year, regardless of how small the cumulated number of group members may be. When evaluating a three-year cumulated group of fewer than 10 individuals, the candidate group will be measured against the performance standard of the current year, or a performance standard of up to one candidate failing to meet the

requirement, whichever is more favorable. The three-year cumulated group performance shall not include group performance from years prior to the 2021-2022 academic year.

(5) In any reporting year in which the EPP candidate group, aggregated or disaggregated by demographic group, does not meet the necessary number of individuals needed to measure against performance standards for that year, for all indicators, the accreditation status will continue from the prior year. Any sanction assigned as a result of an accredited-warned or accredited-probation status in a prior year will continue if that candidate group has not met performance standards since being assigned accredited-warned or accredited-probation status. If an EPP has a status of Accredited-Probation carried over as a result of this subsection, the year in which the EPP has the carried over status will not count as a consecutively measured year for the purpose of subsection (b)(5)(A) of this section. The SBEC may modify the sanction as the SBEC deems necessary based on subsequent performance, even though that performance is not measured against performance standards for a rating.

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

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SUBCHAPTER D. CONTINUING APPROVAL PROCEDURES

19 TAC §229.6

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.6. Continuing Approval.

(a) The continuing approval of an educator preparation program (EPP) to recommend candidates for educator certification, which shall be reviewed pursuant to §228.13 [~~§228.10(b)~~] of this title (relating to Continuing Educator Preparation Program Approval [~~Approval Process~~]), will be based upon the EPP's accreditation status and compliance with the State Board for Educator Certification (SBEC) rules regarding program-approval components specified in §228.11 [~~§228.10(a)~~] of this title (relating to New Entity Approval [~~Approval Process~~]).

(b) After a continuing approval review pursuant to §228.13 [~~§228.10(b)~~] of this title, if the Texas Education Agency (TEA) staff finds that an EPP is in compliance with SBEC rules and/or Texas Education Code (TEC), Chapter 21, the TEA staff shall issue a proposed recommendation for SBEC to approve the renewal of an EPP. After a continuing approval review pursuant to §228.13 [~~§228.10(b)~~] of this title or a complaint investigation pursuant to Chapter 228, Subchapter G, of this title (relating to Complaints and Investigations) [~~§228.70 of this title (relating to Complaints and Investigations Procedures)~~], if the TEA staff finds that an EPP has failed to comply with SBEC rules and/or the TEC, Chapter 21, and the EPP does not obtain compliance within four months, the TEA staff shall recommend that the SBEC sanction the EPP. The TEA staff may recommend that the SBEC action include, but is not limited to, public reprimand, revocation of program approval, or the imposition of conditions upon continuing program approval.

(c) TEA staff shall provide notice of the proposed recommendation for SBEC action relating to the EPP's continuing approval to recommend candidates for educator certification in the manner provided by §229.7 of this title (relating to Informal Review of Texas Education Agency Recommendations), and an EPP shall be entitled to an informal review of the proposed recommendation, under the conditions and procedures set out in §229.7 of this title, prior to the submission of the recommendation for action to either the SBEC or the State Office of Administrative Hearings (SOAH). If the EPP fails to request an informal review in a timely manner, the proposed recommendation will become a final recommendation.

(d) Following the informal review, a final recommendation will be issued by the TEA staff. The final recommendation may include changes or additions to the proposed recommendation and such modifications are not subject to another informal review procedure.

(e) If the final recommendation proposes revocation of approval of an EPP to recommend candidates for educator certification, within 14 calendar days of receipt of the final recommendation, the EPP may agree in writing to accept the final revocation without further proceedings or may request that TEA staff schedule the matter for a hearing before an administrative law judge at the SOAH, as provided by §229.8 of this title (relating to Contested Cases for Accreditation Revocation).

(f) If the final recommendation does not propose revocation of approval of an EPP to recommend candidates for educator certification, the final recommendation will be submitted to SBEC for consideration and entry of a final order.

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

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SUBCHAPTER F. REQUIRED FEES

19 TAC §229.9

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.9. Fees for Educator Preparation Program Approval and Accountability.

An educator preparation program requesting approval and continuation of accreditation status shall pay the applicable fee from the following list.

(1) New educator preparation program application and approval (nonrefundable)--$9,000.

(2) Five-year continuing approval review visit pursuant to <u>§228.13</u> [~~§228.10(b)~~] of this title (relating to <u>Continuing Educator Preparation Program Approval</u> [~~Approval Process~~])--$4,500.

(3) Discretionary continuing approval review visit pursuant to <u>§228.13</u> [~~§228.10(b)~~] of this title--$4,500.

(4) Addition of new certification category or addition of clinical teaching--$500.

(5) Addition of each new class of certificate--$1,000.

(6) Applications for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, and practicums--$500.

(7) Accountability System for Educator Preparation Programs technology fee--$35 per admitted candidate.

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

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CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER B. GENERAL CERTIFICATION REQUIREMENTS

19 TAC §230.11

The State Board for Educator Certification (SBEC) proposes an amendment to 19 Texas Administrative Code (TAC) §230.11, concerning professional educator preparation and certification.

The proposed amendment would expand the options for demonstrating English language proficiency (ELP).

BACKGROUND INFORMATION AND JUSTIFICATION: At the February 2024 SBEC meeting, Texas Education Agency (TEA) staff provided the Board with an overview of the history of the ELP requirement and confirmed that regardless of the pathway to certification in Texas, demonstration of ELP is required for all candidates. TEA staff also posed key questions for the Board's consideration regarding current requirements in rule and possible updates for the demonstration of ELP. TEA staff anchored the conversation with the Board around required performance on the Test of English as a Foreign Language internet-Based Test (TOEFL-iBT), the list of countries approved by the SBEC to satisfy demonstration of ELP, the addition of U.S. territories to exempt individuals from the ELP requirement, and the potential use of standard certification obtained in another state by individuals licensed to teach in other countries.

At the April 2024 SBEC meeting, TEA staff provided a follow-up discussion item, including recommendations for amendments to 19 TAC Chapter 230 to be presented for consideration and action by the Board at the July SBEC meeting. The Board provided final direction on how to move forward with the proposal.

The following is a description of the proposed amendment.

Proposed Amendment to Required Performance on the TOEFL-iBT

The proposed amendment to §230.11(b)(5)(B) would update TOEFL-iBT score requirements from a specific score for each of the four sections (24 for Speaking, 22 for Listening, 22 for Reading, and 21 for Writing) to any score that falls within the range identified for performance at the High-Intermediate Level for all four sections of the test.

Proposed Amendment Related to U.S. Territories and the ELP Requirement

Proposed new §230.11(b)(5)(A) would add the phrase, "or one of its territories," to allow degrees obtained in the U.S. territories to also count toward meeting the ELP requirement.

Proposed Amendment to Add Countries to the List Approved by the SBEC for Exemption from the ELP Requirement

The proposed amendment to Figure: 19 TAC §230.11(b)(5)(C) would add Cameroon, Kenya, Philippines, South Africa, Uganda, Zambia, and Zimbabwe to the list of countries approved for exemption from the ELP requirement and would strike American Samoa to align with proposed changes that would incorporate all U.S. territories in meeting the requirement.

Proposed Amendment to Include an Additional Option to Meet the ELP Requirement

Proposed new §230.11(b)(5)(D) would allow an individual applying for the out-of-country credentials review who also holds a standard certificate issued in another state where exams were taken and passed to be eligible for consideration of exemption from ELP requirements.

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by including additional provisions for individuals to meet the ELP requirement.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. McLoughlin has determined that for the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be increased flexibility in demonstrating ELP. The proposal would reduce the number of TOEFL-iBT test attempts for some candidates. The addition of countries approved by the SBEC to satisfy the ELP requirement would save TOEFL-iBT testing fees for some candidates. Also, the future ability to utilize a standard certificate issued by another state department of education would also be a TOEFL-iBT test fee savings for some candidates. TEA staff has determined there is an anticipated savings to persons required to comply with the proposal. The proposal would allow an individual to score within a range of scores on the TOEFL-iBT, as opposed to a required specific scaled score. This would have a potential savings of approximately $200 per exam for an estimated 114 individuals per fiscal year (FY) who may have needed to retake the test to meet the minimum scaled score requirement. This would result in a savings of $22,800 for each year of FYs 2025-2028 for the individuals who were able to demonstrate ELP outside of TOEFL-iBT testing.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA staff has determined that the proposal

would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins August 9, 2024, and ends September 9, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal during the September 20, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), (2), and (4), which require the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B, specify the classes of educator certificates to be issued, including emergency certificates, and specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to TEC, §21.052.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.003(a), 21.031, and 21.041(b)(1), (2), (4), and (5).

§230.11. General Requirements.

(a) The only credits and degrees acceptable for certification of educators are those earned from and conferred by accredited institutions of higher education. All credit hour requirements for certification are semester credit hours or their equivalent.

(b) An applicant for a Texas educator certificate must:

(1) be at least 18 years of age;

(2) submit to the criminal history review required by the Texas Education Code (TEC) §22.0831, not be disqualified by the TEC, §21.058, §21.060, or other Texas statute, and not be subject to administrative denial pursuant to §249.12 of this title (relating to Administrative Denial; Appeal) or a pending proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);

(3) not be disqualified by federal law;

(4) be willing to support and defend the constitutions of the United States and Texas;

(5) be able to communicate, listen, read, write, and comprehend the English language sufficiently to use it easily and readily in daily communication and teaching. English language proficiency shall be evidenced by one of the following:

(A) completion of an undergraduate or graduate degree at an accredited institution of higher education in the United States or one of its territories; or

(B) verification of a minimum scaled score that falls within the High-Intermediate level in each section on the Test of English as a Foreign Language internet-Based Test (TOEFL-iBT) [~~minimum scaled scores on the Test of English as a Foreign Language internet-Based Test (TOEFL iBT) of 24 for speaking, 22 for listening, 22 for reading, and 21 for writing~~]; or

(C) an undergraduate or graduate degree that was earned at an institution of higher education in a country outside of the United States listed in the figure provided in this subparagraph; or [~~.~~]
Figure: 19 TAC §230.11(b)(5)(C)
[~~Figure: 19 TAC §230.11(b)(5)(C)~~]

(D) a standard certificate issued by the department of education in another state where examinations for the certificate were taken and passed;

(6) successfully complete appropriate examinations prescribed in §230.21 of this title (relating to Educator Assessment) for the educator certificate sought; and

(7) satisfy one or more of the following requirements:

(A) complete the requirements for certification specified in this chapter, Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), Chapter 239 of this title (relating to Student Services Certificates), Chapter 241 of this title (relating to Certification as Principal), or Chapter 242 of this title (relating to Superintendent Certificate), and be recommended for certification by an approved educator preparation program (EPP);

(B) qualify under Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States);

(C) qualify under §230.105 of this title (relating to Issuance of Additional Certificates Based on Examination);

(D) qualify for a career and technical education certificate based on skill and experience specified in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)); or

(E) qualify under Chapter 245 of this title (relating to Certification of Educators from Other Countries).

(c) An educator who has received a State Board for Educator Certification (SBEC)-issued standard certificate shall not be required to demonstrate English language proficiency as prescribed in subsection (b)(5)(B) and (C) of this section for purposes of admission into an EPP to obtain additional SBEC-issued certifications.

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

Filed with the Office of the Secretary of State on July 29, 2024.

TRD-202403464
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 475-1497

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§97.3, 97.4, 97.6

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes amendments to §97.3, concerning What Condition to Report and What Isolates to Report or Submit; §97.4, concerning When and How to Report a Condition or Isolate; and §97.6, concerning Reporting and Other Duties of Local Health Authorities and Regional Directors.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 969, 87th Regular Session, 2021, Kolkhorst, and to add melioidosis and *Cronobacter spp.* in infants as notifiable conditions in Texas.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.3 updates the public website link available for reviewing the summary list of notifiable conditions, adds *Cronobacter spp.* in infants and melioidosis as notifiable conditions in Texas, and corrects punctuation.

The proposed amendment to §97.4 updates the immediately notifiable conditions by adding melioidosis; removes faxing as an option for reporting immediately notifiable conditions; and identifies the preferred reporting option as electronic data transmission but allows persons to report via telephone or fax for all other notifiable conditions not listed in paragraphs (1) - (4) of this subsection. Additionally, this amendment removes mail or courier as reporting options and corrects punctuation. DSHS will allow a transition period and will continue to accept HIV reporting via mail while 25 TAC §97.134 is amended.

The proposed amendment to §97.6 lists the preferred reporting option as electronic data transmission but allows persons to report via telephone or fax; removes mail or courier as reporting options; and requires any notifiable conditions reported via telephone be followed up with an electronic data transmission through an approved electronic means within 24 hours of the original notification.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will expand existing regulation(s);

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

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

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

Christy Havel Burton has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules. Small or micro-businesses and rural communities with IT infrastructure or resource limitations will have the opportunity to continue to report notifiable conditions via telephone or fax.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Dr. Varun Shetty, Associate Commissioner, has determined for the first five years the rules are in effect, the public benefit will be improved ability of public health entities to plan and implement response and mitigation measures, enhance public surveillance and timely reporting, and increase the availability of public health data in Texas. Additionally, making melioidosis and *Cronobacter spp.* in infants reportable will increase information about these rare but potentially fatal diseases.

Christy Havel Burton, Chief Financial Officer, has also determined for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because alternative reporting options for notifiable conditions are available to those experiencing IT infrastructure or resource limitations.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Com-

ments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R052" in the subject line.

STATUTORY AUTHORITY

These amendments are authorized by Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001; and Texas Health and Safety Code Chapter 81 (Communicable Disease Prevention and Control Act), which authorizes the Executive Commissioner of HHSC to identify reportable diseases and prescribe the form and method for reporting.

The amendments implement Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 81 and 1001.

§97.3. What Condition to Report and What Isolates to Report or Submit.

(a) Humans.

(1) Identification of notifiable conditions.

(A) A summary list of notifiable conditions and reporting time frames is published on the Department of State Health Services web site at https://www.dshs.texas.gov/idcu/investigation/conditions/. [http://www.dshs.state.tx.us/idcu/investigation/conditions/.] Copies are filed in the Emerging and Acute Infectious Disease Unit [Branch], Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(B) Repetitive test results from the same patient do not need to be reported except those for mycobacterial infections.

(2) Notifiable conditions or isolates.

(A) Confirmed and suspected human cases of the following diseases and[/] infections are reportable:

(i) acquired immune deficiency syndrome (AIDS);

(ii) amebic meningitis and encephalitis;

(iii) anaplasmosis;

(iv) ancylostomiasis;

(v) anthrax;

(vi) arboviral infections, including[, but not limited to,] those caused by California serogroup virus, chikungunya virus, dengue virus, Eastern equine encephalitis (EEE) virus, St. Louis encephalitis (SLE) virus, Western equine encephalitis (WEE) virus, yellow fever virus, West Nile (WN) virus, and Zika virus;

(vii) ascariasis;

(viii) babesiosis;

(ix) botulism, adult and infant;

(x) brucellosis;

(xi) campylobacteriosis;

(xii) *Candida auris*;

(xiii) carbapenem resistant *Enterobacteriaceae* (CRE);

(xiv) Chagas disease;

(xv) chancroid;

(xvi) chickenpox (varicella);

(xvii) *Chlamydia trachomatis* infection;

(xviii) *Cronobacter spp.* in infants, invasive;

(xix) cryptosporidiosis;

(xx) cyclosporiasis;

(xxi) diphtheria;

(xxii) echinococcosis;

(xxiii) ehrlichiosis;

(xxiv) fascioliasis;

(xxv) gonorrhea;

(xxvi) *Haemophilus influenzae*,[,] invasive;

(xxvii) Hansen's disease (leprosy);

(xxviii) hantavirus infection;

(xxix) hemolytic uremic syndrome (HUS);

(xxx) hepatitis, including hepatitis A, acute hepatitis B infection, hepatitis B acquired perinatally (child), any hepatitis B infection identified prenatally or at delivery (mother), acute hepatitis C infection, and acute hepatitis E infection;

(xxxi) human immunodeficiency virus (HIV) infection;

(xxxii) influenza-associated pediatric mortality;

(xxxiii) legionellosis;

(xxxiv) leishmaniasis;

(xxxv) listeriosis;

(xxxvi) Lyme disease;

(xxxvii) malaria;

(xxxviii) measles (rubeola);

(xxxix) melioidosis;

(xl) meningococcal infection, invasive;

(xli) mumps;

(xlii) novel coronavirus;

(xliii) novel influenza;

(xliv) paragonimiasis;

(xlv) pertussis;

(xlvi) plague;

(xlvii) poliomyelitis, acute paralytic;

(xlviii) poliovirus infection, non-paralytic;

(xlix) prion diseases, such as Creutzfeldt-Jakob disease (CJD);

(l) Q fever;

(li) rabies;

(lii) rubella (including congenital);

(liii) salmonellosis, including typhoid fever;

(liv) Shiga toxin-producing *Escherichia coli* infection;

(lv) shigellosis;

(lvi) smallpox;

(lvii) spotted fever group rickettsioses (such as Rocky Mountain spotted fever);

(lviii) streptococcal disease: *Streptococcus pneumoniae*,[,] invasive;

(lix) syphilis;

(lx) *Taenia solium* and undifferentiated *Taenia* infections, including cysticercosis;

(lxi) tetanus;

(lxii) tick-borne relapsing fever;

(lxiii) trichinosis;

(lxiv) trichuriasis;

(lxv) tuberculosis ([(]*Mycobacterium tuberculosis* complex);

(lxvi) tuberculosis infection;

(lxvii) tularemia;

(lxviii) typhus;

(lxix) vancomycin-intermediate *Staphylococcus aureus* (VISA);

(lxx) vancomycin-resistant *Staphylococcus aureus* (VRSA);

(lxxi) *Vibrio* infection, including cholera (specify species);

(lxxii) viral hemorrhagic fever; and

(lxxiii) yersiniosis.

(B) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern should be reported by the most expeditious means.

(3) Minimal reportable information requirements. The minimal information that must [shall] be reported for each disease is as follows.[:]

(A) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis must [shall] be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).[;]

(B) For [for] tuberculosis disease - complete name, date of birth, physical address and county of residence, country of origin, and information on which diagnosis was based or suspected. In addition, if known, radiographic or diagnostic imaging results and dates [date(s)]; all information necessary to complete the most recent versions of department reporting forms: Report of Case and Patient Services, Report of Follow-up and Treatment for Contacts to TB Cases and Suspects,[;] and Report of Verified Case of Tuberculosis; laboratory results used to guide prescribing, monitoring, or modifying antibiotic treatment regimens for tuberculosis, including [to include, but not limited to,] liver function studies, renal function studies, and serum drug levels; pathology reports related to diagnostic evaluations of tuberculosis; reports of imaging or radiographic studies; records of hospital or outpatient care, including [to include, but not limited to,] histories and physical examinations, discharge summaries, and progress notes; records of medication administration, including [to include, but not limited to,] directly observed therapy (DOT) records, and drug toxicity and monitoring records; a listing of other patient medications to evaluate the potential for drug-drug interactions; and copies of court documents related to court-ordered [court ordered] management of tuberculosis.

(C) For [for] contacts to a known case of tuberculosis - complete name,[;] date of birth,[;] physical address,[;] county of residence,[;] evaluation and disposition,[;] and all information necessary to complete the most recent versions of department reporting forms: Report of Follow-up and Treatment for Contacts to TB Cases and Suspects[;] and Report of Case and Patient Services.[;]

(D) For [for] other persons identified with tuberculosis infection - complete name,[;] date of birth,[;] physical address and county of residence,[;] country of origin,[;] diagnostic information,[;] treatment information,[;] medical and population risks,[;] and all information necessary to complete the most recent version [versions] of the department's [department] reporting form,[:] Report of Case and Patient Services.

(E) For [for] hepatitis B (chronic and acute) identified prenatally or at delivery - mother's name, address, telephone number, age, date of birth, sex, race and ethnicity, preferred language, hepatitis B laboratory test results; estimated delivery date or date and time of birth; name and phone number of delivery hospital or planned delivery hospital; name of infant; name, phone number, and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant.[;]

(F) For [for] hepatitis A, B, C, and E - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, including all positive and negative hepatitis panel results, liver function tests, and symptoms), date of onset, pregnancy status, and physician or practitioner name, address, and telephone number.[;]

(G) For [for] hepatitis B, perinatal infection - name of infant; date of birth; sex; race and[;] ethnicity; name, phone number, and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant;[,] and hepatitis B laboratory test results.[;]

(H) For [for] chickenpox - name, date of birth, sex, race and ethnicity, address, date of onset, and varicella vaccination history.[;]

(I) For [for] Hansen's disease - name; date of birth; sex; race and ethnicity; disease type; place of birth; address; telephone number; date entered Texas; date entered U.S.; education and [/]employment; insurance status; location and inclusive dates of residence outside U.S.; date of onset and history prior to diagnosis; date of initial biopsy and result; disease type (i.e., tuberculoid, borderline, and lepromatous); date initial drugs prescribed and name of drugs; name, date of birth, and relationship of household contacts; and name, address, and telephone number of physician or practitioner.[;]

(J) For [for] novel influenza investigations occurring during an influenza pandemic-[-]minimal reportable information on

individual cases, a subset of cases or aggregate data will be specified by the department.[~~;~~]

(K) For [~~for~~] all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, specimen source, test type, and clinical indicators), date of onset, and physician or practitioner name, address, and telephone number.[~~; and~~]

(L) Other [~~other~~] information may be required as part of an investigation in accordance with Texas Health and Safety Code[~~,~~] §81.061.

(4) Diseases requiring submission of cultures. Pure cultures, or specimens as indicated below, must be submitted and accompanied by a current department Specimen Submission Form for:

(A) anthrax (*Bacillus anthracis*);

(B) botulism, adult and infant (*Clostridium botulinum*);

(C) brucellosis (*Brucella* species);

(D) *Candida auris*;

(E) diphtheria (*Corynebacteria diphtheriae* from any site);

(F) all *Haemophilus influenzae*, invasive, in children under five years old (*Haemophilus influenzae* from normally sterile sites);

(G) listeriosis (*Listeria monocytogenes*);

(H) meningococcal infection, invasive (*Neisseria meningitidis* from normally sterile sites or purpuric lesions);

(I) plague (*Yersinia pestis*);

(J) salmonellosis, including typhoid fever (*Salmonella* species);

(K) Shiga toxin-producing *Escherichia coli* infection (*E.coli* O157:H7, isolates or specimens from cases where Shiga toxin activity is demonstrated);

(L) *Staphylococcus aureus* with a vancomycin minimum inhibition concentration (MIC) greater than 2 micrograms per milliliter (µg/mL);

(M) all *Streptococcus pneumoniae*, invasive, in children under five years old (Streptococcus pneumoniae from normally sterile sites);

(N) tuberculosis (*Mycobacterium tuberculosis* complex);

(O) tularemia (*Francisella tularensis*);

(P) vibriosis (*Vibrio* species); and

(Q) any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern may require submission of cultures or specimens.

[~~(4) Diseases requiring submission of cultures. For all anthrax (Bacillus anthracis); botulism, adult and infant (Clostridium botulinum); brucellosis (Brucella species); Candida auris; diphtheria (Corynebacteria diphtheria from any site); all Haemophilus influenzae, invasive, in children under five years old (Haemophilus influenzae from normally sterile sites); listeriosis (Listeria monocytogenes); meningococcal infection, invasive (Neisseria meningitidis from normally sterile sites or purpuric lesions); plague (Yersinia pestis); salmonellosis, including typhoid fever (Salmonella species); Shiga toxin-producing Escherichia coli infection (E.coli O157:H7, isolates or specimens from cases where Shiga toxin activity is demonstrated); Staphylococcus aureus with a vancomycin MIC greater than 2 µg/mL; all Streptococcus pneumoniae, invasive, in children under five years old (Streptococcus pneumoniae from normally sterile sites); tuberculosis (Mycobacterium tuberculosis complex); tularemia (Francisella tularensis); and vibriosis (Vibrio species) - pure cultures (or specimens as indicated in this paragraph) shall be submitted accompanied by a current department Specimen Submission Form.~~]

(5) Laboratory reports. Reports from laboratories must [~~shall~~] include patient name, identification number, address, telephone number, age, date of birth, sex, race and ethnicity; specimen submitter name, address, and phone number; specimen type; date specimen collected; disease test and test result; normal test range; date of test report; and physician or practitioner name and telephone number.

(b) Animals.

(1) Clinically diagnosed or laboratory-confirmed animal cases of the following diseases are reportable: anthrax, arboviral encephalitis, tuberculosis (*Mycobacterium tuberculosis* complex) in animals other than those housed in research facilities, and plague. All [~~Also, all~~] non-negative rabies tests performed on animals from Texas at laboratories located outside of Texas must [~~shall~~] be reported. All [~~; all~~] non-negative rabies tests performed in Texas must [~~will~~] be reported by the laboratory conducting the testing. In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(2) The minimal information that must [~~shall~~] be reported for each disease includes species and number of animals affected, disease or condition, name and phone number of the veterinarian or other person in attendance, and the animal [~~animal(s)~~] owner's name, address, and phone number. Other information may be required as part of an investigation in accordance with Texas Health and Safety Code[~~,~~] §81.061.

§97.4. When and How to Report a Condition or Isolate.

(a) Humans.

(1) The following notifiable conditions are public health emergencies and suspect cases must [~~shall~~] be reported immediately by telephone [~~phone~~] to the local health authority or the appropriate Department of State Health Services regional epidemiology office:

(A) anthrax;

(B) botulism;

(C) diphtheria;

(D) measles (rubeola);

(E) melioidosis;

(F) meningococcal infection, invasive;

(G) novel coronavirus;

(H) novel influenza;

(I) poliomyelitis, acute paralytic;

(J) plague;

(K) rabies;

(L) smallpox;

(M) tularemia;

(N) vancomycin-intermediate *Staphylococcus aureus* (VISA);

(O) vancomycin-resistant *Staphylococcus aureus* (VRSA);

(P) viral hemorrhagic fever;

(Q) yellow fever; and

(R) any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern.

(2) The following notifiable conditions must [shall] be reported by electronic data transmission [fax] or telephone [phone] within one working day of identification as a suspected case:

(A) brucellosis;

(B) *Candida auris*;

(C) carbapenem resistant *Enterobacteriaceae* (CRE);

(D) hepatitis A, acute;

(E) hepatitis B, perinatal infection;

(F) influenza-associated pediatric mortality;

(G) mumps;

(H) pertussis;

(I) poliovirus infection, non-paralytic;

(J) Q fever;

(K) rubella (including congenital);

(L) syphilis infection in pregnant females;

(M) tuberculosis ([(]*Mycobacterium tuberculosis* complex); and

(N) *Vibrio* infection (including cholera).

(3) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis must [shall] be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(4) Tuberculosis antibiotic susceptibility results must [should] be reported by laboratories no later than one week after they first become available.

(5) For all other notifiable conditions not listed in paragraphs (1) - (4) of this subsection, reports of disease must [shall] be made no later than one week after a case or suspected case is identified.

(A) The preferred option for reporting is electronic data transmission, but reports [Transmittal] may be made by telephone or[,] fax. Any electronic data transmission of the report must provide protection against unauthorized disclosure and utilize a format prescribed by the receiving agency[, mail, courier, or electronic transmission].

[*(i)* If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked "Confidential."]

[*(ii)* Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal, be by express written agreement with the receiving agency, utilize a format prescribed by the receiving agency, and be validated as accurate.]

(B) A health information exchange (HIE) organization as defined by Texas Health and Safety Code[,] §182.151, may transmit reports on behalf of providers required to report in §97.2(a) - (d) of this chapter [title](relating to Who Shall Report) in accordance with Texas Health and Safety Code[,] Chapter 182, Subchapter D,[.] Health Information Exchanges, and all other state and federal law as follows.[:]

(i) The receiving agency has published message standards.

(ii) A method of secure transmission has been established between the HIE and the receiving agency, and transmissions have been tested with the receiving agency and established as meeting the data exchange standards and conveying information accurately.

(iii) Reporting by the HIE has been requested and authorized by the appropriate health care provider, practitioner, physician, facility, clinical laboratory, or other person [who is] required to report health-related information.

(iv) HIE reports may be made in addition to but do [shall] not replace reports listed in paragraphs (1) - (2) of this subsection.

(6) All diseases requiring submission of cultures in §97.3(a)(4) of this chapter [title] (relating to What Condition to Report and What Isolates to Report or Submit) must [shall] be submitted as they become available.

(b) Animals. Reportable conditions affecting animals must [shall] be reported within one working day following the diagnosis.

§97.6. Reporting and Other Duties of Local Health Authorities and Regional Directors.

(a) The purpose of this section is to provide procedures for local health authorities and regional directors to report a disease to the Department of State Health Services (department) central office.

(b) Those notifiable conditions identified as public health emergencies in §97.4(a) of this chapter [title] (relating to When and How to Report a Condition or Isolate) must [shall] be reported immediately to the department by telephone at (888) 963-7111.

(c) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis must [shall] be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(d) For notifiable conditions not listed in subsections (b) and (c) of this section, the local health authority or the department's regional director collects [shall collect] reports of disease and transmits [transmit] the information listed in §97.3(a)(3) of this chapter [title] (relating to What Condition to Report and What Isolates to Report or Submit) at weekly intervals, as directed by the department.

(e) The preferred option for reporting is electronic data transmission, but reports may be made by telephone or fax. [Transmittal may be by telephone, mail, courier, or electronic transmission.]

[(1) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked "Confidential."]

(1) [(2)] Any electronic data transmission of the report [reports] must provide [at least the same degree of] protection against unauthorized disclosure, and utilize a format prescribed by the receiving agency [as those of mail or courier transmittal].

(2) For any notifiable condition reported by telephone, the person reporting must follow-up with an electronic data transmission through an approved electronic means within 24 hours of the original notification.

(f) The health authority must [~~shall~~] notify health authorities in other jurisdictions of a case or outbreak of a communicable disease [~~that has been reported~~] if the case resides in another jurisdiction or there is cause to believe transmission of a disease may have occurred in another jurisdiction. The department will [~~shall~~] assist the health authority in providing such notifications upon request. The health authority of the area where the case or outbreak is diagnosed must [~~shall~~] report the case or outbreak to the department on the same basis as other reports.

(g) The health authority upon identification of a case or upon receipt of notification or report of disease, must [~~shall~~] take such action and measures as may be necessary to conform with the appropriate control measure standards. The health authority may, upon identification of a case or upon report of a communicable disease in a child attending a public or private child-care facility or a school, notify the owner or operator of the child-care facility or the school administrator. The commissioner is authorized to amend, revise, or revoke any control measure or action taken by the health authority, if necessary or desirable in the administration of a regional or statewide public health program or policy.

(h) The health authority is empowered to close any public or private child-care facility, school, or other place of public or private assembly when in his or her opinion such closing is necessary to protect the public health; and such school or other place of public or private assembly must [~~shall~~] not reopen until permitted by the health authority who caused its closure.

(i) Persons reporting notifiable conditions in animals must [~~shall~~] be referred to the central office or the appropriate regional office of the department's Zoonosis Control Branch.

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

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Cynthia Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-7676

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 356. GROUNDWATER MANAGEMENT

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) Subchapters A, B, C, E, and G, more specifically §§356.10, 356.20, 356.22, 356.31 - 356.35, 356.51 - 356.57, and §§356.70 - 356.72.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB is proposing this rulemaking primarily to modernize, update, and clarify rule language to facilitate groundwater management in the state and to clarify requirements for groundwater conservation districts. The proposed rule language adds more specificity and clarity regarding desired future condition packages, including non-relevant aquifer documentation; required elements of groundwater management plans; and brackish groundwater production zones. Additionally, the TWDB proposes adding definitions for brackish groundwater, conservation, groundwater management area, and non-relevant aquifer.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

31 TAC 356, Subchapter A

Section 356.10, Definitions, is proposed to be amended primarily to add the following new definitions: "brackish groundwater" in proposed §356.10(5), "conservation" in proposed §356.10(9), "groundwater management area" in proposed §356.10(15), and "non-relevant aquifer" in proposed §356.10(21). Other proposed amendments to §356.10 include correcting an error in §356.10(3) to refer to the "quantity" of water rather than the "quality" of water, renumbering the entire section to provide for new definitions and to modernize and clarify the rule language improving the readability of the rule.

31 TAC 356, Subchapter B

Sections 356.20 and 356.22 are proposed to be amended to modernize the rule language. No changes are proposed to §356.21 and that rule will not be published with this proposal.

31 TAC 356, Subchapter C

No changes are proposed to §356.30. That rule will not be published with this proposal.

Section 356.31 is proposed to be amended to update the title of the section and the due date by which desired future condition packages are due from a designated representative of each groundwater management area to the Executive Administrator of the TWDB. The proposed amendments also clarify "non-relevant" aquifer designations and required documentation submitted as part of a desired future condition package.

Section 356.32 is proposed to be amended to update the title of the section, to clarify the contents of the submission package for desired future conditions due to the TWDB, to require the submission of "non-relevant" aquifer information, and to renumber the section as appropriate.

Section 356.33 is proposed to be amended to require that a package submitting a desired future condition by the representative of a groundwater management area be signed and dated by that representative. The proposed amendments also clarify how the Executive Administrator of the TWDB will determine whether a submission package is administratively complete.

Section 356.34 is proposed to be amended to modernize the rule language.

Section 356.35 is proposed to be amended to clarify that a desired future condition package is what is declared administratively complete by the Executive Administrator.

31 TAC 356, Subchapter E

No changes are proposed to Section 356.50, and the rule will not be republished with this proposal.

Section 356.51 is proposed to be amended to modernize the rule language.

Section 356.52 is proposed to be amended to clarify that "management objectives," must correspond to a "management goal," to include proposed §356.52(a)(5) in the review of submitted management plans. Amendments to this section also include proposed §356.52(a)(7) requiring a consideration of water supply needs and water management strategies, in accordance with statute, and to modernize and re-number the rule language throughout the section.

Section 356.53 is proposed to be amended to modernize the rule language, to update the kind of information submitted to the Executive Administrator during review of a management plan, and to reflect that documentation of notice of the plan's adoption may be posted on the official website of a District. §356.53(a)(1) is amended to remove the requirement for hard-copy submissions of adopted management plans and to provide for only the submission of electronic versions of adopted management plans.

Section 356.54 is proposed to be amended to clarify that management plans are "revised" rather than "amended" when an adopted plan is not approved by the Executive Administrator.

Section 356.55 is proposed to be amended to modernize the rule language.

Section 356.56 is proposed to be amended to update the title of the section, to add new §356.56(a) clarifying the process of Executive Administrator approval of amended management plans, to provide that changes to approved management plans will be defined as "amendments" rather than "addendums," and to re-number the section.

Section 356.57 is proposed to be amended to update the rule language.

31 TAC 356 Subchapter G

Section 356.70 is proposed to be amended to update §356.70(d) to provide the TWDB the authority to amend a designated brackish groundwater production zone on its own, or by request by a district. In addition, §356.70(e) is proposed to be added to the rule requiring the TWDB to provide public notice of an amendment related to a designated brackish groundwater production zone.

Section 356.71 is proposed to be amended to update the rule language.

Section 356.72 is proposed to be amended to require districts to submit certain report information to the TWDB and to clarify and update the language.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments from the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments and there is no change in costs with the proposed amendments to the rule because the proposed rule revisions are to modernize and clarify existing rule language.

These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary for groundwater management resources of this state as authorized by the Texas Water Code and are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as the rules are necessary for groundwater management resources of this state. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the proposed rule as it modernizes, updates, and clarifies rule language to facilitate groundwater management in the state and certain requirements for groundwater conservation districts.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed 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 rulemaking is to update and clarify existing rules that are necessary for

groundwater management in the state and certain requirements for groundwater conservation districts.

Even if the proposed rule 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 Section 15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, Section 36.1073, §36.108, §36.1084, §36.1085, and §36.3011.Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to update and clarify existing rules that are necessary for groundwater management in the state and certain requirements for groundwater conservation districts. The proposed rule would substantially advance this stated purpose by aligning definitions with agency and industry practice and providing greater detail for desired future condition packages and required elements of groundwater management plans.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule 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 charged with the delineation of groundwater management areas in order to assist with the conservation, preservation, protection and prevention of the waste of the state's groundwater resources.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation 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 rule updates the state's existing rules that facilitate groundwater management without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register.* Include "Chapter 356" in the subject line of any comments submitted.

SUBCHAPTER A. DEFINITIONS

31 TAC §356.10

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 §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

This rulemaking affects Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

§356.10. Definitions.

The following words and terms, when used in this chapter, will [~~shall~~] have the following meanings unless the context clearly indicates otherwise. Words defined in Texas Water Code Chapter 36, Groundwater Conservation Districts, that are not defined here will [~~shall~~] have the meanings provided in Chapter 36.

(1) Affected Person--An owner of land in the management area, a district in or adjacent to the management area, a regional water planning group with a water management strategy in the management area, a person or entity who holds or is applying for a permit from a district in the management area, a person or entity who has groundwater rights in the management area or any other person defined as affected with respect to a management area by Texas Commission on Environmental Quality rule.

(2) Agency--The Texas Water Development Board.

(3) Amount of groundwater being used on an annual basis--An estimate of the quantity [~~quality~~] of groundwater annually withdrawn or flowing from wells in an aquifer for at least the most recent five years that information is available. It may include data from Texas Water Development Board historical water use estimates, an estimate of exempt uses, and data collected by the district.

(4) Board--The governing body of the Texas Water Development Board.

(5) Brackish groundwater--Groundwater containing 1,000 to 9,999 milligrams per liter of total dissolved solids for the purposes of brackish groundwater production zone designations.

(6) [~~(5)~~] Brackish groundwater production zone operating permit--A permit issued by a district under Texas Water Code §36.1015.

(7) [~~(6)~~] Conjunctive use--The combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.

(8) [~~(7)~~] Conjunctive surface water management issues--Issues related to conjunctive use such as groundwater or surface water quality degradation and impacts of shifting between surface water and groundwater during shortages.

(9) Conservation--Practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(10) [~~(8)~~] Designated brackish groundwater production zone--An aquifer, subdivision of an aquifer, or geologic stratum designated under Texas Water Code §16.060(b)(5).

(11) [~~(9)~~] Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a groundwater management area at one or more specified future times as defined by district representatives [~~participating groundwater conservation districts~~] within a groundwater management area as part of the joint planning process.

(12) [~~(10)~~] District--Any district or authority subject to Chapter 36, Texas Water Code.

(13) [~~(11)~~] Executive administrator--The executive administrator of the Texas Water Development Board or a designated representative.

(14) [~~(12)~~] Groundwater availability model [~~Groundwater Availability Model~~]--A regional groundwater flow model provided [~~approved~~] by the executive administrator.

(15) Groundwater management area--An area delineated and designated by the Texas Water Development Board as an area most suitable for management of groundwater resources through regional joint groundwater planning.

(16) [~~(13)~~] Major aquifer--An aquifer designated as a major aquifer by the board [~~in the State Water Plan~~].

(17) [~~(14)~~] Minor aquifer--An aquifer designated as a minor aquifer by the board [~~in the State Water Plan~~].

(18) [~~(15)~~] Modeled available groundwater [~~Modeled Available Groundwater~~]--The amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition.

(19) [~~(16)~~] Most efficient use of groundwater--Practices, techniques, and technologies that a district determines will provide the least consumption of groundwater for each type of use balanced with the benefits of using groundwater.

(20) [~~(17)~~] Natural resources issues--Issues related to environmental and other concerns that may be affected by a district's groundwater management plan and rules, such as impacts on endangered species, soils, oil and gas production, mining, air and water quality degradation, agriculture, and plant and animal life.

(21) Non-relevant aquifer--An aquifer or portion of an aquifer deemed not relevant for joint planning purposes by district representatives within a groundwater management area.

(22) [~~(18)~~] Office--State Office of Administrative Hearings.

(23) [~~(19)~~] Petition--A document submitted to a [~~the groundwater conservation~~] district by an affected person appealing the reasonableness of a desired future condition.

(24) [~~(20)~~] Projected water demand--The quantity of water needed on an annual basis according to the state water plan for the state water plan planning period.

(25) [~~(21)~~] Recharge enhancement--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.

(26) [~~(22)~~] Relevant aquifer--An aquifer designated as a major or minor aquifer, or any undesignated aquifer deemed relevant for joint planning by district representatives within a groundwater management area.

(27) [~~(23)~~] State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).

(28) [~~(24)~~] Surface water management entities--Political subdivisions as defined by Texas Water Code Chapter 15 and identified from Texas Commission on Environmental Quality records that are granted authority under Texas Water Code Chapter 11 to store, take, divert, or supply surface water either directly or by contract for use within the boundaries of a district, including but not limited to river authorities or irrigation authorities.

(29) [~~(25)~~] Total estimated recoverable storage [~~Total Estimated Recoverable Storage~~]--The estimated amount of groundwater within an aquifer that accounts for recovery scenarios that range between 25% and 75% of the porosity-adjusted aquifer volume.

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

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Ashley Harden
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-2776

SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

31 TAC §356.20, §356.22

The amendments are 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 §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

This rulemaking affects Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

§356.20. Scope of Subchapter.

This subchapter describes the agency's delineation and designation of groundwater management areas pursuant to the requirements of Texas Water Code §35.004.

§356.22. Request to Amend Groundwater Management Area Boundaries.

(a) A request to amend the boundaries of a groundwater management area must be made in writing [~~addressed~~] to the executive administrator and must contain the following:

(1) a resolution supporting the change signed by each of the district representatives in each affected groundwater management area;

(2) a demonstration that the geographic and hydrogeologic conditions require the proposed boundary change or an explanation that the change involves only an administrative correction; and

(3) a copy of the notice and minutes of the public meeting held by the districts in each affected groundwater management area at which the districts approved the resolution in paragraph (1) of this subsection.

(b) The executive administrator will review the request and will notify the districts of his decision.

(1) If the proposed change involves only an administrative adjustment or correction to the boundary data files identified in §356.21 of this subchapter (relating to Designation of Groundwater Management Areas), the executive administrator will instruct agency staff to make the change and notify the districts upon completing the change.

(2) If the proposed change involves a substantive change to the boundaries of one or more groundwater management areas, the request will be presented to the board for authorization.

(c) The executive administrator may, in his discretion, make administrative corrections to the data files described in §356.21 of this subchapter. The executive administrator will notify the affected districts before making any correction.

(d) The executive administrator may, in his discretion, waive any of the requirements of this subchapter upon a showing of good cause.

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

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Ashley Harden
General Counsel
Texas Water Development Board
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SUBCHAPTER C. SUBMISSION OF DESIRED FUTURE CONDITIONS

31 TAC §§356.31 - 356.35

The amendments are 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 §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

This rulemaking affects Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

§356.31. Desired Future Condition Package Submission Date.

(a) The desired future conditions for the relevant aquifers within the groundwater management area must be approved by a resolution adopted by a two-thirds vote of all the district representatives [~~districts~~] in a groundwater management area not later than January 5, 2027 [~~2022~~], in accordance with Texas Water Code §36.108. Subsequent desired future conditions must be proposed and finally adopted by the district representatives before the end of each successive five-year period after that date.

(b) A designated representative of the groundwater management area must provide complete copies of all documents required under §356.32 of this subchapter (relating to Desired Future Condition Package) to the executive administrator no later than 60 days following the date on which the district representatives within the groundwater management area adopted desired future conditions.

(c) [~~(b)~~] The district representatives [~~districts~~] in a groundwater management area may, as part of the process for adopting and submitting desired future conditions, propose classification of a relevant aquifer or [~~portion or~~] portions of a relevant aquifer as non-relevant if the districts determine that aquifer characteristics, projected groundwater demands, and current groundwater uses do not warrant adoption of a desired future condition. Non-relevant aquifers do not require a desired future condition. [~~In such a case no desired future condition is required.~~] The districts must submit the following documentation for non-relevant aquifers to the agency as part of the desired future condition package [~~related to the portion of the relevant aquifer proposed to be classified as non-relevant~~]:

(1) A description, location, and/or map of the aquifer or portion of the aquifer;

(2) A summary of aquifer characteristics, projected groundwater demands, and current groundwater uses, including the total estimated recoverable storage as provided by the executive administrator, that support the conclusion that desired future conditions in adjacent or hydraulically connected relevant aquifer(s) will not be affected; and

(3) An explanation of why the aquifer or portion of the aquifer is non-relevant for joint planning purposes.

§356.32. Desired Future Condition [~~Submission~~] Package.

A designated representative of the groundwater management area [Districts] must provide the following to the executive administrator no later than 60 days following the date on which the district representatives [districts] in the groundwater management area [collectively] adopted the desired future condition(s):

(1) a copy of the desired future conditions explanatory report addressing the information required by Texas Water Code §36.108(d-3) and the criteria in Texas Water Code §36.108(d);

(2) non-relevant aquifer documentation required by §356.31(c) of this subchapter (relating to Desired Future Condition Package Submission Date);

(3) [(2)] a copy of the resolution of the groundwater management area adopting the desired future conditions as required by Texas Water Code §36.108(d-3);

(4) [(3)] a copy of the notice that was posted for the joint planning meeting at which the districts collectively adopted the desired future condition(s) as required by Texas Water Code §36.108(e) and §36.108(e-2);

(5) [(4)] the name of a designated representative of the groundwater management area;

(6) [(5)] any groundwater availability model files or aquifer assessments acceptable to the executive administrator used in developing the adopted desired future condition with documentation sufficient to replicate the work; and

(7) [(6)] any other information the executive administrator may require to be able to estimate the modeled available groundwater.

§356.33. Determination of Administrative Completeness.

A submitted package will be considered administratively complete if it contains complete copies of all documents required under §356.32 of this subchapter (relating to Desired Future Condition [Submission] Package) and is signed and dated by the designated representative of the groundwater management area.

(1) The executive administrator will acknowledge in writing receipt of submitted packages and will review for administrative completeness. The agency may request clarifications while reviewing the package for administrative completeness. If the submitted package is administratively complete, the executive administrator will notify the district representatives within the groundwater management area in writing. If requests for clarification are not acknowledged or addressed in a reasonable amount of time, the executive administrator will [advise whether they are administratively complete or will] provide a notice of deficiencies.

(2) The designated representative of the groundwater management area [Districts] must submit to the executive administrator an updated package that contains corrections to the deficiencies noted in paragraph (1) of this section no later than 90 days following the date on which the executive administrator provided a notice of deficiencies.

§356.34. District Adoption of the Desired Future Condition.

Each district must [shall] adopt the desired future condition for the aquifer(s) within its boundaries as soon as possible after the executive administrator advises that the desired future condition package submitted pursuant to §356.32 of this subchapter (relating to Desired Future Condition [Submission] Package) is administratively complete.

§356.35. Modeled Available Groundwater.

The executive administrator will provide the modeled available groundwater value for each relevant aquifer with a desired future condition to districts in a groundwater management area and the appropriate regional water planning groups no later than 180 days after the executive administrator has provided notice that the submitted desired future condition package is administratively complete as described in §356.33 of this subchapter (relating to Determination of Administrative Completeness).

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

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Ashley Harden
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-2776

SUBCHAPTER E. GROUNDWATER MANAGEMENT PLAN APPROVAL

31 TAC §§356.51 - 356.57

The amendments are 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 §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

This rulemaking affects Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

§356.51. Required Management Plan.

In accordance with Texas Water Code §§36.1071 (including coordination with surface water management entities on a regional basis), 36.1072, and 36.1085, a district must [shall] develop and submit to the executive administrator a management plan that meets the requirements of §356.52 of this subchapter (relating to Required Content of Management Plan). [The management plan goals must be time-based and quantifiable.]

§356.52. Required Content of Management Plan.

(a) A management plan must [shall] contain, unless explained in detail as not applicable, the following elements:

(1) Management goals:

(A) providing the most efficient use of groundwater;

(B) controlling and preventing waste of groundwater;

(C) controlling and preventing subsidence;

(D) addressing conjunctive surface water management issues;

(E) addressing natural resource issues which impact the use and availability of groundwater, and which are impacted by the use of groundwater;

(F) addressing drought conditions;

(G) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement and brush control, where appropriate and cost-effective; and

(H) addressing the desired future conditions adopted by the district under [established pursuant to] Texas Water Code §36.108;

(2) Management objective(s) for each management goal. Management objectives are specific, measurable, and time-based statements of future outcomes that the district will use to achieve each [the] management goal [goals] in paragraph (1) of this subsection. [Management objectives are specific and time-based statements of future outcomes, each linked to a management goal.] Each future outcome must be the result of actions that can be taken by the district during the five years following the effective date of the adopted management plan;

(3) Performance standard(s) for each management objective. Performance standards are indicators or measures used to evaluate the effectiveness and efficiency of district activities. Evaluation of the effectiveness of district activities measures the performance of the district. Evaluation of the efficiency of district activities measures how well district resources are used to produce an output, such as the amount of resources devoted for each management action;

(4) Details of how the district will manage groundwater supplies in the district, including a methodology by which the district will track its progress in achieving its management goals. At least one goal must be tracked on an annual basis; however, other goals may be defined and tracked over a longer time period as appropriate; [and]

(5) The actions, procedures, performance, and avoidance that are or may be necessary by the district to effect the plan, including specifications and proposed rules;

(6) [(5)] Estimates of the following:

(A) modeled available groundwater in the district as provided by the executive administrator based on the desired future condition established under Texas Water Code §36.108;

(B) the amount of groundwater being used within the district on an annual basis taken from either the water use survey data provided by the executive administrator or the district's own estimate;

(C) the annual amount of recharge from precipitation, if any, to each aquifer [the groundwater resources] within the district, as provided by the executive administrator;

(D) [for each aquifer,] the annual volume of water that discharges from each [the] aquifer within the district to springs and any surface water bodies, including lakes, streams, and rivers, as provided by the executive administrator;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, as provided by [if a groundwater availability model is available from] the executive administrator;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected water demand for water in the district according to the most recently adopted state water plan; and[.]

(7) Details of the district's consideration of:

(A) Water supply needs within the district according to the most recently adopted state water plan, emphasizing those needs that impact groundwater supply within the district; and

(B) Water management strategies sourced from within the district boundaries according to the most recently adopted state water plan, emphasizing strategies that are or will be impacted by district actions.

(b) The management goals, management objectives, and performance standards [and management objectives] required in subsection (a)(1), (2), and (3) of this section must be consistent with the established desired future conditions of the district's groundwater management area(s).

(c) Estimates required in subsection (a)(5) of this section must be developed with [Each district must use the] groundwater availability modeling information provided by the executive administrator in conjunction with the district's best available site-specific information and data. [provided by the district when developing the estimates required in subsection (a)(5) of this section.]

§356.53. Plan Submission.

(a) A district requesting approval of its management plan, or of an amended [update of its] management plan to incorporate adopted desired future conditions, or any other updates as necessary, will [that apply to the district, shall] submit to the executive administrator the following:

[(1) one hard copy of the adopted management plan;]

(1) [(2)] one electronic copy of the adopted management plan; and

(2) [(3)] documentation that the plan was adopted after notice posted in accordance with Texas Government Code Chapter 551, including a copy of the posted agenda, meeting minutes, and copies of the notice either posted on the district's website or provided to the county clerk. [printed in the newspaper or publisher's affidavit.]

(b) The plan or revised plan under §356.54 of this subchapter (relating to Approval) will [shall] be considered properly submitted to the executive administrator when all of the items specified in subsection (a) of this section are received by the executive administrator.

§356.54. Approval.

(a) The executive administrator will approve a plan as administratively complete when it contains the information required by Texas Water Code §36.1071(a) and (e). The executive administrator will notify the district in writing of the determination.

(b) If approval is denied, the executive administrator will provide written reasons for the denial with the notice of denial. A district has 180 days from receipt of notice to submit a revised management plan for review and approval. A revised [or amended] management plan must comply with all requirements of this subchapter.

(c) An approved management plan remains in effect until:

(1) the district fails to readopt a management plan at least 90 days before the plan expires;

(2) the district fails to submit the district's readopted management plan to the executive administrator at least 60 days before the plan expires; or

(3) the executive administrator determines that the readopted management plan does not meet the requirements for approval and the district has exhausted all appeals to the board or court in accordance with Texas Water Code §36.1072(f).

§356.55. Appeal of Denial of Management Plan Approval.

(a) If the executive administrator denies approval of a management plan, a revised management plan, or an amendment to a management plan, the district may appeal the denial by notifying the executive administrator in writing of its intent to appeal, not later than 60 days after the executive administrator's written notice of denial.

(1) Not later than 30 days after filing its notice of intent to appeal, a district will [shall] submit to the executive administrator in

writing points of appeal addressing each of the executive administrator's reasons for denial of approval.

(2) The appeal must [~~shall~~] be heard at the first regularly scheduled meeting of the board to occur after the expiration of 30 days from the receipt of the district's written points of appeal. Written notice of appeal and written points of appeal will [~~shall~~] be considered to be received by the executive administrator when received in the Austin offices of the agency.

(3) The executive administrator may file a written response to the district's points of appeal with the board and must [~~shall~~] provide a copy of the response to the district.

(b) If the board upholds the executive administrator's decision to deny approval of the management plan, the district may request that the matter be mediated or, failing mediation, may appeal to a district court in Travis County, in accordance with Texas Water Code §36.1072(f).

§356.56. Approval of Management Plan Amendments.

(a) Amendments to a plan that substantially affect the management plan require approval by the executive administrator and must be submitted in accordance with §356.53 of this subchapter (relating to Plan Submission). Substantial amendments include updating estimates of modeled available groundwater, revising the desired future conditions goal, or any changes to elements required by Texas Water Code §36.1071. A plan must be updated no later than two years after the adoption of desired future conditions by the district representatives within the groundwater management area(s).

(b) [~~(a)~~] If the district proposes to amend its plan for revisions of items not required by Texas Water Code §36.1071 or that do not substantially affect the plan [~~other than the modeled available groundwater or desired future condition~~], the district must [~~shall~~] submit a written copy of the proposed amendment to the executive administrator so that the executive administrator may determine whether the amendment requires approval.

(c) [~~(b)~~] If the executive administrator determines that a proposed [~~the~~] amendment substantially affects the plan and requires approval, the district must [~~shall~~] submit all amendments to the management plan developed under §356.52 of this subchapter (relating to Required Content of Management Plan) to the executive administrator within 60 days of adoption of the amendment by the district's board. [~~Amendments shall be submitted either in the form of an addendum to the management plan or as changes highlighted within the entire management plan.~~]

(d) All management plan amendments or proposed amendments must be submitted in writing to the executive administrator and include a cover letter noting the amendments made or proposed amendments to the plan.

[~~(c) If the amendments address items required by Texas Water Code §36.1071, they should be in the form of an amended plan instead of an addendum to avoid confusion and preserve the integrity of the plan. Amendments must be submitted in accordance with §356.53 of this subchapter (relating to Plan Submission). Incorporation of newly developed desired future conditions and modeled available groundwater values must be adopted as an amendment.~~]

§356.57. Sharing with Regional Water Planning Groups.

Each district must [~~shall~~] forward a copy of its approved management plan to the chair of each regional water planning group within the district's boundaries.

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

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SUBCHAPTER G. BRACKISH GROUNDWATER PRODUCTION ZONES

31 TAC §§356.70 - 356.72

The amendments are 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 §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

This rulemaking affects Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

§356.70. Brackish Groundwater Production Zone Designation.

(a) The agency will identify and designate local or regional brackish groundwater production zones in areas of the state with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater and that:

(1) are separated by hydrogeologic barriers sufficient to prevent significant impacts to water availability or water quality in any area of the same or other aquifers, subdivisions of aquifers, or geologic strata that have an average total dissolved solids level of 1,000 milligrams per liter or less at the time of designation of the zones; and

(2) are not located in:

(A) an area of the Edwards Aquifer subject to the jurisdiction of the Edwards Aquifer Authority;

(B) the boundaries of the:

(i) Barton Springs-Edwards Aquifer Conservation District;

(ii) Harris-Galveston Subsidence District; or

(iii) Fort Bend Subsidence District;

(C) an aquifer, subdivision of an aquifer, or geologic stratum that:

(i) has an average total dissolved solids level of more than 1,000 milligrams per liter; and

(ii) is serving as a significant source of water supply for municipal, domestic, or agricultural purposes at the time of designation of the zones; or

(D) an area of a geologic stratum that is designated or used for wastewater injection through the use of injection wells or disposal wells permitted under Texas Water Code Chapter 27.

(b) In designating a brackish groundwater production zone under this section, the agency will [shall]:

(1) determine the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period without causing a significant impact to water availability or water quality as described by subsection (a)(1) of this section; [and]

(2) include in the designation description:

(A) the amounts of brackish groundwater that the zone is capable of producing during the periods described by paragraph (1) of this subsection; and

(B) recommendations regarding reasonable monitoring to observe the effects of brackish groundwater production within the zone; and

(3) work with [groundwater conservation] districts and stakeholders and consider the most recently updated Brackish Groundwater Manual for Texas Regional Water Planning Groups[, and any updates to the manual,] and other relevant scientific data or findings.

(c) Areas of the state that are not designated as brackish groundwater production zones are not precluded from development of brackish groundwater or from future designation of zones.

(d) The agency may amend a designated brackish groundwater production zone upon its own initiative or upon request by a district. A request for an amendment from a district must be made in writing and include justification and documentation supporting the requested amendment.

(e) The Agency will provide notice of the intent to amend a designated brackish groundwater production zone with proposed changes to any district within the applicable brackish groundwater production zone and to the district(s) and any entity that requested the amendment through a district.

[(d) The Agency may amend a designated brackish groundwater production zone upon its own initiative or upon request by a groundwater conservation district and will publish guidance discussing the timing for considering amendments. The Agency will provide notice of intent to amend brackish groundwater production zone with proposed changes to any groundwater conservation district within the applicable brackish groundwater production zone and to any entity that requested the amendment. A request from a groundwater conservation district must be in form and substance acceptable to the Executive Administrator and include a justification and documentation supporting the requested amendment.]

§356.71. Brackish Groundwater Production Zone Operating Permit Review.

(a) This section does not apply to a district that overlies the Dockum Aquifer and includes wholly or partly 10 or more counties.

(b) When a district submits an application for a brackish groundwater production zone operating permit to the agency, the agency will conduct a technical review of the application, subject to subsections (c) and (d) of this section.

(c) Upon receipt of such an application, the agency will assess the application to determine whether a proposed production well is located within a designated brackish groundwater production zone. If a proposed production well is not located within a designated brackish groundwater production zone, the agency will not conduct the technical review of the application. If a proposed production well is located within a designated brackish groundwater production zone, the agency will conduct the technical review of the applicable permit application or applicable portions of a permit application in accordance with subsections (d) - (f) of this section.

(d) Upon receipt of an application for a brackish groundwater production zone operating permit for a proposed production well located within a designated brackish groundwater production zone and that includes all of the information required by Texas Water Code §36.1015(g), the agency will conduct a technical review of the application. If the agency does not receive all of the information required by Texas Water Code §36.1015(g), the agency will notify the district of the missing information. The agency will not conduct a technical review of an incomplete application until all required information is received.

(e) After conducting the application assessment and required technical review of a complete application, the agency will [shall] provide a report of the technical review of the application to the district that submitted the application that includes:

(1) findings regarding the compatibility of the proposed well field design with the designated brackish groundwater production zone, including:

(A) whether the proposed production exceeds the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period, as determined pursuant to Texas Water Code §16.060(e) and [is] in addition to the amount of modeled available groundwater provided under Texas Water Code §36.108; and

(B) whether the parameters and assumptions used in the model described in Texas Water Code §36.1015(g)(4)(A) are compatible with the designated brackish groundwater production zone;

(2) recommendations for the monitoring system required by Texas Water Code §36.1015(e)(4) and (6), including whether the number of monitoring wells are adequate and in appropriate locations and aquifers, in accordance with recommendations established under Texas Water Code §16.060(e)(2)(B);

(3) verification the district rules require [required] monitoring of land elevations for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, as required by Texas Water Code §36.1015(e)(5).

(f) The findings and recommendations included in subsection (e) of this section [subsection] will only be site-specific if the agency has received site-specific data and information from the district.

§356.72. Annual Report Review.

(a) When a district has received an annual report required under Texas Water Code §36.1015(e)(6) and reviewed the report for any missing information, the district will submit the report to the agency and request a review, under [If a district makes a request under] Texas Water Code §36.1015(j). The[, the] agency will investigate and issue a technical report to the district that sent the request, subject to subsection (b) of this section [subsection].

(b) Upon receipt of a request, the agency will determine whether it has received the applicable annual report and all of the information required under Texas Water Code §36.1015(e)(6), and for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, the information required to be collected under Texas Water Code §36.1015(e)(5) related to subsidence. If the agency has not received all of the information required under Texas Water Code §36.1015(e)(6) or §36.1016(e)(5), as applicable, the agency will notify the district of the missing information and will not conduct a technical review of the reports until all required information is received.

(c) Not later than the 120th day after the date the agency receives all of the required information, the agency will investigate and issue a technical report on whether:

(1) brackish groundwater production from the designated brackish groundwater production zone under the project that is the subject of the report [~~from the designated brackish groundwater production zone~~] is projected to cause:

(A) significant aquifer level declines in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum that were not anticipated by the agency in the designation of the zone;

(B) negative effects on quality of water in an aquifer, subdivision of an aquifer, or geologic stratum; or

(C) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, subsidence during the permit term; or

(2) [~~whether not~~] enough information is available to determine if [~~whether~~] brackish groundwater production from the designated brackish groundwater production zone under the project that is the subject of the report [~~from the designated brackish groundwater production zone~~] is projected to cause the conditions listed in paragraph (1) of this subsection [~~(c)(1) of this section~~].

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The Texas Pension Review Board (Board) proposes the repeal of 40 Texas Administrative Code Chapter 607 relating to the Minimum Educational Training program for public retirement system trustees and administrators. The purpose of the proposed repeal is to eliminate the existing rule and adopt a new rule under separate action.

This repeal is proposed under Sections 801.201(a) and 801.211(e), which grant the Board authority to adopt rules for the conduct of its business and specifically the Minimum Educational Training program, respectively.

FISCAL NOTE

Ashley Rendon, Deputy Director, has determined that for each year of the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government.

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

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the proposed repeal. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed repeal will not have an adverse economic impact on small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT.

There are no anticipated economic costs to persons who are required to comply with the proposed repeal. There is no effect on local economy for the first five years that the proposed repeal is in effect; therefore, no local employment impact statement is required under Government Code, §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT

The board has determined that the proposed repeal does not require an environmental impact analysis because the repeal is not a major environmental rule under Government Code, §2001.0225.

COSTS TO REGULATED PERSONS

The proposed repeal does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE

Ms. Rendon has determined that for each year of the first five years the proposed repeal will be in effect, the public benefit anticipated would be to eliminate an outdated rule while adopting a new, updated rule under separate action.

GOVERNMENT GROWTH IMPACT STATEMENT

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 40 T.A.C. Chapter 607. For each year of the first five years the proposed rules are in effect, Ms. Rendon has determined:

(1) The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous rule proposal making changes to the existing Minimum Educational Training program.

(2) The proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) The proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal will repeal existing rules, but is associated with a simultaneous rule proposal making changes to the existing Minimum Educational Training program.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

TAKINGS IMPACT ASSESSMENT

This proposed repeal will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under Government Code §2007.043 is not required.

REQUEST FOR PUBLIC COMMENT

Comments on the proposed repeal may be submitted to Tamara Aronstein, General Counsel, Texas Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or via email: rules@prb.texas.gov, no later than 30 days from the date that this proposal are published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§607.101, 607.103 - 607.105, 607.107

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

The proposed repeal affects 40 T.A.C. Chapter 607.

§607.101. Authority.
§607.103. Purpose.
§607.104. Definitions.
§607.105. Applicability.
§607.107. Exemption for Certain System Administrators.

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

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Tamara Aronstein
General Counsel
State Pension Review Board
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SUBCHAPTER B. MINIMUM EDUCATIONAL TRAINING REQUIREMENTS FOR TRUSTEES AND SYSTEM ADMINISTRATORS

40 TAC §607.110, §607.113

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

The proposed repeal affects 40 T.A.C. Chapter 607.

§607.110. Minimum Educational Training Requirements.
§607.113. Minimum Educational Training Requirements for Reappointed and Re-elected Trustees and Rehired System Administrators.

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

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SUBCHAPTER C. MINIMUM EDUCATIONAL TRAINING PROGRAM SPONSORS

40 TAC §§607.120, 607.122, 607.124, 607.126, 607.128, 607.130

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

The proposed repeal affects 40 T.A.C. Chapter 607.

§607.120. Program Standards for All Sponsors.
§607.122. MET Credit Hour Computation for Sponsors.
§607.124. Sponsor Accreditation.
§607.126. Obligations of Accredited Sponsors.
§607.128. Accreditation of MET Activities from Non-Accredited Sponsors.
§607.130. Accreditation of In-House Training Activities.

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

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SUBCHAPTER D. COMPLIANCE WITH THE MINIMUM TRAINING REQUIREMENTS

40 TAC §607.140, §607.142

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

The proposed repeal affects 40 T.A.C. Chapter 607.

§607.140. PRS Reporting.
§607.142. PRS Records.

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

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CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The Texas Pension Review Board (Board) proposes new 40 Texas Administrative Code Chapter 607 relating to the Minimum Educational Training program for public retirement system trustees and administrators.

The purpose of the proposed rules is to increase clarity of the rules, streamline training cycles to improve compliance with the training requirements, increase the efficiency of program tracking and reporting, and strengthen agency oversight for accredited training activities.

BACKGROUND AND PURPOSE

In 2013, the legislature passed House Bill 13, requiring the Board to establish a program to provide educational training to public retirement system trustees and administrators. Section 801.211(e), Texas Government Code authorizes the Board to adopt rules to implement this requirement. The Board initially adopted 40 TAC Chapter 607 in 2014. The Board now proposes new rules to clarify and improve the Minimum Educational Training program, together with the proposed repeal of the rules under separate action.

SUMMARY

The proposed rules in 40 TAC §607.101 provide the authority to adopt these rules.

The proposed rules in 40 TAC §607.103 provide the purpose of the rules, to ensure that trustees and administrators of Texas public retirement systems have the pension education needed to successfully discharge their duties.

The proposed rules in 40 TAC §607.104 provide definitions pertinent to the rules for the Minimum Educational Training program.

The proposed rules in 40 TAC §607.105 provide the applicability of the rules, which apply to trustees, except in certain cases, statutorily authorized designees, and administrators of public retirement systems.

The proposed rules in 40 TAC §607.110 provide the Minimum Educational Training program requirements for trustees and administrators in their first year of service and each calendar year thereafter. Trustees and administrators must complete seven credit hours of core training in the first year of service and two credit hours of training for continuing education each calendar year thereafter. The proposed rules create a one-time extension application process for the first year of service training requirement. The proposed rules specify that continuing education hours completed in excess of the annual requirement may not be carried over to a subsequent calendar year. The proposed rules provide for the transition from current requirements, proposed for repeal under separate action, to the new requirements effective January 1, 2025.

The proposed rules in 40 TAC §607.113 specify that trustees and administrators reappointed to, re-elected to, or rehired by a public retirement system are not required to repeat the first year of service training requirement unless more than five years have passed since the last date of the most recent term of service or employment.

The proposed rules in 40 TAC §607.120 provide program standards for training providers offering Minimum Educational Training activities, such as compliance with program requirements and the Board's curriculum guide, method of delivery for training activities, and verification of attendance for online training.

The proposed rules in 40 TAC §607.122 detail the computation of credit hours by training providers. Credit hours are based on net actual instruction time for all activities, with additional parameters provided for both digital and in-person activities.

The proposed rules in 40 TAC §607.124 provide for the accreditation of training providers by the Board. Training providers must conform with Board standards outlined in rule, conduct its business lawfully, and follow the application process provided in rule. This rule also creates a process for complaints regarding training providers and the Board's authority if a training provider is noncompliant with training program standards or Board rules.

The proposed rules in 40 TAC §607.126 create several requirements for accredited training providers, including recordkeeping, allowing review by the Board, and providing participants a certificate of completion.

The proposed rules in 40 TAC §607.128 allow for accreditation of training activities by a non-accredited training provider through a case-by-case application process outlined in the rule. Such activities, once approved, may be offered through repeat presentations for 36 months without requiring a new application.

The proposed rules in 40 TAC §607.130 provide details on accreditation of in-house training activities offered by a public retirement system for its own trustees and/or administrators. In-house training must meet all standards for training providers included in Chapter 607, except that in-house training is exempted from certain requirements listed in the rule.

The proposed rules in 40 TAC §607.140 pertain to Minimum Educational Training program reporting requirements, creating an annual April 1 deadline for two reports to be submitted by public retirement systems to provide the Board information on trustees and administrators and the training they completed during the preceding calendar year. This section also includes a requirement for the Board to report annually on the noncompliance status of trustees and administrators, as reported to the Board pursuant to this section.

The proposed rules in 40 TAC §607.142 create recordkeeping requirements for public retirement systems, which must retain records detailed in the rule for five years from the date a training activity is completed, and provide a copy of these records to the Board upon request.

FISCAL NOTE

The Board's deputy director, Ashley Rendon has determined that for each year of the first five-year period the proposed rules are

in effect there will be no fiscal implications for state or local government.

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

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the proposed rules. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed rules will not have an adverse economic impact on small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT.

There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no effect on local economy for the first five years that the proposed rules are in effect; therefore, no local employment impact statement is required under Government Code, §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT

The Board has determined that the proposed rules do not require an environmental impact analysis because the rule is not a major environmental rule under Government Code, §2001.0225.

COSTS TO REGULATED PERSONS

The proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE

Ms. Rendon has determined that for each year of the first five years the proposed rules will be in effect the public benefit is to improve efficiency of and compliance with the Minimum Educational Training program, ensuring public retirement system trustees and administrators have the pension knowledge needed to successfully discharge their duties.

GOVERNMENT GROWTH IMPACT STATEMENT

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed rules. For each year of the first five years the proposed rules are in effect, Ms. Rendon has determined:

(1) The proposed rules do not create or eliminate a government program, but instead relate to the readoption of the rules to make changes to an existing government program.

(2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rules do not require a decrease or increase in fees paid to the Board.

(5) The proposed rules do not create a new regulation, because these rules replace a rule being repealed simultaneously to provide for revisions.

(6) The proposed rules will not expand or repeal existing rules.

(7) The proposed rules do not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rules do not positively or adversely affect the state economy.

TAKINGS IMPACT ASSESSMENT

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.002(5), so a takings impact assessment under Government Code §2007.043 is not required.

REQUEST FOR PUBLIC COMMENT

Comments on the proposed rules may be submitted to Tamara Aronstein, General Counsel, Texas Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or via email: rules@prb.texas.gov, no later than 30 days from the date that these proposed rules are published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§607.101, 607.103 - 607.105, 607.107

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

CROSS REFERENCE TO STATUTE

Section 801.211, Texas Government Code.

§607.101. Authority.

This chapter is promulgated under the authority of Texas Government Code, §801.201, relating to rulemaking, and §801.211, relating to a public retirement system educational training program.

§607.103. Purpose.

(a) The Public Retirement System Educational Training Program, as mandated by §801.211 of the Texas Government Code, is intended to ensure that every trustee and system administrator of a public retirement system in Texas pursues the necessary education relating to public pension matters throughout his or her tenure to successfully discharge their duties.

(b) This chapter will establish Minimum Educational Training requirements for Trustees and Administrators to help ensure that these trustees and administrators participate in training activities that maintain and improve their core competencies, and keep them abreast of recent developments in public pension matters and issues impacting their respective duties.

(c) This chapter is not intended to dictate that trustees and system administrators pursue only the Minimum Educational Training, but to set a minimum standard for training/education. Trustees and system administrators are encouraged to pursue additional educational opportunities in public pension-related areas.

§607.104. Definitions.

The following words and terms, for the purposes of this chapter, shall have the following meanings, unless the rule indicates otherwise.

(1) "Board" means the State Pension Review Board.

(2) "Credit hour" means the actual amount of instruction time for an MET activity expressed in terms of hours. The number of

MET credit hours shall be based on sixty (60) minutes of instruction per hour.

(3) "First year of service" means:

(A) On or before December 31, 2024, the twelve-month period beginning from the date of assuming one's position on the PRS board or date of hire for an administrator.

(B) On or after January 1, 2025, the calendar year in which an individual assumes one's position on the PRS board or is hired to serve as administrator if that date occurs before September 1 of that calendar year. For individuals who assume a position on the PRS board or are hired to serve as administrator on or after September 1 of a calendar year, the first year of service refers to the next calendar year.

(4) "Minimum Educational Training" shall have the same meaning as assigned by §607.110 of this chapter.

(5) "MET" means Minimum Educational Training.

(6) "MET activity" means any organized in-person or online pension-related educational activity, which may include, but is not limited to, organized seminars, courses, conferences, lectures, panel discussions, audio, teleconference, video, and digital media presentations, question-and-answer periods, and in-house education.

(7) "Net actual instruction time" means time spent on instruction, not including any breaks, or other non-educational activities including promotion of particular products or services as prescribed by §607.120(a)(3) of this chapter (relating to Program Standards for All Training Providers).

(8) "Public retirement system" shall have the same meaning as assigned by §801.001(2) and §802.001(3) of the Texas Government Code, but shall not include defined contribution plans as defined by Texas Government Code, §802.001(1-a) and retirement systems consisting exclusively of volunteers organized under the Texas Local Fire Fighters' Retirement Act as defined by Texas Government Code, §802.002(d).

(9) "PRS" means public retirement system.

(10) "PRS board" has the same meaning as "governing body of a public retirement system," as provided in Texas Government Code §802.001(2).

(11) "Statutorily authorized designee" means an individual other than the trustee, designated by the trustee as authorized under the governing statute of the PRS or any other statute.

(12) "System administrator" means as defined by Texas Government Code §801.001(3) and §802.001(4).

(13) "Training provider" means an individual or organization offering training programs to trustees and system administrators. The training provider may or may not have developed the program materials. However, the training provider is responsible for ensuring the program materials present the necessary learning objectives and for maintaining the documentation required by this chapter.

(14) "Trustee" means as provided in Texas Government Code §801.001(4).

§607.105. Applicability.

This chapter is promulgated to establish the MET requirements for the following.

(1) Trustees, as defined in Texas Government Code, §801.001(4), in their capacity as members of the governing body of a PRS, as that term is defined in Texas Government Code §802.001(2). However, this chapter does not apply to:

(A) members of a PRS' sponsoring entity board that is only responsible for the creation, termination and amendment of the PRS; and

(B) members of a committee appointed by a PRS' sponsoring entity board to act in an advisory or oversight capacity only by providing guidance or recommendations.

(2) Statutorily authorized designees serving as members of the governing body of a PRS.

(3) System administrators, as defined by Texas Government Code, §801.001(3) and §802.001(4).

§607.107. Exemption for Certain System Administrators.

(a) For the purposes of this section, an "outside entity" is a bank or financial institution.

(b) The Board may grant an exemption to a PRS for certain types of system administrators from the MET requirements on a case-by-case basis if:

(1) the PRS designates an outside entity as the system administrator, and the PRS board of trustees or its designee completes and forwards to the Board a request for exemption on a form provided by the Board indicating the same; or

(2) the PRS does not have a system administrator that meets the statutory definition as contained in the Texas Government Code, §801.001(3) and §802.001(4) and the PRS board or its designee completes and forwards to the Board a request for exemption, on a form provided by the Board, certifying that the PRS does not have a system administrator. The request shall include a statement affirming that one or more trustees of the PRS are responsible for the duties of the system administrator and are already subject to the MET requirements.

(c) If the Board granted an exemption to a PRS under subsection (a) of this section and the exemption is no longer applicable, the PRS shall report the same to the Board, and the exemption shall be revoked.

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

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

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Tamara Aronstein
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State Pension Review Board
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For further information, please call: (512) 463-1736

SUBCHAPTER B. MINIMUM EDUCATIONAL TRAINING REQUIREMENTS FOR TRUSTEES AND SYSTEM ADMINISTRATORS

40 TAC §607.110, §607.113

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

CROSS REFERENCE TO STATUTE

Section 801.211, Texas Government Code.

§607.110. Minimum Educational Training Requirements.

(a) First year of service. A new trustee and a new system administrator shall complete at least seven (7) credit hours of training in the core content areas within the first year of service. The seven credit hours shall include training in all of the core content areas. A trustee or system administrator must earn no less than half a credit hour in each content area. No more than two credit hours earned in any one core content area shall be applied toward meeting the 7-hour minimum requirement contained in this subsection. The core content areas are:

(1) fiduciary matters;

(2) governance;

(3) ethics;

(4) investments;

(5) actuarial matters;

(6) benefits administration; and

(7) risk management.

(b) A new trustee or system administrator may submit to the Board an application for a one-time extension period of three months to complete the first year of service core training requirement, which the Board may approve in exceptional circumstances. The request for extension must be approved by the chair of the PRS' board, or, for an extension request by the PRS board chair, approved by the vice chair of the PRS' board or its administrator. The application must be submitted to the Board on a form prescribed by the Board and must include an explanation of the circumstances necessitating the extension.

(c) Subsequent years of service. A trustee and a system administrator shall complete at least two (2) credit hours of continuing education in either the core content areas in subsection (a) of this section, continuing education content areas, or any combination thereof, within each calendar year after the first year of service as a new trustee or new system administrator. The continuing education content areas include:

(1) compliance;

(2) legal and regulatory matters;

(3) pension accounting;

(4) custodial issues;

(5) plan administration;

(6) Texas Open Meetings Act; and

(7) Texas Public Information Act.

(d) A trustee or administrator may not carry over continuing education credit hours earned in excess of the requirement under subsection (c) of this section to a subsequent calendar year.

(e) MET completed up to six months before the trustee's date of assuming position on the PRS board or system administrator's hiring date may be counted for the first-year-of-service requirement in subsection (a) of this section.

(f) A trustee serving concurrently on multiple PRS boards and a system administrator employed concurrently by multiple PRSs shall only be required to complete the MET requirements in this section for service with one PRS, so long as the concurrent service or employment is reported to the Board pursuant to §607.140(b)(3) of this chapter.

(g) Credit hours for attending MET activities shall be based on net actual instruction time. Credit hours for viewing or listening to audio, video, or digital media shall be based on the running time of the recordings, and credit hours for attending in-person educational programs shall be based on actual instruction time.

(h) A trustee or administrator may gain credit for teaching an accredited MET activity. Credit hours shall be based on net actual presentation time, but may not include repeated presentations of the same activity in a single calendar year.

(i) The Board hereby adopts by reference the Curriculum Guide for Minimum Educational Training to provide further direction on core and continuing education content areas as contained in subsections (a) and (c)(1) of this section. Trustees and system administrators are encouraged to review the Curriculum Guide for content area guidance.

(j) The Board shall make the Curriculum Guide for Minimum Educational Training available to the PRSs. A PRS can obtain the most current version of the Curriculum Guide for Minimum Educational Training from the offices of the State Pension Review Board and from its website at http://www.prb.texas.gov.

(k) The 2025 calendar year training cycle for trustees and administrators shall be based on their MET compliance status on December 31, 2024, as detailed below. This subsection expires on December 31, 2025.

(1) Trustees and administrators within their first year of service on December 31, 2024 who have completed by that date the training required by subsection (a) of this section shall begin their first continuing education cycle in calendar year 2025.

(2) Trustees and administrators within their first year of service on December 31, 2024 who have not completed by that date the training required by subsection (a) of this section shall complete the first year of service training in calendar year 2025.

(3) Trustees and administrators who began a continuing education cycle, as required by subsection (c) of this section, in calendar year 2024 may carry over any hours completed in that year to the calendar year 2025 continuing education cycle. If a trustee or administrator completed more than two continuing education hours, those hours will not carry over to calendar year 2026.

(4) Trustees and administrators who began a continuing education cycle, as required by subsection (c) of this section, in calendar year 2023 will begin a new continuing education cycle on January 1, 2025. Trustees and administrators who did not complete the training hours required in previous cycles will remain noncompliant and must complete all outstanding required credit hours.

§607.113. Minimum Educational Training Requirements for Reappointed and Re-elected Trustees and Rehired System Administrators.

(a) The following provisions shall apply to:

(1) A trustee who is reappointed or re-elected to a subsequent term of service for the same PRS or who leaves one PRS and is appointed as a trustee to another PRS;

(2) A trustee who serves on multiple PRS boards;

(3) A trustee who is subsequently hired by a PRS to serve as system administrator;

(4) A system administrator who is rehired to a subsequent term of employment by the same PRS or who leaves one PRS and is hired as system administrator by another PRS;

(5) A system administrator who is employed by multiple PRSs; and

(6) A system administrator who is subsequently appointed or elected to a PRS board.

(b) Unless more than five years have passed since the last date of the most recent term of service or employment, a person under subsection (a) of this section shall not be required to repeat the core training requirement already completed under §607.110(a) of this subchapter (relating to Minimum Educational Training Requirements) but shall complete the continuing education requirement in §607.110(c) of this subchapter within each calendar-year period served.

(c) If more than five years have passed since the last date of most recent term of service or employment, a person under subsection (a) of this section shall be subject to both the core training requirement within the first year of service as contained in §607.110(a) of this subchapter and the continuing education requirement within each calendar-year period after the first year of service as contained in §607.110(c) of this subchapter.

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

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SUBCHAPTER C. MINIMUM EDUCATIONAL TRAINING PROGRAM SPONSORS

40 TAC §§607.120, 607.122, 607.124, 607.126, 607.128, 607.130

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

CROSS REFERENCE TO STATUTE

Section 801.211, Texas Government Code.

§607.120. Program Standards for All Training Providers.

(a) MET activities offered by training providers must comply with the following standards.

(1) An MET activity shall constitute an organized program of learning dealing with matters related to public pensions, including the MET's core or continuing education content areas in §607.110 of this chapter (relating to Minimum Educational Training Requirements). Training providers are required to review the Curriculum Guide as referenced in §607.110 of this chapter for content area guidance.

(2) An MET activity shall be conducted in a suitable facility by an individual or group qualified by professional or academic experience.

(3) An MET activity shall be educational in nature and shall not include the promotion of particular products or services.

(4) An MET activity shall be conducted in person, online via the internet, or by teleconference.

(5) An MET activity shall meet all of the other requirements contained in this chapter.

(b) An MET activity training provider shall determine, and inform participants, in advance of the course, of the course's learning or content objectives, any necessary prerequisites, the credit hours the course provides for each core and continuing education content area, and the total credit hours the course provides.

(c) An MET activity training provider is responsible for ensuring the participants register their attendance during the MET activity. Training providers are responsible for assigning the appropriate number of credit hours for participants, including reduced hours for those participants who arrive late or leave early.

(d) An MET activity training provider conducting online or other electronically-delivered courses including via pre-recorded audio or video shall verify participation by participants using one of the following methods:

(1) Provide a completion code to the participant upon successful completion of the course. The participant shall provide the completion code to the training provider to demonstrate attendance and completion. Without receiving such code, the training provider shall not issue a certificate of completion to the participant.

(2) Require participants to successfully complete a quiz on topics covered in the course.

(3) Use software-based student verification or attendance checks to verify participation.

(4) Use of another method to verify participation with approval from the Board.

(e) Staff meetings and other settings cannot be claimed for fulfilling the MET requirements if they do not meet the provisions of this chapter.

§607.122. MET Credit Hour Computation for Training Providers.

(a) Credit hours for attending MET activities shall be based on net actual instruction time. Training providers shall calculate the number of credit hours that should be given for an MET activity offered based on the net actual instruction time to be spent, and shall indicate the number on the MET activity materials. Fractional credit hours should be stated as decimals.

(b) Credit hours for viewing or listening to audio, video, or digital media shall be based on the running time of the recordings. For digital media activities that do not consist entirely of audio or video recordings, training providers shall reasonably estimate the time needed to complete the course.

(c) Credit hours for attending in-person educational programs shall be based on actual instruction time. Training providers shall adjust the credit hours for attendees who arrive late or leave early, as required by §607.120(c) of this chapter.

§607.124. Training Provider Accreditation.

(a) The Board may allow any training provider of MET to become Board accredited if the training provider, in the opinion of the Board, demonstrates that it will comply with its obligations to the Board and that its programs will conform to the Board's standards as outlined in:

(1) §607.120 of this chapter (relating to Program Standards for All Training Providers); and

(2) §607.122 of this chapter (relating to MET Credit Hour Computation for Training Providers).

(b) The Board will also require that each organization or individual applying to become a Board-accredited MET training provider agree that in the conduct of its business it will:

(1) Not commit fraud, deceit or engage in fiscal dishonesty of any kind;

(2) Not misrepresent facts or make false or misleading statements;

(3) Not make false statements to the Board or to the Board's agents; and

(4) Comply with the laws of the United States and the State of Texas.

(c) Each organization or individual applying to become a Board accredited MET training provider must submit an application on a form provided by the Board. The Board will consider for approval only applications that are complete. As part of the application process, the Board may require the training provider to submit information regarding its organization, purpose, history of providing educational training activities, course outlines, and such additional information that the Board may deem relevant.

(d) The Board shall review each application and notify the training provider of its acceptance or rejection. Approval of accredited training provider status will be based upon information received with the application, and such other information the Board shall deem relevant including, but not limited to, course offering and attendance history, approvals and denials of accreditation by other governmental entities, and complaints concerning past programs or the marketing thereof. An acceptance in any given year shall not bind the Board to accept a training provider in any future year.

(e) Upon accreditation a training provider can represent that it is a Board accredited MET training provider. An accredited training provider shall include in promotional materials the following language: "We are accredited by the State Pension Review Board as a Minimum Educational Training (MET) training provider for Texas public retirement systems. This accreditation does not constitute an endorsement by the Board as to the quality of our MET program."

(f) An accredited training provider is not required to comply with provisions contained in §607.128 of this chapter (relating to Accreditation of MET Activities from Non-Accredited Training Providers).

(g) The Board may accredit a training provider to offer MET activities in the core content areas under §607.110(a) of this chapter (relating to Minimum Educational Training Requirements), the continuing education content areas under §607.110(c)(1) of this chapter, or both.

(h) An accredited training provider shall be reviewed for renewal of accredited training provider status after an initial two-year period of accreditation, and again after each subsequent four-year period of accreditation, or at such other times as the Board deems reasonable. To be considered for renewal, an accredited training provider must submit a renewal application on a form provided by the Board. Review for renewal shall be based on the criteria stated in subsection (d) of this section.

(i) Complaints concerning accredited training providers and MET activities may be directed to the Board. If the Board determines that a response is necessary from the training provider, the training provider shall be notified in writing and provided a copy of the complaint. The Board shall respond to all complaints within a reasonable time.

(j) The Board, in its sole and exclusive discretion, may determine that an accredited training provider is not in compliance with the registration requirements, MET standards, or applicable Board rules. The Board will provide the accredited training provider reasonable notice of such a determination and shall provide the accredited training provider a reasonable opportunity to become compliant. If the Board determines the training provider is not in compliance, the Board may require the training provider to take corrective action and/or may terminate the training provider's accreditation. A training provider that has had its accreditation terminated or that has voluntarily surrendered its accreditation in lieu of corrective action may apply for reinstatement no sooner than six months after the effective date of the termination or surrender.

(k) A training provider that requests reinstatement may do so by submitting a completed application as required by subsection (c) of this section. The applicant will be subject to all the requirements of this section.

(l) Board decisions under this chapter are final and are not appealable. No portion of this chapter shall be interpreted or construed to create a right to a hearing, or to acknowledge or create any private right or interest.

§607.126. Obligations of Accredited Training Providers.

(a) In order to support the reports required of PRSs, a training provider accredited under §607.124 of this chapter (relating to Training Provider Accreditation) shall retain the following records for five years following the date the program is completed:

(1) an agenda or outline that describes the course content;

(2) the name and title of each instructor for each topic;

(3) time devoted to each topic;

(4) each date and location of the presentation;

(5) record of participation that reflects:

(A) the credit hours earned by each trustee and system administrator participant; and

(B) the number of non-trustee and non-administrator attendees; and

(6) evaluations completed by trustee and system administrator participants pursuant to subsection (f) of this section.

(b) The accredited training provider, upon request of the Board, shall immediately submit any of the records retained in subsection (a) of this section for review.

(c) An accredited training provider shall at any reasonable time allow a member of the Board or Board staff, as part of a review of the training provider, to inspect the training provider's teaching facilities, examine the training provider's records, attend its courses or seminars at no charge, and review its program to determine compliance with the training provider accreditation requirements, MET standards, and all applicable Board rules.

(d) An accredited training provider shall not use advertising that is false or misleading, or use any communication that, in the training provider's effort to promote its services, is coercive.

(e) An accredited training provider, promptly upon the conclusion of the activity, but not later than 30 calendar days after the conclusion of the activity, shall provide to each trustee or system administrator participant a certificate of completion, reflecting the following information:

(1) Name of participant;

(2) Activity title;

(3) Date and location of the activity;

(4) Total accredited MET hours; and

(5) Training provider name and contact information.

(f) A training provider accredited to offer MET activities in the core content areas under §607.110(a) of this chapter (relating to Minimum Educational Training Requirements) shall promptly provide the information specified in subsection (e) of this section to the Board within 30 days of the conclusion of a core MET activity offered to satisfy the first year of service training requirement.

(g) An accredited training provider shall include in each MET activity a process for participants and instructors to evaluate the quality of the activity, including whether:

(1) Course objectives were met;

(2) Facilities and technology were satisfactory;

(3) Each instructor was effective; and

(4) Program content was timely and effective.

(h) Training providers shall inform instructors of the results of their performance evaluation in subsection (f) of this section, and should systematically review the evaluation process to ensure its effectiveness.

§607.128. Accreditation of MET Activities from Non-Accredited Training Providers.

(a) MET activities may be accredited, on a case-by-case basis, upon the written application of a training provider or PRS on behalf of its own trustees or system administrator. All applications for accreditation of an MET activity by a non-accredited training provider shall:

(1) be submitted at least 30 days in advance of the activity, although the Board, at its discretion, may approve applications filed less than 30 days in advance of the activity, or may approve applications filed after the activity;

(2) be submitted on a form provided by the Board;

(3) contain all information requested on the form;

(4) be accompanied by a sample agenda or course outline that describes the course content, designates the courses sought to be accredited as an MET activity, identifies the instructors, lists the time devoted to each topic, and shows each date and location at which the program will be offered; and

(5) include a detailed calculation of the total MET hours for the course and the hours that correspond to each core and continuing education topic the course covers.

(b) A separate application is required for each activity unless the activity is being repeated in exactly the same format but on different dates and/or locations. Repeat presentations may be added to an existing application for a 36-month period following the effective date of accreditation.

(c) The Board shall review each application and notify the applicant of acceptance or rejection of the activity. An acceptance in any given year shall not bind the Board to accept a training provider or activity in any future year.

§607.130. Accreditation of In-House Training Activities.

(a) MET activities provided by PRSs or their hired consultants primarily for the education of their trustees and/or system administrators are considered in-house training, and may be accredited for MET credit. Education provided in-house must meet the standards in §607.120 of this chapter (relating to Program Standards for All Training Providers) and §607.122 of this chapter (relating to MET Credit Hour Computation for Training Providers), except that in-house training is not required to comply with the following provisions:

(1) Section 607.120(c) of this chapter, regarding the requirement for ensuring participants register their attendance.

(2) Section 607.126(a)(5)(B) of this chapter, regarding the requirement to maintain a record of the non-trustee and non-administrator attendees.

(3) Section 607.126(e) of this chapter, regarding the requirement to provide participants a certificate of completion.

(4) Section 607.126(f) of this chapter, regarding the requirement to provide the Board participant information for accredited core activities satisfying the first year of service training requirement because this training will be reported as specified in §607.140 of this chapter.

(b) PRSs that conduct in-house training may apply to become accredited training providers under §607.124 of this chapter (relating to Training Provider Accreditation).

(c) PRSs that conduct in-house training may submit individual courses for accreditation under §607.128 of this chapter (relating to Accreditation of MET Activities from Non-Accredited Training Providers).

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

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SUBCHAPTER D. COMPLIANCE WITH THE MINIMUM TRAINING REQUIREMENTS

40 TAC §607.140, §607.142

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

CROSS REFERENCE TO STATUTE

Section 801.211, Texas Government Code.

§607.140. PRS Reporting.

(a) By April 1 of each year, a PRS shall accurately report to the Board on behalf of its trustees and system administrator the MET credit hours completed during the preceding calendar year and any previous unreported training, as required by subchapter B. A PRS shall submit the report on a completed PRB-2000 form provided by the Board.

(b) By April 1 of each year, a PRS shall be responsible for providing the following information to the Board. A PRS shall also notify the Board of any changes in such information within 30 days after the date of the changes. A PRS shall submit this information on a completed PRB-150 form provided by the Board.

(1) For each trustee: the name, mailing address, phone number, e-mail, position (such as Chair, Vice-Chair, Secretary, etc.),

trustee type (such as Active, Retired, Citizen, etc.), term start date, the term length, and the term end date.

(2) For a system administrator: the name, title, phone number, e-mail, and date of hire.

(3) For each trustee serving concurrently on multiple PRS boards or system administrator employed concurrently by multiple PRSs, the name of the other PRSs.

(c) The Board shall report on the noncompliance status of trustees and administrators annually.

§607.142. PRS Records.

(a) For each trustee and system administrator, a PRS shall retain the following records for five years following the date an MET activity is completed:

(1) the training provider's name;

(2) the location of the MET activity;

(3) date(s) of completion; and

(4) the credit hours earned by the trustee or system administrator participant.

(b) The PRS, upon request of the Board, shall immediately submit a copy of any of the records retained in subsection (a) of this section for review.

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

Filed with the Office of the Secretary of State on July 30, 2024.

TRD-202403516
Tamara Aronstein
General Counsel
State Pension Review Board
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 463-1736

CHAPTER 609. PUBLIC RETIREMENT SYSTEM INVESTMENT EXPENSE REPORTING

The Texas Pension Review Board (Board) proposes amendments to 40 TAC §609.105 and §609.111, pertaining to public retirement system investment expense reporting, and the repeal of the existing rule at 40 TAC §609.109, regarding the initial investment expense reporting period. These proposed changes are referred to as "proposed rules." This rulemaking action was identified as part of the agency's four-year review of rules pursuant to Texas Government Code §2001.039.

BACKGROUND AND PURPOSE

In 2019, the legislature passed Senate Bill 322, enhancing investment expense reporting requirements for public retirement systems. Section 802.103(e), Texas Government Code authorizes the Board to adopt rules to implement this requirement. The Board initially adopted 40 TAC Chapter 609 in 2020. The Board now proposes rules to clarify the requirements.

The Board's investment analyst, Robert Munter, has determined that for each year of the first five-year period the proposed rules are in effect there will be no fiscal implications for state or local government.

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the proposed rules. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed rules will not have an adverse economic impact on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Munter has determined that for each year of the first five years the proposed rules will be in effect the public benefit is to clarify the provisions in the current rule for ease of reference and understanding by the public and improve consistency and accuracy of investment expense reports to improve transparency for the public, members of the systems, and policymakers.

SUMMARY

The proposed rules in 40 TAC §609.105 pertain to definitions for investment expense reporting. The rule would be modified to specify that "direct and indirect fees and commissions" include "fees netted from returns," which is defined in the existing rule language. The amendments would also specify that "investment service" includes "in-house investment staff."

The proposed repeal of 40 TAC §609.109 pertains to the first investment expense reporting period, which has already passed. The rules expressly state that they expired on April 1, 2022. The proposed rules would repeal this entire obsolete section.

The proposed rules in 40 TAC §609.111 pertain to the investment expense reporting structure. The amendments would clarify that direct and indirect fees and commissions must be reported by type of fee and commission, and specifies the types as defined in 40 TAC §609.105(4), as the definition would be amended by this rulemaking. The amendments would also specify that investment expense information may be reported in an unaudited supplemental schedule within the public retirement system's annual financial report.

FISCAL NOTE

Mr. Munter has determined that for each year of the first five-year period the proposed rules are in effect there will be no fiscal implications for state or local government.

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

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the proposed rules. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed rules will not have an adverse economic impact on small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT.

There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no effect on local economy for the first five years that the proposed rules are in effect; therefore, no local employment impact statement is required under Government Code, §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT

The board has determined that the proposed rules do not require an environmental impact analysis because the rule is not a major environmental rule under Government Code, §2001.0225.

COSTS TO REGULATED PERSONS

The proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE

Mr. Munter has determined that for each year of the first five years the proposed rules will be in effect the public benefit is consistency and clarity in the agency's investment expense reporting rules, resulting in enhanced transparency and data quality.

GOVERNMENT GROWTH IMPACT STATEMENT

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed rules, 40 TAC §§609.105, 609.109, and 609.111. For each year of the first five years the proposed rules are in effect, Mr. Munter has determined:

(1) The proposed rules do not create or eliminate a government program.

(2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rules do not require a decrease or increase in fees paid to the Board.

(5) The proposed rules do not create a new regulation.

(6) The proposed rules will not expand or repeal existing rules.

(7) The proposed rules do not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rules do not positively or adversely affect the state economy.

TAKINGS IMPACT ASSESSMENT

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.002(5), so a takings impact assessment under Government Code §2007.043 is not required.

REQUEST FOR PUBLIC COMMENT

Comments on the proposed rules may be submitted to Tamara Aronstein, General Counsel, Texas Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or via email: rules@prb.texas.gov, no later than 30 days from the date that these proposed rules are published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

40 TAC §609.105, §609.111

STATUTORY AUTHORITY

These rules are proposed under Government Code §802.103(e), which authorizes the Board to adopt rules necessary to implement the Government Code §802.103(a)(3) investment expense reporting requirement.

CROSS REFERENCE TO STATUTE

Sections 802.103(a)(3), 802.103(e), Texas Government Code.

§609.105. Definitions.

The following words and terms, for the purposes of this chapter, shall have the following meanings, unless the rule indicates otherwise.

(1) "Annual financial report" means as defined by §802.103 of the Texas Government Code.

(2) "Asset class" means a group of securities that share similar characteristics, perform comparably in the marketplace, and are generally governed by the same laws and regulations.

(3) "Board" means the State Pension Review Board.

(4) "Direct and indirect fees and commissions" means amounts paid to investment managers for managing assets; commissions paid to brokers for trading securities on a per share basis; [~~and~~] profit share as defined by §815.3015(a)(2) of the Texas Government Code; and fees netted from returns.

(5) "Fees netted from returns" means an amount that an investment manager collects or retains from earned investment returns rather than from the pension trust fund.

(6) "Governing body of a public retirement system" means as provided by Texas Government Code §802.001(2).

(7) "Investment expense" means direct and indirect fees and commissions and amounts retained or paid for investment services.

(8) "Investment manager" means as defined by §802.204 of the Texas Government Code.

(9) "Investment service" means a service provided to a public retirement system for general purposes of administering its investment program such as custodial, investment consulting, investment-related legal services, [~~and~~] research, and in-house investment staff.

(10) "Public retirement system" means as defined by §801.001(2) and §802.001(3) of the Texas Government Code, but shall not include defined contribution plans as defined by Texas Government Code, §802.001(1-a) or retirement systems consisting exclusively of volunteers organized under the Texas Local Fire Fighters' Retirement Act as defined by Texas Government Code, §802.002(d).

§609.111. Investment Expense Reporting Structure.

(a) Public retirement systems shall[~~:~~]

[~~(1)~~] report direct and indirect fees and commissions:

(1) [~~(A)~~] in the fiscal year they are incurred;

(2) [~~(B)~~] by asset class;

(3) by type of fees and commissions, specifically:

(A) amounts paid to investment managers for managing assets;

(B) commissions paid directly by the public retirement system to brokers for trading securities on a per share basis;

(C) profit share as defined by §815.3015(a)(2) of the Texas Government Code; and

(D) fees netted from returns.

(4) [~~(C)~~] in a supplemental schedule, which may be unaudited, as part of the system's annual financial report.[~~; and~~]

[(2) identify amounts netted from returns separately from those paid from the trust.]

(b) Investment services provided to the system shall be reported in a supplemental schedule contained in the notes to the financial statements that are part of a public retirement system's annual financial report.

(c) A retirement system shall report expenses incurred for investment services by type of service provided, even if multiple investment services are provided by a single firm. Those expenses should not be reported by asset class.

(d) The asset classes are:

(1) Cash;

(2) Public Equity;

(3) Fixed Income;

(4) Real Assets;

(5) Alternative/Other.

(e) The Board hereby adopts by reference the 2020 Asset Class Categorization Guide (2020 ACC Guide) to assist in categorizing items by asset class.

(f) The Asset Class Categorization Guide is available to all public retirement systems. A public retirement system may obtain the most current version of the Asset Class Categorization Guide from the offices of the State Pension Review Board and from its website at http://www.prb.texas.gov.

(g) For an investment product containing investments in more than one asset class, a public retirement system shall report fees according to the corresponding asset class.

(h) For a fund of funds, reported fees must include the top-layer management fees charged by the fund-of-fund manager and the fees charged by all subsidiary fund managers, and all profit share, reported as a single amount.

(i) A public retirement system must list the types of investment included in the "Alternative/Other" asset class as described in the 2020 ACC Guide.

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

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

TRD-202403414
Tamara Aronstein
General Counsel
State Pension Review Board
Earliest possible date of adoption: September 8, 2024
For further information, please call: (512) 463-1736

40 TAC §609.109

STATUTORY AUTHORITY

The proposed repeal is authorized under Texas Government Code §801.201, which authorizes the Board to adopt rules and Texas Government Code §802.103(e), which authorizes the Board to adopt rules for investment expense reporting and other annual financial report requirements.

The statutory provisions affected by the proposed repeal are those set forth in Texas Government Code §802.103. No other statutes, articles, or codes are affected by the proposed repeal.

§609.109. Investment Expense Reporting.

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

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Tamara Aronstein
General Counsel
State Pension Review Board
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For further information, please call: (512) 463-1736

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 6. ORGANIZATION AND ADMINISTRATION
SUBCHAPTER A. GENERAL RULES

1 TAC §6.1, §6.9

The Texas Ethics Commission withdraws proposed amendments to 1 TAC §6.1 and §6.9, which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2357).

Filed with the Office of the Secretary of State on July 23, 2024.

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James Tinley
General Counsel
Texas Ethics Commission
Effective date: July 23, 2024
For further information, please call: (512) 463-5800

SUBCHAPTER B. OFFICERS AND EMPLOYEES OF THE COMMISSION

1 TAC §6.21, §6.23

The Texas Ethics Commission withdraws proposed amendments to 1 TAC §6.21 and §6.23, which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2357).

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James Tinley
General Counsel
Texas Ethics Commission
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SUBCHAPTER C. COMMISSION MEETINGS

1 TAC §§6.35, 6.39, 6.43, 6.45, 6.47

The Texas Ethics Commission withdraws proposed amendments to 1 TAC §§6.35, 6.39, 6.43, 6.45, and 6.47, which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2357).

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James Tinley
General Counsel
Texas Ethics Commission
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CHAPTER 6. ORGANIZATION AND ADMINISTRATION
SUBCHAPTER A. GENERAL RULES

1 TAC §6.5, §6.7

The Texas Ethics Commission withdraws the proposed repeal of 1 TAC §6.5 and §6.7 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2360).

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James Tinley
General Counsel
Texas Ethics Commission
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SUBCHAPTER C. COMMISSION MEETINGS

1 TAC §6.31, §6.33

The Texas Ethics Commission withdraws the proposed repeal of 1 TAC §6.31 and §6.33 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2360).

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER A. RESPONDENT'S RIGHTS

1 TAC §§12.1 - 12.4

The Texas Ethics Commission withdraws proposed new §§12.1 - 12.4, which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2361).

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James Tinley
General Counsel
Texas Ethics Commission
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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.11 - 12.15

The Texas Ethics Commission withdraws proposed new §§12.11 - 12.15, which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2361).

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James Tinley
General Counsel
Texas Ethics Commission
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SUBCHAPTER C. INVESTIGATION AND DISCOVERY

1 TAC §§12.21 - 12.26

The Texas Ethics Commission withdraws proposed new §§12.21 - 12.26 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2361).

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James Tinley
General Counsel
Texas Ethics Commission
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SUBCHAPTER D. PLEADINGS AND MOTIONS

DIVISION 1. GENERAL RULES

1 TAC §§12.31 - 12.39

The Texas Ethics Commission withdraws proposed new §§12.31 - 12.39, which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2361).

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

DIVISION 2. TYPES OF MOTIONS

1 TAC §§12.41 - 12.45

The Texas Ethics Commission withdraws proposed new §§12.41 - 12.45 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2361).

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

SUBCHAPTER E. HEARINGS

DIVISION 1. GENERAL RULES

1 TAC §12.51, §12.52

The Texas Ethics Commission withdraws proposed new §12.51 and §12.52 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2361).

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

DIVISION 2. POWERS OF THE PRESIDING OFFICER

1 TAC §§12.61 - 12.66

The Texas Ethics Commission withdraws proposed new §§12.61 - 12.66 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2361).

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James Tinley
General Counsel
Texas Ethics Commission
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DIVISION 3. PRELIMANARY REVIEW HEARINGS

1 TAC §12.71, §12.72

The Texas Ethics Commission withdraws proposed new §12.71 and §12.72 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2361).

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James Tinley
General Counsel
Texas Ethics Commission
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DIVISION 4. FORMAL HEARINGS

1 TAC §§12.81 - 12.86

The Texas Ethics Commission withdraws proposed new §§12.81 - 12.86, which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2361).

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James Tinley
General Counsel
Texas Ethics Commission
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SUBCHAPTER F. RESOLUTIONS

1 TAC §§12.91 - 12.94

The Texas Ethics Commission withdraws proposed new §§12.91 - 12.94 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2361).

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James Tinley
General Counsel
Texas Ethics Commission
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CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §§12.5 - 12.7, 12.9, 12.11, 12.13, 12.15, 12.19, 12.21, 12.23, 12.25, 12.27 - 12.31, 12.33 - 12.36

The Texas Ethics Commission withdraws the proposed repeal of §§12.5 - 12.7, 12.9, 12.11, 12.13, 12.15, 12.19, 12.21, 12.23, 12.25, 12.27 - 12.31, and §§12.33 - 12.36 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2372).

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TRD-202403277
James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.51 - 12.53, 12.59, 12.61, 12.67

The Texas Ethics Commission withdraws the proposed repeal of 1 TAC §§12.51 - 12.53, 12.59, 12.61 and 12.67, which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2372).

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.81, §12.83

The Texas Ethics Commission withdraws the proposed repeal of 1 TAC §12.81 and §12.83 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2372).

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

SUBCHAPTER D. PRELIMINARY REVIEW HEARING

1 TAC §§12.84 - 12.87

The Texas Ethics Commission withdraws the proposed repeal of 1 TAC §§12.84 - 12.87 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2372).

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TRD-202403280

James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

SUBCHAPTER E. FORMAL HEARING

DIVISION 1. GENERAL PROCEDURES

1 TAC §§12.101 - 12.103, 12.117, 12.119

The Texas Ethics Commission withdraws the proposed repeal of 1 TAC §§12.101 - 12.103, 12.117, and 12.119 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2372).

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TRD-202403281
James Tinley
General Counsel
Texas Ethics Commission
Effective date: July 23, 2024
For further information, please call: (512) 463-5800

DIVISION 2. SCHEDULING, FILING, AND SERVICE

1 TAC §§12.121, 12.123, 12.125, 12.127

The Texas Ethics Commission withdraws proposed the proposed repeal of 1 TAC §§12.121, 12.123, 12.125, and 12.127 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2372).

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TRD-202403282
James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

DIVISION 3. POWERS AND DUTIES OF COMMISSION AND PRESIDING OFFICER

1 TAC §12.131, §12.133

The Texas Ethics Commission withdraws the proposed repeal of 1 TAC §12.131 and §12.133 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2372).

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

DIVISION 5. PLEADINGS AND MOTIONS

1 TAC §§12.151, 12.153, 12.155

The Texas Ethics Commission withdraws the proposed repeal of 1 TAC §§12.151, 12.153, and 12.155 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2372).

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

DIVISION 6. HEARINGS AND PREHEARING CONFERENCES

1 TAC §§12.161, 12.163, 12.165, 12.167

The Texas Ethics Commission withdraws the proposed repeal of 1 TAC §§12.161, 12.163, 12.165 and 12.167 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2372).

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

DIVISION 7. DISPOSITION OF FORMAL HEARING

1 TAC §§12.171, 12.173 - 12.175

The Texas Ethics Commission withdraws the proposed repeal of 1 TAC §§12.171 and 12.173 - 12.175 which appeared in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2372).

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TRD-202403286
James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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

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

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

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

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

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

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

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

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.

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Adriana Gonzales
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Public Utility Commission of Texas
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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
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Proposal publication date: April 26, 2024
For further information, please call: (512) 475-4879

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.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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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
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For further information, please call: (512) 427-6271

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.

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General Counsel
Texas Higher Education Coordinating Board
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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.

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Nichole Bunker-Henderson
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Effective date: August 15, 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.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182

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.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182

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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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

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

19 TAC §§4.32, 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.

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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 non-metropolitan 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.

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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.

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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.

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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.

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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.

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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.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: May 31, 2024
For further information, please call: (512) 427-6548

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.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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

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

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

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.

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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6683

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

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

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.

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Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
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For further information, please call: (512) 776-6683

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.

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Cynthia Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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.

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Cynthia Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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.

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Cynthia Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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.

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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

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

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

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.

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Health and Human Services Commission
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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.

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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.

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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.

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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.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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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.

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For further information, please call: (512) 389-4775

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.

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Ashley Harden
General Counsel
Texas Water Development Board
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Proposal publication date: April 26, 2024
For further information, please call: (512) 463-6072

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.

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Ashley Harden
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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.

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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

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
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

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 211, Day Activity and Health Services (DAHS) Contractual Requirements

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 211, Day Activity and Health Services (DAHS) Contractual Requirements, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to MCSRulesPublicComments@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 211" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202403530
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: July 31, 2024

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Adopted Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 359, Medicare Savings Program

Notice of the review of this chapter was published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3379). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 359 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 359. Any amendments, if applicable, to Chapter 359 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 1 TAC Chapter 359 as required by the Texas Government Code §2001.039.

TRD-202403457
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: July 29, 2024

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) initiated a review of Chapter 21, Interconnection Agreements for Telecommunications Service Providers, as required by Texas Government Code §2001.039, Agency Review of Existing Rules. The commission's Chapter 21 rules Interconnection Agreements for Telecommunications Service Providers (Texas Administrative Code, Title 16, Part 2), establish procedures for approving telecommunications interconnection agreements and resolving open issues under the Federal Telecommunications Act of 1996 (FTA) §252. The purpose of this review was to consider whether to re-adopt this chapter and assess whether the reasons for initially adopting these rules continue to exist. The notice of intention to review Chapter 21 was published in the *Texas Register* on June 7, 2024 at 49 TexReg 4065. Project Number 55293 is assigned to this rule review project. The commission did not receive any comments nor requests for hearing.

Having completed this review, the commission finds that the reasons for initially adopting Chapter 21 continue to exist and re-adopts the chapter with thirteen rule amendments which will be published in the Adopted Rules section of the *Texas Register.*

The commission readopts Chapter 21, Interconnection Agreements for Telecommunications Service Providers, under PURA §14.002, which provides the Commission with the authority to make and enforce rules

reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039, which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Texas Government Code §2001.039.

TRD-202403361
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2024

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of 19 Texas Administrative Code (TAC) Chapter 231, Requirements for Public School Personnel Assignments, pursuant to Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 231 in the May 31, 2024 issue of the *Texas Register* (49 TexReg 3937).

Relating to the review of 19 TAC Chapter 231, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following is a summary of the comments received on the proposal.

Comment: A teacher in Texas commented that any secondary certification that requires a college degree should suffice for being able to teach Grades 9-12 College Readiness and Study Skills classes, not just individuals who hold English- and Reading-related certificates.

Board Response: The issues raised are outside the scope of the rule review and will be taken into consideration during future rulemaking.

Comment: An administrator in Texas commented that the review of 19 TAC Chapter 231 should continue. The commenter shared concerns regarding §231.45 and the ability of teachers certified through Grade 6 being allowed to teach Grades 7-8. The individual also commented against English as a Second Language Generalists teaching English Language Arts, Grades 6-8, since the Texas Essential Knowledge and Skills (TEKS) are higher level.

Board Response: The issues raised are outside the scope of the rule review and will be taken into consideration during future rulemaking.

This concludes the review of 19 TAC Chapter 231.

TRD-202403465
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: July 29, 2024

The State Board for Educator Certification (SBEC) adopts the review of 19 Texas Administrative Code (TAC) Chapter 234, Military Service Members, Military Spouses, and Military Veterans, pursuant to Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 234 in the May 31, 2024 issue of the *Texas Register* (49 TexReg 3938).

Relating to the review of 19 TAC Chapter 234, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following is a summary of the comments received on the proposal.

Comment: A teacher in Texas commented their support of the rule review of 19 TAC Chapter 234 but asked that the pathway that provides a one-year certificate to individuals who have taught at the Community College of the Airforce be extended to all who have taught at one of the 50 community colleges in Texas.

Board Response: The issue raised is outside the scope of the rule review and will be taken into consideration during future rulemaking.

Comment: A Texas teacher, who also identified as a military spouse, requested that Texas accept teaching credentials and test scores with reciprocity from other states for all military spouses.

Board Response: The SBEC agrees. Texas recognizes the standard certificates and corresponding examinations of military spouses issued licensure to teach by state departments of education outside of Texas. Military spouses can be exempted from most required certification examinations, except for the Science of Teaching Reading, which is mandated by state law. After completion of a successful out-of-state credentials review, military spouses can be issued a three-year temporary certificate or the five-year standard certificate to teach in Texas.

This concludes the review of 19 TAC Chapter 234.

TRD-202403466
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: July 29, 2024

The State Board for Educator Certification (SBEC) adopts the review of 19 Texas Administrative Code (TAC) Chapter 245, Certification of Educators from Other Countries, pursuant to Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 245 in the May 31, 2024 issue of the *Texas Register* (49 TexReg 3938).

Relating to the review of 19 TAC Chapter 245, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following is a summary of the comment received on the proposal.

Comment: A teacher in Texas commented that individuals from other countries should be able to pass an English language proficiency test of some type, similar to the Texas English Language Proficiency Assessment System (TELPAS).

Board Response: The issue raised is outside the scope of the rule review and will be taken into consideration during future rulemaking.

This concludes the review of 19 TAC Chapter 245.

TRD-202403467
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: July 29, 2024

Texas Board of Physical Therapy Examiners

Title 22, Part 16

The Texas Board of Physical Therapy Examiners (Board) readopts the following chapters of Title 22, Part 16 of the Texas Administrative Code in accordance with Texas Government Code §2001.039: Chapter 321, concerning Definitions; Chapter 322, concerning Practice; Chapter 323, concerning Powers and Duties of the Board; Chapter 325, concerning Organization of the Board; Chapter 327, concerning Compensation; Chapter 329, concerning Licensing Procedure; Chapter 335, concerning Professional Title; Chapter 337, concerning Display of License; Chapter 339, concerning Fees; Chapter 341, concerning License

Renewal; Chapter 342, concerning Open Records; Chapter 343, concerning Contested Case Procedure; Chapter 344, concerning Administrative Fines and Penalties; Chapter 346, concerning Practice Settings for Physical Therapy; and Chapter 348, Physical Therapy Licensure Compact.

The notice of intent to review these rules was published in the May 3, 2024 issue of the *Texas Register* (49 TexReg 3021).

No comments were received on the proposed rule review.

The Board has assessed whether the reasons for adopting the rules continue to exist. As a result of the review, the Board finds the reasons for adopting the rules continue to exist and readopts the rules in accordance with the requirements of Texas Government Code §2001.039.

TRD-202403351
Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
Filed: July 24, 2024

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), in its own capacity and on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 102, Distribution of Tobacco Settlement Proceeds to Political Subdivisions

Notice of the review of this chapter was published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4439). HHSC received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 102 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agencies determined that the original reasons for adopting all rules in the chapter continue to exist and readopt Chapter 102. Any amendments, if applicable, to Chapter 102 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's and DSHS' review of 25 TAC Chapter 102 as required by the Texas Government Code §2001.039.

TRD-202403360
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: July 25, 2024

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 300, Manufacture, Distribution, and Retail Sale of Consumable Hemp Products

Notice of the review of this chapter was published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1974).

HHSC received 425 comments, some with multiple comments, concerning this chapter. A summary of comments and HHSC's and DSHS' responses follows.

Businesses submitting comments and represented in the individual comments include: 210 Double; Hometown Hero; CBD American Shaman (Southlake and College Station); Pharm Road Wellness; Tactical Vapors; Zebra Head; Hemp and Herbs; Happy Clouds; Endo Laredo Dispensary, LLC; Texas Hemp Reporter; Turquoise Mountains; Freedom Vapes; Elevated Hemp Co.; One Love Tattoos LLC; Moderne Primitives LLC; Mango Island Smoke Shop; Cozy Cannabis Dispensary; Fog Hog Vapors; RHD Remedies; Lufkin Vapor Supply; Breathe Easy Hemp-House; Maguire Strategies; Two Romantics; The Texas Hemp Show; and Canniversal.

Comment: Thirty-six commenters recommend keeping the current rules. One commenter is requesting no changes to the rules that restrict access to consumable hemp products.

Response: DSHS appreciates the comment and will review in future rule making.

Comment: One commenter suggests replacing the current QR code system with a more secure solution utilizing blockchain-enabled Near-Field Communication/Radio Frequency Identification (NFC/RFID) chips.

Response: The proposed labeling requirements are designed to be minimum standards. DSHS appreciates the comment and will review in future rule making.

Comment: One commenter recommends establishing Uniform Testing Laboratory Standards for Industry and Law Enforcement.

Response: The proposed testing requirements are designed to be minimum standards. Businesses may conduct more robust testing at their own discretion.

Comment: One commenter recommends requiring full panel testing on all consumable products.

Response: DSHS requires full panel testing, as appropriate to consumable hemp products.

Comment: Two commenters recommend adding the requirement that packaging be child resistant, as outlined in 16 C.F.R. 1700 (Poison Prevention Packaging) (1995).

Response: DSHS appreciates the comment and will review in future rule making.

Comment: Three commenters recommend restricting the sale of products from gas stations, convenience stores, and head shops. Products need to be in hemp/cannabis locations.

Response: DSHS makes no distinction between gas stations, convenience stores, and head shops. Businesses who sell consumable hemp products are required to obtain a license or registration from DSHS and to comply with Texas Health and Safety Code, Chapter 443 and 25 TAC Chapter 300.

Comment: One commenter recommends hemp products be made available only in specialty stores that have hemp permits, with strict guidelines in place to regulate the sale of these products.

Response: Businesses who sell consumable hemp products are required to obtain a license or registration from DSHS and to comply with Texas Health and Safety Code, Chapter 443 and 25 TAC Chapter 300.

Comment: One commenter recommends delta 8 gummy pieces be individually wrapped.

Response: DSHS cannot comment regarding delta 8 due to pending litigation. DSHS appreciates the comment and will review in future rule making.

Comment: Three commenters recommend prohibiting consumable hemp sales in alcohol licensed locations.

Response: DSHS considers these comments to be outside the scope of rulemaking for this chapter. House Bill (H.B.) 1325 (Texas Health and Safety Code, Chapter 443) requires DSHS to develop rules regulating the manufacture, distribution, and sale of consumable hemp products in Texas. Chapter 443 does not prohibit the sale of consumable hemp products at locations where alcoholic beverages are sold.

Comment: One commenter recommends putting tetrahydrocannabinol (THC) limits on serving sizes and packages. One commenter recommends the serving size be 10mg.

Response: DSHS appreciates the comment and will review in a future rule making process.

Comment: One commenter recommends outlawing cannabinoids other than delta 9 THC.

Response: DSHS appreciates the comment, due to pending litigation, DSHS will review this recommendation in a future rule making process.

Comment: Two commenters raised concerns regarding the dry weight of 0.3% delta 9 THC threshold. One commenter is concerned that firms are exploiting the loophole and the delta 9 THC should be measured by dose or milligrams, not percentage. Another commenter recommends "tightening" the farm bill so there is no ambiguity.

Response: The definition of hemp is in statute at Texas Health and Safety Code §443.001(5), which has the meaning assigned by Texas Agriculture Code §121.001. Change to statute requires legislative action and, hence, is outside the scope of the 4-year rule review.

Comment: One commenter recommends consumable hemp packaging not resemble common food items.

Response: DSHS defines a consumable hemp product as food, a drug, a device, or a cosmetic, as those terms are defined by Texas Health and Safety Code, §431.002(16), that contains hemp or one or more hemp-derived cannabinoids, including cannabidiol. Texas Health and Safety Code, §443.204(2) states products containing one or more hemp-derived cannabinoids, such as cannabidiol, intended for ingestion are considered foods.

Comment: Twenty-three commenters recommend that access of consumable hemp products be limited to only adults over the age of 21 years old. One commenter recommends vendors be also over the age of 21 to sell consumable hemp products to the public. One commenter further recommends adding an exception to military members between the ages of 18 through 21 years of age.

Response: Texas Health and Safety Code Chapter 443 does not state a minimum age to purchase consumable hemp products and must be addressed by Texas legislature.

Comment: One commenter recommends consumable hemp rules be evaluated and reviewed by medical and public health experts, not by persons with interest in the cannabis industry.

Response: H.B. 1325 (Texas Health and Safety Code, Chapter 443) requires DSHS to develop rules regulating, distribution, and sale of consumable hemp products. DSHS consults with subject matter experts in developing rules.

Comment: 394 commenters opposed the prohibition and restrictions to access to delta 8 THC, THC-A, and delta 9 THC consumable hemp products.

Reasons for opposition to the prohibition of delta 8 THC, THC-A, and delta 9 THC consumable hemp products include:

-A deleterious effect on the overall consumable hemp product business in Texas, particularly on those businesses already selling the products.

-A negative impact on individuals who depend on smoking for rapid delivery of cannabidiol to relieve medical conditions.

-Lack of constitutionality under the Texas Farm Bill.

-The cannabis illegal black market will flourish.

-The opioids crisis will worsen.

Response: DSHS appreciates the comment, due to pending litigation, DSHS will review in future rule making.

Comment: One commenter recommends revision of proposed 25 TAC §300.301 to require specific analytical techniques such as Gas Chromatography Mass Spectrometry (GC-MS) and High-Performance Liquid Chromatography (HPLC).

Response: DSHS appreciates the comment and will review in future rule making. Texas Health and Safety Code §443.202 and §443.151 do not prescribe testing methods.

Comment: One commenter recommends the establishment of an office to track and issue licenses, inspect retailers, issue warnings and citations, educate consumers on responsible use, and regularly evaluate the program.

Response: DSHS has established a Consumable Hemp Program that tracks and issues licenses, inspects retailers, issues warnings and citations, and regularly evaluates the program's goals. DSHS appreciates the comment about educating consumers on responsible use and will review in future rule making.

Comment: One commenter recommends that smokable hemp be removed from retail establishments via inspection and compliance checks.

Response: Manufacturing and processing of consumable hemp products for smoking is prohibited; however, distribution and retail sale of consumable hemp products for smoking are allowed.

Comment: One commenter recommends prohibiting cannabinoids until further research is conducted.

Response: DSHS appreciates the comment and will review in future rule making.

Comment: One commenter recommends that no retail cannabis establishments or signage be located within 500 feet of a school, church, playground, park, or other areas where youth are likely to be.

Response: The Texas Health and Safety Code, Chapter 443 does not have any zoning restrictions. The issue must be addressed by Texas legislature.

Comment: One commenter recommends the regulating agency establish excise taxes, indexed to inflation, at a rate intended to discourage excessive use and underage use. These revenues must be allocated in part to drug prevention and treatment programs as well as law enforcement, emergency services, and mental health to alleviate the negative consequences of increased access to a third legal drug.

Response: Agencies must possess statutory authority to adopt rules, and a rule may not exceed that statutory authority. DSHS considers this comment outside the scope of statutory authority of Texas Health

and Safety Code Chapter 443, which requires DSHS to develop rules regulating the manufacture, distribution, and sale of consumable hemp products in Texas.

Comment: One commenter recommends that cannabis products and businesses not be allowed to advertise via TV or other broadcast media (radio, movie theaters, online media, etc.) nor on billboards. The commenter also recommends that print and online advertisements not contain endorsements or images of superheroes, celebrities, human models, paraphernalia, mascots, marijuana leaves, or graphic images of drug use. The commenter further recommends that the regulating agency establish minimum pricing to reduce marketing through extreme discounts and prohibit "giveaways" of free product and that rules prohibit violations of trademark law, products that appear similar to popular foods and drinks, and packaging that is overly attractive to youth.

Response: Agencies must possess statutory authority to adopt rules, and a rule may not exceed that statutory authority of Texas Health and Safety Code Chapter 443. DSHS considers this comment outside the scope of statutory authority of Texas Health and Safety Code Chapter 443, which requires DSHS to develop rules regulating the manufacture, distribution, and sale of consumable hemp products in Texas.

Comment: Sixteen commenters recommend on not revising or restricting the farm bill.

Response: Agencies must possess statutory authority to adopt rules and a rule may not exceed that statutory authority. DSHS considers these comments outside the scope of statutory authority of Texas Health and Safety Code Chapter 443, which requires DSHS to develop rules regulating the manufacture, distribution, and sale of consumable hemp products in Texas.

Comment: Thirteen commenters recommend legalizing marijuana.

Response: DSHS considers these comments outside the scope of rulemaking for this chapter. H.B. 1325 (Texas Health and Safety Code, Chapter 443) requires DSHS to develop rules regulating the manufacture, distribution, and sale of consumable hemp products in Texas. H.B. 1325 contains no authorization for the legalization of marijuana in Texas.

HHSC and DSHS have reviewed 25 TAC Chapter 300 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agencies determined that the original reasons for adopting all rules in the chapter continue to exist and readopts 25 TAC Chapter 300. Any amendments, if applicable, to 25 TAC Chapter 300 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 300 as required by the Texas Government Code §2001.039.

TRD-202403407
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: July 26, 2024

The Texas Health and Human Services Commission (HHSC), in its own capacity and on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 417, Agency and Facility Responsibilities

Notice of the review of this chapter was published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 3022). HHSC received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 417 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

HHSC determined that the original reasons for adopting rules in the chapter continue to exist, however, HHSC has rules in Title 26 that address the same topics as the following rules. The repeal of the following Chapter 417 rules identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*:

§417.4, Definitions;

§417.7, Inscription on State Vehicles;

§417.14, Non-Commercial Groups;

§417.15, Family Members and Guests of an Individual Receiving Services;

§417.27, Depositing Department Funds;

§417.28, Investing Department Funds;

§417.29 Benefit Funds: Use and Control;

§417.38, Individual's Personal Property;

§417.504, Prohibition and Definitions of Abuse, Neglect, and Exploitation;

§417.505, Reporting Responsibilities of All TDMHMR Employees, Agents, and Contractors: Reports to Texas Department of Protective and Regulatory Services (TDPRS);

§417.507, Prohibition Against Retaliatory Action;

§417.510, Completion of the Investigation;

§417.511, Confidentiality of Investigative Process and Report;

§417.512, Classifications and Disciplinary Actions;

§417.513, Contractors; and

§417.515, Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation.

HHSC determined that the original reasons for adopting the following rules in the chapter do not exist and the following rules identified by HHSC in the rule review will be proposed for repeal in a future issue of the *Texas Register*:

§417.1, Purpose;

§417.2, Application;

§417.3, Compliance with Nondiscrimination Laws

§417.6, Assignment and Use of Pooled Vehicles;

§417.9, Material Safety Data Sheets;

§417.23, Unauthorized Departures That May Have Unusual Consequences;

§417.33, Mail for Staff Residing On Campus;

§417.34, Commercial Solicitation on Grounds;

§417.49, References;

§417.50, Distribution;

§417.516, Exhibits;

§417.517, References; and

§417.518, Distribution.

HHSC and DSHS determined that the original reasons for adopting the following rules in the chapter continue to exist and readopts these rules. Any amendments, if applicable, to the following rules identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*:

§417.39, Protecting an Individual's Personal Funds;

§417.40, Notice Regarding Personal Funds;

§417.41, Determining Management of Personal Funds;

§417.42, SMHF-Managed Personal Funds;

§417.43, Requests for Personal Funds from Trust Fund Accounts;

§417.44, Returning Individual's Personal Funds on Discharge;

§417.45, Unclaimed Personal Funds and Property;

§417.46, Contributions;

§417.301, Purpose;

§417.302, Application;

§417.303, Definitions;

§417.305, Limitations on Private Donations;

§417.306, Volunteer Services Council;

§417.501, Purpose;

§417.502, Application;

§417.503, Definitions;

§417.504, Prohibition and Definitions of Abuse, Neglect, and Exploitation;

§417.508, Responsibilities of the Head of the Facility;

§417.509, Peer Review; and

§417.514, TDMHMR Administrative Responsibilities.

This concludes HHSC's review of 25 TAC Chapter 417 as required by the Texas Government Code §2001.039.

TRD-202403461
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: July 29, 2024

Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 352, Comprehensive Rehabilitation Services

Notice of the review of this chapter was published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4067). HHSC received no comments concerning this chapter.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 352. Any amendments, if applicable, to Chapter 352 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 26 TAC Chapter 352 as required by the Texas Government Code §2001.039.

TRD-202403359
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: July 25, 2024

Department of Aging and Disability Services

Title 40, Part 1

The Texas Health and Human Services Commission (HHSC), as the successor agency of the Texas Department of Aging and Disability Services, adopts the review of the chapter below in Title 40, Part 1, of the Texas Administrative Code (TAC):

Chapter 11, Quality Assurance Fee

Notice of the review of this chapter was published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4068). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 11 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 11. Any amendments, if applicable, to Chapter 11 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 40 TAC Chapter 11 as required by the Texas Government Code §2001.039.

TRD-202403538
Jessica Miller
Director, Rules Coordination Office
Department of Aging and Disability Services
Filed: July 31, 2024

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §12.5(d)(4)

APPROVED ASSESSMENTS AND DOCUMENTATION FOR OPPORTUNITY HIGH SCHOOL DIPLOMA CORE PROGRAM COMPETENCIES

Assessment Documentation	Use	Quantitative Reasoning Core Competency	MS	Communication Skills Core Competency	MS	Civics Core Competency	MS	Scientific Reasoning Core Competency	MS	Workplace Success Core Competency	MS
Accuplacer	PLA Final	Arithmetic	230	Reading	233	–	–	–	–	–	–
ACT	PLA	Math	19	English	17	–	–	Science	22	–	–
ACT WorkKeys	PLA Final	Applied Math	86	Workplace Documents	81	–	–	–	–	National Career Readiness Certificate, Essential Skills	Applied Math 86 Workplace Documents 81 Graphic Literacy 75
CASAS (assessments)	PLA Final	Math	226	Reading	239	–	–	–	–	–	–
GED	PLA	Mathematical Reasoning	145	Reasoning through Language Arts	145	–	–	Science	145	–	–
SAT	PLA	Math	530	Reading, Writing	480	–	–	–	–	–	–
STAAR EOC (high school)	PLA	Algebra 1	Meets Grade Level	English I and II	Meets Grade Level	U.S. History	Meets Grade Level	Biology	Meets Grade Level	–	–
Test of Adult Basic Education	PLA Final	Mathematics	596	Reading	576	–	–	–	–	–	–
TSIA	PLA	Mathematics	350	Reading	351+4E	–	–	–	–	–	–
TSIA2	PLA Final	Mathematics	950	English Language Arts Reading	945+5E	–	–	–	–	–	–
U.S. Citizenship Exam	PLA Final	–	–	–	–	Civics content (61 questions)	60% Pass	–	–	–	–

APPROVED ASSESSMENTS AND DOCUMENTATION FOR OPPORTUNITY HIGH SCHOOL DIPLOMA CORE PROGRAM COMPETENCIES

Assessment Documentation	Use	Quantitative Reasoning Core Competency	MS	Communication Skills Core Competency	MS	Civics Core Competency	MS	Scientific Reasoning Core Competency	MS	Workplace Success Core Competency	MS
High School Transcript, including Dual Credit	PLA	Algebra I, Geometry, and higher	Pass	English I and II or CTE Communications	Pass	U.S. Government	Pass	Biology	Pass	–	–
Postsecondary Transcript, credit bearing class completion	PLA	Applied Math or Algebra	Pass	English or CTE Communications	Pass	U.S. Government	Pass	Science	Pass	–	–
Military Service Credit as recommended by the American Council on Education	PLA	Algebra I and higher	Pass	English or English Language Arts	Pass	U.S. Government	Pass	Science or Biology	Pass	–	–
HiSet (out-of-state high school diploma equivalent)	PLA	Mathematics	8	Reading	8	–	–	Science	8	–	–

Notes:

CTE – career and technical education
E – essay
Final – end of course assessment
MS – minimum score
PLA – prior learning assessment

Figure: 19 TAC §230.11(b)(5)(C) [~~Figure: 19 TAC §230.11(b)(5)(C)~~]

Countries in which English is an Official Language

The countries listed below have been approved by the State Board for Educator Certification (SBEC) to satisfy the English language proficiency requirement specified in 19 TAC §230.11(b)(5)(C). To be exempted from the Test of English as a Foreign Language internet-Based Test (TOEFL - iBT) testing requirement specified in 19 TAC §230.11(b)(5)(B), a certification candidate must have earned an undergraduate or graduate degree from an institution of higher education on the SBEC-approved list of countries.

[~~American Samoa~~]

Anguilla

Antigua and Barbuda

Australia

Bahamas

Barbados

Belize

Bermuda

British Virgin Islands

Cameroon

Canada (except Quebec)

Cayman Islands

Dominica

Federated States of Micronesia

Gambia

Ghana

Gibraltar

Grand Cayman

Grenada

Guyana

India

Ireland

Jamaica

Kenya

Liberia

New Zealand

Nigeria

Philippines

Saint Kitts and Nevis

Saint Lucia

Singapore

South Africa

Trinidad/Tobago

Turks and Caicos Islands

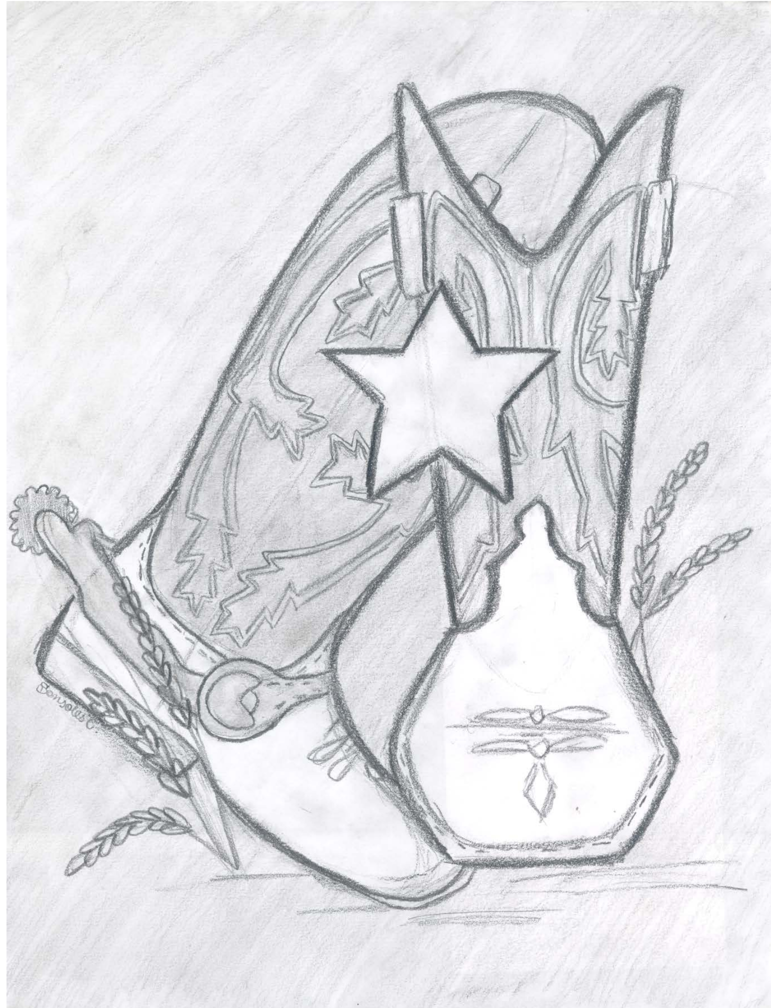
Uganda

United Kingdom

U.S. Pacific Trust

Zambia

Zimbabwe



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Proposals for the Development of a Housing Revitalization Plan in Connection with the North Houston Highway Improvement Project

Notice is hereby given of a Request for Proposals by the Texas State Affordable Housing Corporation ("TSAHC") to identify and contract professional services with a Consultant for the development of a housing Revitalization Plan in connection with the North Houston Highway Improvement Project. A copy of the RFP can be found on TSAHC's website at www.tsahc.org.

The deadline for submissions in response to this RFP is **Friday, September 20, 2024, at 5:00 p.m.** Responses should be emailed to Michael Wilt at mwilt@tsahc.org. For questions or comments about the RFP, please contact Michael Wilt at (512) 334-2157 or by email at mwilt@tsahc.org.

TRD-202403475
David Long
President
Texas State Affordable Housing Corporation
Filed: July 29, 2024

♦ ♦ ♦

Alamo Area Metropolitan Planning Organization

Request for Proposals - Comal County Railroad Crossing Study

The Alamo Area Metropolitan Planning Organization (AAMPO) is seeking proposals from qualified firms to provide services related to the **Comal County Railroad Crossing Study.**

The Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from AAMPO's website at www.alamoareampo.org or calling Sonia Jiménez, Deputy Director, at (210) 227-8651. Anyone wishing to submit a proposal must email it by 12:00 p.m. (CDT), Friday, August 30, 2024 to the AAMPO office at aampo@alamoareampo.org.

Reimbursable funding for this study, in the amount of $250,000, is contingent upon the availability of federal transportation planning funds.

TRD-202403529
Sonia Jimenez
Deputy Director
Alamo Area Metropolitan Planning Organization
Filed: July 31, 2024

♦ ♦ ♦

Texas Animal Health Commission

Executive Director Order Declaring Intrastate Movement Restrictions of Lactating Dairy Cattle to Fairs, Shows, or Exhibitions

The Texas Animal Health Commission (the "Commission") is authorized to establish movement restrictions against all or a portion of a state in which an animal disease exists to protect livestock, exotic livestock, domestic fowl, and exotic fowl in this state from the disease.

Pursuant to Texas Agriculture Code §161.054, the Commission by rule may regulate the movement of animals and restrict the intrastate movement of animals.

As specified in Title 4, Texas Administrative Code §45.3, the Commission is required to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from avian influenza. Under Title 4 Texas Administrative Code §58.2, the Executive Director of the Commission is authorized to act for the commission in order to respond expeditiously to an animal health emergency and may act to eradicate and control any disease or agent of disease transmission that affects livestock, exotic livestock, domestic fowl, or exotic fowl from a disease or agent of transmission recognized by the United States Department of Agriculture (USDA) as a foreign animal disease or reportable animal disease.

Highly Pathogenic Avian Influenza (HPAI) is disease recognized by the USDA as a foreign animal disease or reportable animal disease. HPAI is an influenza virus that may cause illness and death in domestic poultry, fowl, and birds. HPAI is extremely infectious and can spread rapidly from flock to flock and is often fatal to chickens. In domestic poultry, HPAI can cause morbidity and mortality rates between 90-100 percent, leading to detrimental economic consequences.

In March of 2024, a strain of HPAI was detected in dairy cattle. While HPAI causes less severe illness in cattle, the novel movement of HPAI into livestock poses a threat to both livestock and poultry in Texas.

HPAI can spread easily through direct transmission or indirectly through contaminated material. Due to the highly contagious nature of HPAI, rapid response to outbreaks is required. Movement control of animals, animal products, and other potentially contaminated materials is critical to prevent transmission of HPAI.

While the USDA has developed and implemented interstate measures to control the spread of HPAI, the Executive Director of the Commission finds that additional intrastate movement restrictions are needed to mitigate the spread of the disease at fairs, shows, or exhibitions.

The Executive Director further finds that the risk of disease exposure from the movement of lactating dairy cows to a show, fair, or exhibition, without a recent negative HPAI test could lead to unnecessary disease exposure across Texas.

The Executive Director, therefore, has determined that movement of untested lactating dairy animals to fairs, shows, and exhibitions in Texas, poses a threat to animal health in Texas.

To protect animal health in this state, the Executive Director imposes the following movement restrictions on lactating dairy cows prior to their intrastate movement to a fair, show, or exhibition:

Each lactating dairy cow moving intrastate to a fair, show, or exhibition must have a negative PCR (polymerase chain reaction) test result for Influenza A virus from an individual milk sample collected and tested at an approved National Animal Health Laboratory Network (NAHLN) laboratory using a NAHLN approved assay within 7 days prior to movement. These animals may return to their home herd using the same negative test result provided the exhibition or show does not

exceed 10 days of length. This testing is available to producers at no cost through USDA APHIS at NAHLN laboratories. Producers may also apply for reimbursement of shipping and veterinary fees for collection of samples.

Prior to interstate movement, lactating dairy cattle are required to receive a negative PCR test for Influenza A virus at an approved NAHLN laboratory using a NAHLN approved assay and in accordance with the Federal Order effective April 29, 2024 https://www.aphis.usda.gov/sites/default/files/federal-order-faq.pdf

The HPAI Dairy Testing Protocol requires the following:

Sample collection must be performed by a USDA category II accredited veterinarian or a person under the direct supervision of USDA category II accredited veterinarian working for the dairy cattle herd.

Milk from each quarter of the individual cow must be pooled together to create a total sample between 3-10 ml of milk.

Each lactating dairy cow's sample must be kept individualized. Samples shall not be pooled between cows.

This order is issued pursuant to Texas Agriculture Code §161.054 and Title 4, Texas Administrative Code §58 and is effective immediately.

This order will remain in effect until 60 days after the last detection of H5N1 in cattle herds in the United States.

As previously noted, the USDA has developed and implemented interstate measures to control the spread of HPAI. In addition to the Federal movement requirements, please verify if the state of destination has any additional entry requirements if moving lactating dairy cows out-of-state to a show, fair, or exhibition, or for any other reason.

Signed July 25, 2024.

Lewis R. "Bud" Dinges, D.V.M.

Executive Director

Texas Animal Health Commission

TEXAS ANIMAL HEALTH COMMISSION | 2105 Kramer Lane, Austin, TX 78758 | (512) 719-0700 | www.tahc.texas.gov

TRD-202403377
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Filed: July 26, 2024

♦ ♦ ♦

Capital Area Rural Transportation System

Modal & Real-Time Trip Planner for CARTS

Capital Area Rural Transportation System (CARTS) invites qualified vendors to submit proposals for professional assistance to develop and integrate a real-time multi-modal trip planner into its Rural Bus System.

RFP will be available on the CARTS Website beginning at 2:00 p.m., Wednesday, August 14, 2024, Go to: https://www.ridecarts.com/procurement/, select the **Trip Planner** link and follow the instructions.

An on-site pre-proposal conference (not mandatory but recommended) will be held at 2:00 p.m., Wednesday, August 21, 2024, via Teams meeting.

The schedule is:

Wednesday, August 14 2:00 p.m. - RFP Documents available for download

Wednesday, August 21 2:00 p.m. - On-site pre-proposal conference

Wednesday, August 28 5:00 p.m. - Deadline for Proposal Questions

Wednesday, September 4 10:00 a.m. - Responses to questions posted on website

Wednesday, September 10 2:00 p.m. - Proposals due at CARTS

Proposals will be evaluated on cost, qualifications, experience, the quality and content of the submittal.

TRD-202403458
David L. Marsh
CARTS General Manager
Capital Area Rural Transportation System
Filed: July 29, 2024

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/05/24 - 08/11/24 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/05/24 - 08/11/24 is 18.00% for commercial[2] credit.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202403532
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 31, 2024

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 10, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the ap-

plicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **September 10, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 2020 Landmark Capital, LLC; DOCKET NUMBER: 2023-1484-PWS-E; IDENTIFIER: RN111401238; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service for Well Numbers 1, 2, and 3; PENALTY: $587; ENFORCEMENT COORDINATOR: Daphne Greene, (903) 535-5157; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Alamo Cement Company; DOCKET NUMBER: 2024-0288-AIR-E; IDENTIFIER: RN100220474; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: portland cement kiln; RULES VIOLATED: 30 TAC §§101.20(2) and (3), 113.690, 116.115(c), and 122.143(4), 40 Code of Federal Regulations §63.1346(a), New Source Review (NSR) Permit Numbers 6758, PSDTX145M2, and GHGPSDTX143, Special Conditions (SC) Number 21, Federal Operating Permit (FOP) Number O1115, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 1.E., and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the established in-line kiln/raw mill temperature limit; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 6758, PSDTX145M2, and GHGPSDTX143, SC Number 13, FOP Number O1115, GTC and STC Number 12, and THSC, §382.085(b), by failing to prevent an excess opacity event; and 30 TAC §§116.110(a), 116.604(2), and 122.143(4), FOP Number O1115, GTC, and THSC, §382.0518(a) and §382.085(b), by failing to renew the registration to use a standard permit by the date the registration expires; PENALTY: $46,500; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: C and R WATER SUPPLY INCORPORATED; DOCKET NUMBER: 2023-1620-PWS-E; IDENTIFIER: RN101201424; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the Executive Director and receive approval prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance; 30 TAC §290.43(c), by failing to ensure that all potable water storage facilities are covered and designed, fabricated, erected, tested and disinfected in strict accordance with current American Water Works Association standards; 30 TAC §290.43(c)(2), by failing to ensure the facility's ground storage tank hatch remains locked except during inspections and maintenance; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and an emergency telephone number where a responsible official can be contacted; PENALTY: $5,901; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (210) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Clifton; DOCKET NUMBER: 2024-0942-MWD-E; IDENTIFIER: RN102183191; LOCATION: Clifton, Bosque County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System Permit Number WQ0010043001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at intervals specified in the permit; PENALTY: $575; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: CONSUMERS SUPPLY COOPERATIVE dba Consumers Fuel Coop; DOCKET NUMBER: 2024-0594-PST-E; IDENTIFIER: RN101871036; LOCATION: Canyon, Randall County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Faye Renfro, (512) 239-1833; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(6) COMPANY: CSWR-Texas Utility Operating Company, LLC; DOCKET NUMBER: 2022-1040-MWD-E; IDENTIFIER: RN101521391; LOCATION: Fort Worth, Parker County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015010001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: $29,400; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: David Morgan; DOCKET NUMBER: 2024-1000-EAQ-E; IDENTIFIER: RN111864260; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: commercial property; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(8) COMPANY: ESPINOZA STONE, INCORPORATED; DOCKET NUMBER: 2023-0878-WQ-E; IDENTIFIER: RN104097969; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; PENALTY: $50,000; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: IRPHAN LLC dba SSA Super Food Mart; DOCKET NUMBER: 2023-0936-PST-E; IDENTIFIER: RN102471604; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which

will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the USTs; PENALTY: $3,494; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Jay H. Smith and Patti J. Smith; DOCKET NUMBER: 2024-0271-OSS-E; IDENTIFIER: RN111837662; LOCATION: Cotulla, La Salle County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §285.3(a) and Texas Health and Safety Code, §366.004 and §366.051(a), by failing to obtain authorization prior to constructing, altering, repairing extending, or operating an OSSF; PENALTY: $375; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Pritchett Water Supply Corporation; DOCKET NUMBER: 2023-1663-PWS-E; IDENTIFIER: RN101224608; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(J), by failing to provide all facility wells with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 30 TAC §290.43(c)(8), by failing to ensure that all clearwells, ground storage tanks (GSTs), standpipes, and elevated storage tanks are painted, disinfected, and maintained in strict accordance with current American Water Works Association standards; 30 TAC §290.43(e), by failing to ensure that all potable water storage tanks and pressure maintenance facilities are installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to use a water works operator who holds an applicable, valid license issued by the Executive Director; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe a cross-connection or other potential contamination hazard exists; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system facilities and equipment; and 30 TAC §290.46(m)(1)(B), by failing to inspect the interior of the facility's pressure tanks at least once every five years; PENALTY: $29,901; ENFORCEMENT COORDINATOR: Christiana McCrimmon, (512) 239-2811; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(12) COMPANY: Samuel Alvarez; DOCKET NUMBER: 2023-0688-PST-E; IDENTIFIER: RN101789675; LOCATION: Chillicothe, Hardeman County; TYPE OF FACILITY: a temporarily out-of-service underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: Serenity Light Recovery Holdings, LLC; DOCKET NUMBER: 2023-0599-PWS-E; IDENTIFIER: RN110389616; LOCATION: Angleton, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(2) and (3)(A)(i) and (ii)(III), (B)(iii) and (v), and (D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.110(e)(4)(B), by failing to retain the Disinfection Level Quarterly Operating Reports and provide a copy if requested by the ED; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $3,588; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(14) COMPANY: STANLEY MOBILE HOME PARK, LLC; DOCKET NUMBER: 2023-1771-PWS-E; IDENTIFIER: RN102688793; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: $5,500; ENFORCEMENT COORDINATOR: Emerson Rinewalt, (512) 239-1131; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(15) COMPANY: Targa Frio LaSalle Pipeline LP f/k/a Frio LaSalle Pipeline, LP; DOCKET NUMBER: 2021-0727-AIR-E; IDENTIFIER: RN106040488; LOCATION: Dilley, Frio County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O3419/General Operating Permit (GOP) Number 514, Terms and Conditions Numbers (b)(2) and (40)(F), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 94152, FOP Number 03419/GOP Number 514, Terms and Conditions Numbers (b)(2) and (9)(E)(ii), and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O3419/GOP Number 514, Terms and Conditions Number (b)(2), and THSC, §382.085(b), by failing to report all instances of deviations; 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O3419/GOP Number 514, Terms and Conditions Number (b)(2), and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance, and failing

to submit the deviation report no later than 30 days after the end of each reporting period; PENALTY: $70,104; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(16) COMPANY: Timber Lane Utility District; DOCKET NUMBER: 2021-0739-MWD-E; IDENTIFIER: RN102844909; LOCATION: Spring, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011142002, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $37,125; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202403487
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: July 30, 2024

Enforcement Order

An agreed order was adopted regarding BPR ENTERPRISES, L.L.C., Docket No. 2022-0453-PWS-E on July 30, 2024, assessing $2,215 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marilyn Norrod, Staff Attorney at (512) 239 3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711 3087.

TRD-202403540
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 31, 2024

Enforcement Orders

An agreed order was adopted regarding THE AMERICAN LEGION, MISSING IN ACTION POST NO. 231, THE AMERICAN LEGION, DEPARTMENT OF TEXAS, POTTSBORO, TEXAS, Docket No. 2019-1329-PWS-E on July 31, 2024 assessing $2,600 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Kenneth Fox Supply Company, Docket No. 2020-1336-AIR-E on July 31, 2024 assessing $8,437 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239 3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711 3087.

A default order was adopted regarding Benton Rainey, Docket No. 2021-0212-PST-E on July 31, 2024 assessing $74,194 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Keagle, Staff Attorney at (512) 239 3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711 3087.

A default order was adopted regarding Patrick Gordon Snipes, Docket No. 2021-0734-LII-E on July 31, 2024 assessing $3,525 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239 3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711 3087.

An agreed order was adopted regarding ANITRIO, INC. dba Mr Discount, Docket No. 2021-0873-PST-E on July 31, 2024 assessing $28,530 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239 3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711 3087.

An agreed order was adopted regarding City of Sonora, Docket No. 2021-0906-PWS-E on July 31, 2024 assessing $11,475 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding INEOS OLIGOMERS USA LLC, Docket No. 2021-1267-AIR-E on July 31, 2024 assessing $54,426 in administrative penalties with 10,885 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Clean Harbors Deer Park, LLC, Docket No. 2021-1517-IWD-E on July 31, 2024 assessing $65,699 in administrative penalties with $13,139 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Castillo, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nucor Steel Longview LLC, Docket No. 2021-1630-IWD-E on July 31, 2024 assessing $7,963 in administrative penalties with $1,592 deferred. Information concerning any aspect of this order may be obtained by contacting Taylor Williamson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Alberto Loredo dba Loredo Trucking, Docket No. 2022-0231-MLM-E on July 31, 2024 assessing $9,000 in administrative penalties with $1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TA Operating LLC, Docket No. 2022-0286-MWD-E on July 31, 2024 assessing $11,800 in administrative penalties with $2,360 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Castillo, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Carol Ann Norra dba Carol Norra Mobile Home, Docket No. 2022-0425-PWS-E on July 31, 2024 assessing $7,050 in administrative penalties administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239 3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711 3087.

An agreed order was adopted regarding Wilbarger Creek Municipal Utility District No. 2, Docket No. 2022-0437-MWD-E on July 31, 2024 assessing $9,813 in administrative penalties with $1,962

deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding J. F. Presley Oil Company, Docket No. 2022-0623-WQ-E on July 31, 2024 assessing $17,500 in administrative penalties with $3,500 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Troy, Docket No. 2022-0708-MWD-E on July 31, 2024 assessing $13,500 in administrative penalties with $2,700 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RIGHT-WAY SAND CO., Docket No. 2022-0938-WQ-E on July 31, 2024 assessing $13,375 in administrative penalties with $2,675 deferred. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DUKO OIL COMPANY, INC., Docket No. 2022-0957-PST-E on July 31, 2024 assessing $22,000 in administrative penalties with $4,400 deferred. Information concerning any aspect of this order may be obtained by contacting Lauren Little, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Manuel Rogelio Estrada dba Estrada's Muffler and Welding, Docket No. 2022-0971-MSW-E on July 31, 2024 assessing $2,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jennifer Peltier, Staff Attorney at (512) 239 3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711 3087.

An agreed order was adopted regarding Bell-Milam-Falls Water Supply Corporation, Docket No. 2022-1618-PWS-E on July 31, 2024 assessing $8,819 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 114TH Mobile Home Park, LLC, Docket No. 2022-1644-PWS-E on July 31, 2024 assessing $8,251 in administrative penalties with $1,650 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Vopak Logistics Services USA Inc., Docket No. 2023-0572-IWD-E on July 31, 2024 assessing $10,500 in administrative penalties with $2,100 deferred. Information concerning any aspect of this order may be obtained by contacting Mistie Gonzales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Energy Transfer GC NGL Fractionators LLC, Docket No. 2023-0632-IWD-E on July 31, 2024 assessing $10,912 in administrative penalties with $2,182 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2023-0696-AIR-E on July 31, 2024 assessing $95,528 in administrative penalties with $19,105 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LOVE'S TRAVEL STOPS & COUNTRY STORES, INC. and SUNNYLAND DEVELOPMENT, INC., Docket No. 2023-0701-MWD-E on July 31, 2024 assessing $12,937 in administrative penalties with $2,587 deferred. Information concerning any aspect of this order may be obtained by contacting Mistie Gonzales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding T RYAN INC, Docket No. 2023-0730-WQ-E on July 31, 2024 assessing $20,000 in administrative penalties with $4,000 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Delaware Basin Midstream LLC, Docket No. 2023-0775-AIR-E on July 31, 2024 assessing $18,450 in administrative penalties with $3,690 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Topsoe, Inc., Docket No. 2023-0797-AIR-E on July 31, 2024 assessing $8,913 in administrative penalties with $1,782 deferred. Information concerning any aspect of this order may be obtained by contacting Michael Wilkins, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ETC Texas Pipeline, Ltd., Docket No. 2023-0812-AIR-E on July 31, 2024 assessing $8,250 in administrative penalties with $1,650 deferred. Information concerning any aspect of this order may be obtained by contacting Desmond Martin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Highland Lakes Midlothian I Llc, Docket No. 2023-0844-MWD on July 31, 2024 assessing $0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Celia Castro, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Evonik Active Oxygens, LLC, Docket No. 2023-0865-AIR-E on July 31, 2024 assessing $25,200 in administrative penalties with $5,040 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Operating Company, LP, Docket No. 2023-0906-AIR-E on July 31, 2024 assessing $13,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement

Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Raymundo Gonzalez, Docket No. 2023-1021-WQ-E on July 31, 2024 assessing $10,000 in administrative penalties with $2,000 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Capital Star Oil and Gas, Inc., Docket No. 2023-1085-AIR-E on July 31, 2024 assessing $41,650 in administrative penalties with $8,330 deferred. Information concerning any aspect of this order may be obtained by contacting Desmond Martin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shumard Corporation, Docket No. 2023-1096-WQ-E on July 31, 2024 assessing $18,688 in administrative penalties with $3,737 deferred. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding J & S Materials, LLC, Docket No. 2023-1266-MLM-E on July 31, 2024 assessing $25,062 in administrative penalties with $5,012 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TBC - The Boring Company, Docket No. 2023-1489-WQ-E on July 31, 2024 assessing $11,876 in administrative penalties with $2,375 deferred. Information concerning any aspect of this order may be obtained by contacting Arti Patel, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cypress Hill Municipal Utility District No. 1, Docket No. 2023-1504-MWD-E on July 31, 2024 assessing $8,438 in administrative penalties with $1,687 deferred. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tina Lee Tilles, Docket No. 2023-1528-MWD-E on July 31, 2024 assessing $1,050 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Norbord Texas (Nacogdoches) Inc., Docket No. 2023-1627-AIR-E on July 31, 2024 assessing $77,025 in administrative penalties with $15,405 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Martin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 360 Comal Storage, LLC, Docket No. 2023-1744-EAQ-E on July 31, 2024 assessing $27,000 in administrative penalties with $5,400 deferred. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JOE FUNK CONSTRUCTION, INC., Docket No. 2024-0148-WQ-E on July 31, 2024 assessing $11,250 in administrative penalties with $2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Denena, Lee, Docket No. 2024-0426-WR-E on July 31, 2024 assessing $11,925 in administrative penalties with $2,385 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ameresco Dallas LLC, Docket No. 2024-0455-AIR-E on July 31, 2024 assessing $148,500 in administrative penalties with $29,700 deferred. Information concerning any aspect of this order may be obtained by contacting Trenton White, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lund Farm Municipal Utility District, Docket No. 2024-0672-DIS on July 31, 2024 assessing $0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harrison Malley, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bayou Side Partners Santa Fe Ltd, Docket No. 2024-0673-MWD on July 31, 2024 assessing $0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Aubrey Pawelka, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202403541
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 31, 2024

Notice of a Proposed Renewal with Amendment of General Permit TXG 500000 for Quarries in Certain Water Quality Protection Areas

The Texas Commission on Environmental Quality (TCEQ) is proposing to renew and amend Texas Pollutant Discharge Elimination System General Permit TXG500000. This general permit authorizes the discharge of process wastewater, mine dewatering, stormwater associated with industrial activity, construction stormwater, and certain non-stormwater discharges from quarries located in certain water quality protection areas in the state. The draft general permit applies to quarries located greater than one mile from a water body within the water quality protection areas in the John Graves Scenic Riverway or Coke Stevenson Scenic Riverway. The John Graves Scenic Riverway is that portion of the Brazos River Basin and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County and extending to the county line between Parker and Hood Counties. The Coke Stevenson Scenic Riverway is that portion of the South Llano River in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction.

This general permit has been developed to comply with Texas Water Code (TWC), Chapter 26, Subchapter M and 30 Texas Adminis-

trative Code (TAC) Chapter 311, Subchapter H. Specifically, TWC, §26.553(b) requires quarries located greater than one mile from a water body in the water quality protection areas to obtain a general permit authorization. General permits are authorized by TWC, §26.040.

DRAFT GENERAL PERMIT. The executive director has prepared a draft general permit renewal with amendments of an existing general permit that authorizes the discharge of process wastewater, mine dewatering, stormwater associated with industrial activity, construction, stormwater, and certain non-stormwater discharges from quarries located greater than one mile from a water body within certain water quality protection areas. No significant degradation of high-quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require regulated entities to submit a Notice of Intent to obtain authorization under the general permit.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to General Land Office regulations and has determined that the action is consistent with applicable CMP goals and policies.

On the date that this notice is published, a copy of the draft general permit and fact sheet will be available for a minimum of 30 days for viewing and copying at TCEQ's Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's Dallas/Fort Worth Region 4 and San Angelo Region 8 offices and on the TCEQ website at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html*.

PUBLIC COMMENT AND PUBLIC MEETING. You may submit public comments on this proposed general permit in writing or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comments or to ask questions about the proposed general permit. Generally, TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a state legislator. A public meeting is not a contested case hearing.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* within 30 days from the date this notice is published.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.* El aviso de idioma alternativo en español está disponible en *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. TCEQ will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response to the comments. TCEQ will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin office. A notice of the commissioners' action on the proposed general permit and information on how to access the response to comments will be mailed to each person who submitted a comment. Also, a notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the TCEQ Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information about TCEQ can be found at our website at: *https://www.tceq.texas.gov.*

Further information may also be obtained by calling TCEQ's Stormwater Team in the Water Quality Division, at (512) 239-4671.

Si desea información en español, puede llamar (800) 687-4040.

TRD-202403527
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 30, 2024

Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 10, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 10, 2024**. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: BELLVILLE SHELL, INC. dba Bellville Shell Food Court; DOCKET NUMBER: 2021-0546-PST-E; TCEQ ID NUMBER: RN102780095; LOCATION: 800 West Main Street, Bellville, Austin County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES

VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,500; STAFF ATTORNEY: Barrett Hollingsworth, Litigation, MC 175, (512) 239-0657; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202403493
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: July 30, 2024

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 10, 2024**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 10, 2024**. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Brighton Manor Apartments, L.P.; DOCKET NUMBER: 2022-1192-UTL-E; TCEQ ID NUMBER: RN102698743; LOCATION: 195 Peach Street, Blanco, Blanco County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $750; STAFF ATTORNEY: Misty James, Litigation, MC 175, (512) 239-0631; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: CANYON RIDGE INVESTMENT COMPANY; DOCKET NUMBER: 2022-1309-UTL-E; TCEQ ID NUMBER: RN101262483; LOCATION: adjacent to 1001 Tempe Street near Amarillo, Randall County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service; RULES VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the Utility's ability to provide emergency operations; PENALTY: $560; STAFF ATTORNEY: Misty James, Litigation, MC 175, (512) 239-0631; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Los Botines Water Supply Corporation; DOCKET NUMBER: 2023-0291-UTL-E; TCEQ ID NUMBER: RN106716442; LOCATION: 469 Well Lane, Laredo, Webb County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the Utility's ability to provide emergency operations; PENALTY: $825; STAFF ATTORNEY: Misty James, Litigation, MC 175, (512) 239-0631; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: Troy G. Waller dba Rockwell Acres Water System; DOCKET NUMBER: 2022-0456-PWS-E; TCEQ ID NUMBER: RN101451565; LOCATION: 16010 Hammon Street, Amarillo, Randall County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of nitrate/nitrite and volatile organic compound contaminants sampling to the executive director (ED); 30 TAC §290.108(e), by failing to provide the results of radionuclides sampling to the ED; 30 TAC §290.106(e), by failing to provide the results of metals sampling to the ED; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failed to mail a copy of the consumer notification of tap results to the ED along with a certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 91910004; PENALTY: $7,200; STAFF ATTORNEY: Misty James, Litigation, MC 175, (512) 239-0631; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: Troy G. Waller dba Rockwell Acres Water System; DOCKET NUMBER: 2022-1330-UTL-E; TCEQ ID NUMBER: RN101451565; LOCATION: 16010 Hammon Street near Amarillo, Randall County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the Utility's ability to provide emergency operations; PENALTY: $610; STAFF ATTORNEY: Misty James, Litigation, MC 175, (512) 239-0631; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-202403494
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: July 30, 2024

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Texas Ethics Commission

List of Delinquent Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Dave Guilianelli at (512) 463-5800.

Deadline: Runoff Report due May 20, 2024 for Candidates

#00087853 - Samuel B. Silverman, P.O. Box 149, Amarillo, Texas 79105

#00065781- Shawn Nicole Thierry, 3139 W. Holcombe #A346, Houston, Texas 77025

Deadline: 8 day pre-convention Report due May 15, 2024 for Candidates

#00082192 - Matthew L. Mackowiak, 6009 Bon Terra Drive, Austin, Texas 78731

#00087853 - Weston Martinez, 14546 Brook Hollow, Suite 312G, San Antonio, Texas 78232

TRD-202403368
J.R. Johnson
Executive Director
Texas Ethics Commission
Filed: July 25, 2024

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List of Delinquent Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Dave Guilianelli at (512) 463-5800.

Deadline: Semiannual report due January 15, 2021 for Candidates

#00084201 - Jennifer V. Ramos, 5910 Wales St., San Antonio, Texas 78223

Deadline: Semiannaul report due July 15, 2022 for Candidates

#00061839 - Alexandra Smoots-Thomas, 4210 Worrell Dr., Houston, Texas 77045

Deadline: 30 day pre-election report due October 11, 2022 for Candidates

#00086404 - Ken Morrow, P.O. Box 571, Gonzales, Texas 78629

Deadline: Semiannual report due July 17, 2023 for Candidates

#00039699 - Shannon K. McClendon, 1302 Overland Stage Rd., Drippings Springs, Texas 78620

Deadline: 30 day pre-election report due October 10, 2023 for Committees

#00052939 - Justin R. Levvis, 3010 Interstate 30, Mesquite, Texas 75150

Deadline: 8 day pre-election report due October 30, 2023 for Committees

#00052939 - Justin R. Levvis, 3010 Interstate 30, Mesquite, Texas 75150

Deadline: Lobby Activities report due December 11, 2023

#00081235 - Christine Mojezati, 401 W. 15th St., Suite. 100, Austin, Texas 78701

Deadline: Personal Financial Statement due December 20, 2023

#00088497 - Fabian A. Heaney, 8439 Cooper Rd., Wichita Falls, Texas 7630

Deadline: Lobby Activities report due January 10, 2024

#00017380 - David Reynolds, 4309 Avenue G, Austin, Texas 78751

#00081330 - Juan Antonio Flores, 907 Billy Mitchell Blvd., San Antonio, Texas 78226

#00081589 - Adrian Shelley, 309 E. 11th St., Suite. 2, Austin, Texas 78701

Deadline: Semiannual report due January 16, 2024 for Committees

#00084742 - Donald E. Seeger, Jr., 395 Harmony Hills St. Apt. 6306, Spring Branch, Texas 78070

#00082064 - Wendy Banul, 411 W. Lookout Dr., Richardson, Texas 75080

#00081129 - Matthew Mackowiak, 807 Brazos St., Ste. 408, Austin, Texas 78701

#00086563 - Melanie Saunders, 8421 Raylin Drive, Houston, Texas 77055

#00051022 - Patrick L. Durio, 807 Jaquet Dr, Bellaire, Texas 77401

#00018745 - Max A. Miller, Jr., 7817 Calhoun Rd, Houston, Texas 77033

#00053822 - Jonathan A. Lawson III, 1506 Municipal Ave, Plano, Texas 75074

#00086828 - Martha A. Roberts, 12100 S. Hwy 6 #9205, Sugar Land, Texas 77498

Deadline: Semiannual report due January 16, 2024 for Candidates

#00088381 - Praveen D. Merugumala, 2001 Scott St., Apt. 13, La Marque, Texas 77568

#00066213 - Cathleen M. Stryker, P.O. Box 782063, San Antonio, Texas 78278

#00069780 - Sandra Crenshaw, P.O. Box 224123, Dallas, Texas 75222

#00086412 - Rodrigo Carreon, 1122 Avenue C, Fresno, Texas 77545

#00021133 - Harold V. Dutton, Jr., 4001 Jewett, Houston, Texas 77026

#00054113 - Stephen H. Russell, P.O. Box 148, Montalba, Texas 75853

#00080137 - Carlos Antonio Raymond, 12790 FM 1560 North, P.O. Box 1478, San Antonio, Texas 78254

#00084309 - Tameika J. Carter, 15 Cinque Terre Dr., Missouri City, Texas 77459

Deadline: 30 day pre-election report due February 5, 2024 for Candidates

#00088182 - Danyahel M. Norris, 11011 Dahlia Vale Walk, Houston, Texas 77044

#00088408 - Ellen Loveless, 7602 Ridgebluff Ln., Sachse, Texas 75048

#00051948 - Glynis Adams McGinty, 7100 Big Bear Dr., Arlington, Texas 76016

Deadline: Personal Financial Statement due February 12, 2024

#00086201 - Michael Travis Stevens, 7007 Anacua Crk., San Antonio, Texas 78253

#00086412 - Rodrigo Carreon, 1122 Avenue C, Fresno, Texas 77545

Deadline: 8 day pre-election report due February 26, 2024 for Candidates

#00088127 - Sharonda Joy Thomas, 777 Preston Street, Suite 9N, Houston, Texas 77002

#00087731 - Omar Carmona, 701 Magoffin Ave., El Paso, Texas 79901

Deadline: Lobby Activities report due March 11, 2024

#00087168 - Kristen Lenau, 2300 W Commerce St., San Antonio, Texas 78702

TRD-202403372
J.R. Johnson
Executive Director
Texas Ethics Commission
Filed: July 26, 2024

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General Land Office

Coastal Boundary Survey

Surveying Services

Project: N. Bank of Old River, J. Harrell, A-330, W. Carter, A1709

Project No: Houston Port Authority Nav District (State Mineral Interest only)

Project Manager: Amy Nunez, Dianna Ramirez, Coastal Field Operations

Surveyor: Jim M. Naismith, Licensed State Land Surveyor

Description: Coastal Boundary Survey dated January 25, 2024, was conducted along a portion of the northerly bank of Old River situated in the J. Harrell Survey, Abstract 330, the W. Carter Survey, Abstract 1709, and Submerged Land Tract A in Harris County, Texas, for State of Texas mineral interest only. Centroid coordinates 29.785100° N, 95.097868° W, WGS84. A copy of the survey has been filed in Document No. RP-2024-234339, on June 27, 2024, Real Property Records, Harris County Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Date: July 24, 2024

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Jennifer G. Jones, Chief Clerk and Deputy Land Commissioner

Date: July 29, 2024

Filed as: Harris County, NRC Article 33.136 Sketch No. 21

Tex. Nat. Res. Code §33.136

TRD-202403468
Jennifer Jones
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: July 29, 2024

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Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 22, 2024 to July 26, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, August 2, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday September 1, 2024.

Federal License and Permit Activities:

Applicant: Port of Houston Authority

Location: The project site is located within Buffalo Bayou (Houston Ship Channel), off existing Manchester Wharf 3, in Harris County, Texas.

Latitude and Longitude: 29.7256, -95.2615

Project Description: The applicant proposes to amend the currently authorized Corps permit subject number SWG-2005-01296 by including an additional 100 linear feet of mechanical dredging off the existing Manchester Wharf 3. An estimated 5,000 cubic yards of material will be dredged and placed in existing disposal sites. Subsequent maintenance activities will be performed via mechanical, hydraulic, or silt blade dredging of the entire footprint of the original authorizations review area in addition to this newly proposed 100 linear feet. No mitigation has been proposed for this amendment.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2005-01296. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 24-1304-F1

Applicant: CenterPoint Energy Houston Electric, LLC

Location: The project site is located in the Houston Ship Channel (San Jacinto River), approximately 250 feet north-northeast of Alexander Island, in La Porte, Harris County, Texas.

Latitude and Longitude: 29.7280781, -95.0295147

Project Description: The applicant proposes to permanently discharge a total of 18,085 cubic yards (CY) of fill material within 1.02 acres of the Houston Ship Channel to provide continued serviceability to the existing, previously authorized protective cellular structures associated with an existing transmission tower, to replace two failed protective cellular structures (Cell 2 and Cell 3), and to provide continued protection to the existing transmission tower from future vessel collisions.

Phase 1 of the project was conducted September 2023. The applicant requests to retain the discharge of 1,790 CY of granular fill material, installation of 13,100-square-foot geotextile filter fabric cover, and discharge of 2,600 CY of graded rip rap scour protection within 0.34-acre of the Houston Ship Channel surrounding cellular structures 4, 5, and 6. The scour protection terminates at the same elevation as the original mudline at the point when the structures were permitted in 2014.

Phase 2 includes the construction of the protective island replacing Cells 2 and 3 (failed cells) and placement of fill material surrounding the remaining Cell 1. This phase consists of the discharge of 6,625 CY of higher quality granular fill bedding stone and a cap of 7,070 CY of riprap armor stone within 0.68-acre of the Houston Ship Channel. Access to the project site will be from the Houston Ship Channel with working vessels coming in from the east and/or west. There will be no land-based workspaces.

No compensatory mitigation is proposed for this project since it is not anticipated to have an adverse impact on the aquatic environment and is part of a much larger industrial waterbody with high levels of turbidity and degraded environmental value.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2000-02822. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1305-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202403469
Jennifer Jones
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: July 29, 2024

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Texas Health and Human Services Commission

Notice of Stakeholder Engagement Meetings for Medicaid and Non-Medicaid Payment Rates

MEETINGS.

The Texas Health and Human Services Commission (HHSC) will conduct stakeholder engagement meetings on August 15, 2024, to receive comments on Medicaid and non-Medicaid payment rate topics that may potentially be addressed at the upcoming August 2024 and November 2024 rate hearings. Commentary will be collected solely on the topics listed in this notice. Proposed rates will not be published at this time. These meetings will be conducted online only.

The meetings will be held online only at the following times according to topic areas:

Acute Care and Hospital Services: August 15, 2024, 10:00 a.m. - 11:30 a.m.

To attend online: The meetings will be held online via GoToWebinar. Visit the following GoToWebinar link to register to attend the online meeting. After registering, you will receive a confirmation email containing information about joining the webinar.

https://attendee.gotowebinar.com/register/6503490772631421788

Webinar ID: 227-737-515

HHSC will record the meetings. The recording will be archived and can be accessed on-demand at: https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

HHSC may limit speakers' time to ensure all attendees wishing to present public comment are afforded an opportunity to do so. HHSC reserves the right to end an engagement meeting if no participants have registered to present public comments within the first 30 minutes of the meeting.

TOPICS.

Below is a list of topics that HHSC will collect commentary for during the stakeholder engagement meetings. These topics may potentially be presented at the subsequent rate hearings in August 2024 and November 2024. The final list of topics to be presented at the August 2024 and November 2024 rate hearing is at the discretion of HHSC.

Acute Care Services - Calendar Fee Review: (November 2024)

- Anesthesia;
- Birthing Centers;
- Clinical Lab;
- Dental Services;
- Diagnostic Radiology;
- Enteral Supplies ("B" codes);
- Evaluation and Management;
- General and Integumentary System Surgery;
- Medical Nutrition Therapy;
- Nervous System Surgery;
- Ophthalmological Services;
- Orthotic Procedures and Devices;
- Physician Administered Drugs - NDCX;
- Physician Administered Drugs - Non-Oncology;
- Physician Administered Drugs - Oncology;
- Physician Administered Drugs - Vaccines & Toxoids;
- Respiratory Therapists.

Acute Care Services - Medical Policy Review: (November 2024)

- Certified Family Partners;
- Functional Family Therapy (FFT);
- Sleep Studies (WatchPat);
- Dental Services;
- FQHC/RHC Collaborative Care Model (CoCM)- G0512;
- Health and Behavior Assessment and Intervention (HBAI);
- Solid Organ Transplants.

Acute Care Services - HCPCS: (November 2024)

- Quarterly Healthcare Common Procedure Coding System (HCPCS) Updates:

Q1 HCPCS Non-Drugs;

Q1 HCPCS Drugs;

Q2 HCPCS Drugs.

Hospital Services - Calendar Fee Review: (August 2024)

- Diagnosis Related Group (DRG)

WRITTEN COMMENTS.

Written comments regarding the proposed topics may be submitted in lieu of, or in addition to, oral comments until 5:00 p.m. the day following the meetings, August 16, 2024. Written comments may be sent by U.S. mail, overnight mail, fax, or email.

U.S. Mail:

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail or special delivery mail:

Texas Health and Human Services Commission

Attn: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 Guadalupe St

Austin, Texas 78751

Fax: Attention: Provider Finance at (512) 730-7475

Email: ProviderFinanceDept@hhs.texas.gov

PREFERRED COMMUNICATION.

Email or telephone communication is preferred.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202403492
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 30, 2024

Public Notice: CHIP State Plan Amendment Transmittal Number 24-0015

The Texas Health and Human Services Commission (HHSC) announces its intent to submit the following amendment: Transmittal number 24-0015 to amend the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act.

The purpose of this amendment is to demonstrate compliance with Section 11405(b)(1) of the Inflation Reduction Act and the requirement to cover adult vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) without cost sharing. This proposed amendment also demonstrates compliance with existing child vaccine regulations in 42 Code of Federal Regulations §§ 457.410(b)(2) and 457.520(b)(4), which require states to provide CHIP coverage and payment of age-appropriate vaccines recommended by ACIP and their administration without cost sharing. The proposed amendment is effective October 1, 2023.

The proposed amendment is estimated to have no fiscal impact. Texas CHIP is already in compliance with these requirements. Texas CHIP covers vaccines recommended by the American Academy of Pediatrics periodicity schedule, which follows ACIP recommendations. Additionally, Texas CHIP already prohibits cost sharing for preventive services, including immunizations.

To obtain copies of or information relating to the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. The Access and Eligibility Services for local benefit offices will post this notice for 30 days and will have copies of the amendment available for review.

TRD-202403524
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 30, 2024

Public Notice of Updates to the APR-DRG Grouper 41

Hearing: The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 19, 2024, at 9:00 a.m., to receive public comments on proposed updates for the All Patient Refined-Diagnosis Related Group (APR-DRG) version update for Hospital Inpatient services, specifically DRG Grouper 41. These updates include Statistical Data Relative Weight (RW), Mean Length of Stay (MLOS), Day Threshold, and universal mean used to reimburse Medicaid Inpatient Hospital Services.

This hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

https://attendee.gotowebinar.com/register/1962670477661430878

After registering, you will receive a confirmation email containing information about joining the webinar. Instructions for dialing-in by phone will be provided after you register.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125C, 125E, 125W in the John H. Winters Building located at 701 W 51st St, Austin, Texas, or they may access a live stream of the meeting at https://www.hhs.texas.gov/about/live-archived-meetings. For the live stream, select the "Winters Live" tab. A recording of the hearing will be archived and accessible on demand at the same website under the "Archived" tab. The hearing will be held in compliance with Texas Human Resources Code section 32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Any updates to the hearing details will be posted on the HHSC website at https://www.hhs.texas.gov/about/meetings-events.

Proposal. The effective date of the proposed updates to the topics presented during the rate hearing will be as follows:

Effective October 1, 2024

-Annual review of APR-DRG Grouper Relative Weight Statistical Table

The following Title 1 Texas Administrative Code (TAC) rules guide the recommend rates for this topic:

-Section 355.8052 - Reimbursement Methodology for Inpatient Hospital Reimbursement

Rate Hearing Packet. A briefing packet describing the proposed updates will be made available at https://pfd.hhs.texas.gov/rate-packets on or after Aug 9, 2024. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFD_Hospitals@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed updates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFD_Hospitals@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751.

Preferred Communication. For quickest response please use e-mail or phone if possible, for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202403491
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 30, 2024

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Illinois EMCASCO Insurance Company, a foreign fire and/or casualty company. The home office is in Des Moines, Iowa.

Application for Electric Insurance Company, a foreign fire and/or casualty company, to change its name to RiverStone International Insurance, Inc. The home office is in Beverly, Massachusetts.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202403533
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: July 31, 2024

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2592 "GAME OF THRONES™"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2592 is "GAME OF THRONES™". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2592 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2592.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, 10X SYMBOL, $5, $10, $20, $25, $50, $100, $200, $500, $1,000, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2592 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$5	FIV$
$10	TEN$
$20	TWY$
$25	TWFV$
$50	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2592), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2592-0000001-001.

H. Pack - A Pack of "GAME OF THRONES™" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show

the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "GAME OF THRONES™" Scratch Ticket Game No. 2592.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "GAME OF THRONES™" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. The player scratches the entire play area to reveal 5 WINNING NUMBERS Play Symbols and 20 YOUR NUMBERS Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

D. KEY NUMBER MATCH: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "GAME OF THRONES™" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GAME OF THRONES™" Scratch Ticket Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GAME OF THRONES™" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the"GAME OF THRONES™" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "GAME OF THRONES™" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "GAME OF THRONES™" Scratch Ticket may be entered into one (1) of four (4) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in the Scratch Ticket Game No. 2592. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2592 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	708,000	10.00
$10.00	566,400	12.50
$20.00	165,200	42.86
$25.00	94,400	75.00
$50.00	94,400	75.00
$100	22,479	314.96
$200	2,950	2,400.00
$500	885	8,000.00
$1,000	125	56,640.00
$5,000	15	472,000.00
$100,000	4	1,770,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.28. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2592 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2592, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202403539

Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 31, 2024

Scratch Ticket Game Number 2607 "HOLIDAY GOLD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2607 is "HOLIDAY GOLD". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2607 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2607.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, $10.00, $20.00, $30.00, $50.00, $100, $200, $500, $1,000, $5,000, $10,000 and $250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2607 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI

2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$10.00	TEN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$10,000	10TH
$250,000	250TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2607), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2607-0000001-001.

H. Pack - A Pack of the "HOLIDAY GOLD" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HOLIDAY GOLD" Scratch Ticket Game No. 2607.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "HOLIDAY GOLD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-nine (59) Play Symbols. HOLIDAY GOLD PLAY INSTRUCTIONS: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. BONUS PLAY INSTRUCTIONS: If the player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-nine (59) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-nine (59) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-nine (59) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-nine (59) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to twenty-seven (27) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: Each Ticket will have five (5) different WINNING NUMBERS Play Symbols.

D. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

E. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than four (4) times on a Ticket.

F. KEY NUMBER MATCH: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

G. KEY NUMBER MATCH: The "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear in the WINNING NUMBERS or BONUS Play Symbol spots.

H. KEY NUMBER MATCH: The "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

K. BONUS: Matching Prize Symbols will only appear in a winning BONUS play area as dictated by the prize structure.

L. BONUS: A Ticket will not have matching non-winning Prize Symbols across the two (2) BONUS play areas.

M. BONUS: Non-winning Prize Symbols will not be the same as winning Prize Symbols across the two (2) BONUS play areas.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY GOLD" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOLIDAY GOLD" Scratch Ticket Game prize of $1,000, $5,000, $10,000 or $250,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required.

In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY GOLD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "HOLIDAY GOLD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "HOLIDAY GOLD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2607. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2607 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	720,000	8.33
$20.00	360,000	16.67
$30.00	210,000	28.57
$50.00	210,000	28.57
$100	55,000	109.09
$200	13,250	452.83
$500	2,100	2,857.14
$1,000	300	20,000.00
$5,000	12	500,000.00
$10,000	6	1,000,000.00
$250,000	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2607 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2607, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202403430
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 29, 2024

Scratch Ticket Game Number 2609 "$100, $200, $500 or $1,000!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2609 is "$100, $200, $500 or $1,000!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2609 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2609.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02,

03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, MONEY BAG SYMBOL, $100, $200, $500 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2609 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET

29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET

59	FFNI
60	SXTY
61	SXON
62	SXTO
63	SXTH
64	SXFR
65	SXFV
66	SXSX
67	SXSV
68	SXET
69	SXNI
70	SVTY
71	SVON
72	SVTO
73	SVTH
74	SVFR
75	SVFV
76	SVSX
77	SVSV
78	SVET
79	SVNI
MONEY BAG SYMBOL	WIN$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2609), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start

with 001 and end with 025 within each Pack. The format will be: 2609-0000001-001.

H. Pack - A Pack of the "$100, $200, $500 or $1,000!" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$100, $200, $500 or $1,000!" Scratch Ticket Game No. 2609.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$100, $200, $500 or $1,000!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-eight (68) Play Symbols. The player will scratch the entire play area to reveal 8 WINNING NUMBERS Play Symbols and 30 YOUR NUMBERS Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "MONEY BAG" Play Symbol, the players wins the prize for that symbol instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-eight (68) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-eight (68) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty-eight (68) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-eight (68) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to seven (7) times in accordance with the prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols

C. Each Ticket will have eight (8) different WINNING NUMBERS Play Symbols.

D. Non-winning YOUR NUMBERS Play Symbols will all be different.

E. The "MONEY BAG" (WIN$) Play Symbol will never appear in the WINNING NUMBERS Play Symbol spots.

F. The "MONEY BAG" (WIN$) Play Symbol will never appear more than two (2) times on winning Tickets.

G. The $100 Prize Symbol will only appear in the $100 YOUR NUMBERS Play Symbol spots.

H. The $200 Prize Symbol will only appear in the $200 YOUR NUMBERS Play Symbol spots.

I. The $500 Prize Symbol will only appear in the $500 YOUR NUMBERS Play Symbol spots.

J. The $1,000 Prize Symbol will only appear in the $1,000 YOUR NUMBERS Play Symbol spots.

2.3 Procedure for Claiming Prizes.

A. To claim a "$100, $200, $500 or $1,000!" Scratch Ticket Game prize of $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$100, $200, $500 or $1,000!" Scratch Ticket Game prize of $1,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$100, $200, $500 or $1,000!" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$100, $200, $500 or $1,000!" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$100, $200, $500 or $1,000!" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2609. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2609 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$100	643,200	12.50
$200	160,800	50.00
$500	38,592	208.33
$1,000	4,824	1,666.67

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 9.49. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2609 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2609, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202403500
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 30, 2024

Scratch Ticket Game Number 2610 "ULTIMATE MILLIONS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2610 is "ULTIMATE MILLIONS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2610 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2610.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, WIN SYMBOL, MONEY BAG SYMBOL, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, $75.00, $100, $150, $250, $500, $2,000, $25,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2610 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO

33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
61	SXON
62	SXTO
63	SXTH

64	SXFR
65	SXFV
66	SXSX
67	SXSV
68	SXET
69	SXNI
70	SVTY
71	SVON
72	SVTO
73	SVTH
74	SVFR
75	SVFV
76	SVSX
77	SVSV
78	SVET
79	SVNI
80	ETTY
WIN SYMBOL	WIN$
MONEY BAG SYMBOL	WIN$250
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$75.00	SVFV$
$100	ONHN
$150	ONFF
$250	TOFF
$500	FVHN
$2,000	TOTH
$25,000	25TH
$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2610), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2610-0000001-001.

H. Pack - A Pack of the "ULTIMATE MILLIONS" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "ULTIMATE MILLIONS" Scratch Ticket Game No. 2610.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "ULTIMATE MILLIONS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-two (82) Play Symbols. BONUS PLAY INSTRUCTIONS: If a player reveals 2 matching prize amounts in the same BONUS play area, the player wins that amount. ULTIMATE MILLIONS PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "WIN" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "MONEY BAG" Play Symbol, the player wins $250 instantly. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty-two (82) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-two (82) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty-two (82) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-two (82) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to thirty-five (35) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: Each Ticket will have six (6) different WINNING NUMBERS Play Symbols.

D. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

E. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than seven (7) times.

F. KEY NUMBER MATCH: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

G. KEY NUMBER MATCH: The "WIN" (WIN$), "MONEY BAG" (WIN$250), "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear in the WINNING NUMBERS or BONUS Play Symbol spots.

H. KEY NUMBER MATCH: The "MONEY BAG" (WIN$250), "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: The "MONEY BAG" (WIN$250) Play Symbol will only appear with the $250 Prize Symbol.

J. KEY NUMBER MATCH: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

K. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 75 and $75).

L. BONUS: Matching Prize Symbols will only appear in a winning BONUS play area as dictated by the prize structure.

M. BONUS: A Ticket will not have matching non-winning Prize Symbols across the three (3) BONUS play areas.

N. BONUS: The BONUS play areas will only win when there is also a win in the ULTIMATE MILLIONS play area, as per the prize structure.

O. BONUS: Non-winning "BONUS" Prize Symbols will never be the same as the winning "BONUS" Prize Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "ULTIMATE MILLIONS" Scratch Ticket Game prize of $75.00, $100, $150, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $75.00, $100, $150, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ULTIMATE MILLIONS" Scratch Ticket Game prize of $2,000, $25,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ULTIMATE MILLIONS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "ULTIMATE MILLIONS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "ULTIMATE MILLIONS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 4,560,000 Scratch Tickets in Scratch Ticket Game No. 2610. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2610 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$75.00	342,000	13.33
$100	570,000	8.00
$150	171,000	26.67
$250	114,000	40.00
$500	72,960	62.50
$2,000	228	20,000.00
$25,000	10	456,000.00
$1,000,000	4	1,140,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.59. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2610 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2610, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202403528

Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 31, 2024

Scratch Ticket Game Number 2612 "CASH PAYOUT"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2612 is "CASH PAYOUT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2612 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2612.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, MONEY BAG SYMBOL, 5X SYMBOL, 10X SYMBOL, $10.00, $20.00, $30.00, $50.00, $100, $500, $1,000, $10,000 and $250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2612 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET

59	FFNI
60	SXTY
61	SXON
62	SXTO
63	SXTH
64	SXFR
65	SXFV
66	SXSX
67	SXSV
68	SXET
69	SXNI
MONEY BAG SYMBOL	WIN$
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$10.00	TEN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$10,000	10TH
$250,000	250TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2612), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2612-0000001-001.

H. Pack - A Pack of the "CASH PAYOUT" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable

rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "CASH PAYOUT" Scratch Ticket Game No. 2612.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "CASH PAYOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-six (56) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-six (56) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-six (56) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-six (56) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-six (56) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to twenty-five (25) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. KEY NUMBER MATCH: Each Ticket will have six (6) different WINNING NUMBERS Play Symbols.

E. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

F. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than four (4) times.

G. KEY NUMBER MATCH: The "MONEY BAG" (WIN$), "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. KEY NUMBER MATCH: The "5X" (WINX5) and "10X" (WINX10) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. KEY NUMBER MATCH: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH PAYOUT" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH PAYOUT" Scratch Ticket Game prize of $1,000, $10,000 or $250,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH PAYOUT" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "CASH PAYOUT" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "CASH PAYOUT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2612. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2612 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	884,400	9.09
$20.00	562,800	14.29
$30.00	321,600	25.00
$50.00	160,800	50.00
$100	130,650	61.54
$500	7,571	1,061.95
$1,000	268	30,000.00
$10,000	12	670,000.00
$250,000	5	1,608,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.89. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2612 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2612, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202403432
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 29, 2024

Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

Davis Partners, LTD has applied to the Texas Parks and Wildlife Department (TPWD) for an Individual Permit pursuant to Texas Parks and Wildlife Code, Chapter 86 to remove or disturb 9,900 cubic yards of sedimentary material within the Sabinal River in Bandera County. The purpose is to remove accumulated sediment/gravel adjacent to and upstream of an existing low water crossing. The project location (29.689339, -99.550419) is approximately 1.52 river miles south of the upstream Thompson Road (County Road 610) crossing and approximately 0.14 mile north of the downstream Panther Hill Road (County Road 611) crossing. This notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11 a.m. on Friday, September 6, 2024, at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Sue Reilly at (512) 389-8622 or at sue.reilly@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register*. A written request for a contested case hearing from

an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: TPWD Sand and Gravel Program by mail: Attn: Sue Reilly, Texas Parks and Wildlife Department, Inland Fisheries Division, 4200 Smith School Road, Austin, Texas 78744; or via e-mail: sand.gravel@tpwd.texas.gov.

TRD-202403488
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: July 30, 2024

Texas State Soil and Water Conservation Board

Request for Proposals for the Fiscal Year 2025 Clean Water Act §319(h) Nonpoint Source Grant Program

PROPOSALS DUE: September 20, 2024

INTRODUCTION

This request for proposals (RFP) provides instructions and guidance for applicants seeking funding from the Texas State Soil and Water Conservation Board (TSSWCB) under the Clean Water Act (CWA) §319(h) Nonpoint Source (NPS) Grant Program. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the TSSWCB under the authorization of CWA §319(h). TSSWCB then administers/awards these federal funds as grants to cooperating entities for activities that address the goals, objectives, and priorities stated in the *Texas NPS Management Program.* The *Texas NPS Management Program* is the State's comprehensive strategy to protect and restore water quality in waterbodies impacted by NPS water pollution. This document can be accessed online at https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program.

The types of agricultural and silvicultural NPS pollution prevention and abatement activities that can be funded with §319(h) grants include the following: (1) implementation of nine-element watershed protection plans (WPPs) and the agricultural and silvicultural NPS portion of Total Maximum Daily Load (TMDL) Implementation Plans (I-Plans); (2) surface water quality monitoring, data analysis and modeling, demonstration of innovative best management practices (BMPs); (3) technical assistance to landowners for conservation planning; (4) public outreach/education, development of nine-element WPPs including the formation and facilitation of stakeholder groups; and (5) monitoring activities to determine the effectiveness of specific pollution prevention methods. Strictly research activities are not eligible for §319(h) grant funding.

Proposals Requested

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration, and education projects within the boundaries of impaired or threatened watersheds. The Texas Integrated Report of Surface Water Quality describes the water quality conditions for waterbodies in the state. All proposals must focus on the restoration and protection of water quality consistent with the goals, objectives, and priority watersheds and aquifers identified in Appendix C and D of the *Texas NPS Management Program*. Up to $1 million of the TSSWCB's FY2025 CWA §319(h) grant will be eligible for award under this RFP. No more than 10% of these funds may be utilized for groundwater projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for available funding.

Applicants that submit project proposals should, where applicable, focus on interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and highlight public participation. Examples of project proposals previously funded by TSSWCB are available at:

https://www.tsswcb.texas.gov/index.php/programs/texas-nonpoint-source-management-program/active-nonpoint-source-grant-projects.

Additionally, applicants are encouraged to review EPA's Grant Guidelines for the NPS Program available at https://www.epa.gov/nps/319-grant-program-states-and-territories.

Individual Award Amounts

This RFP does not set a maximum or minimum award amount for individual projects; however, project funding generally ranges between $100,000 and $400,000 for a two to three-year project.

Reimbursement and Matching Requirements

The TSSWCB CWA §319(h) NPS Grant Program has a 60/40% match requirement, however proposals that do not meet the minimum matching requirement will still be considered. The cooperating entity will be reimbursed up to 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The match must be from non-federal sources (may be cash or in-kind services) and must be described in the budget justification. Reimbursable indirect costs are limited to no more than 15% of total federal direct costs.

Required Reporting and QAPP

Quarterly progress and final reports are the minimum project reporting requirements. All projects that include an environmental data collection, generation or compilation component (e.g., water quality monitoring, modeling, bacterial source tracking) must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and the EPA. Project budgets and timelines should account for the development and review of QAPPs, final reports, and watershed protection plans. More information on QAPPs and the *TSSWCB Environmental Data Quality Management Plan* is available at https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program/environmental-data-quality-management.

TSSWCB PRIORITIES

For this FY2025 RFP, the following project priorities have been identified. Proposals that do not focus on these priorities are still welcomed but may score lower than those that focus on the priorities.

Priority Project Activities

Implement WPPs and TMDL I-Plans (see priority areas listed below).

WPP development initiatives (see Appendix C in *Texas NPS Management Program*), which include activities such as the formation of watershed groups or water quality data collection and analysis.

Implement components of the *Texas Coastal NPS Pollution Control Program* in the Coastal Management Zone (https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program/coastal-nonpoint-source-pollution-control-program).

Support use of federal Farm Bill Programs and Initiatives (National Water Quality Initiative (NWQI).

Demonstration projects and/or development/delivery of education programs.

Priority Areas for WPP Implementation Projects

WPPs

Lake Lavon

Double Bayou

Mid and Lower Cibolo

Lavaca River

Tres Palacios

Carancahua Bay

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local municipal and county governments and other political subdivisions of the State (e.g., soil and water conservation districts), educational institutions, non-profit organizations, and state and federal agencies. Private organizations (for profit), may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS AND AWARD

Review Process

TSSWCB will review each proposal that is submitted by the deadline by an eligible organization.

At any time during the review process, a TSSWCB staff member may contact the applicant for additional information.

All areas of the budget are subject to review and approval by TSSWCB.

Scoring

Reviewed proposals will be scored and ranked based on the evaluation and ranking criteria included in this RFP on pp. 19-20. A minimum scoring requirement (70%) is necessary for proposals to be eligible for consideration.

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted, and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds. All grant awards will be contingent on the selected applicant's return of a grant contract provided by TSSWCB which will incorporate all applicable state and federal contracting requirements.

Grant Award Decisions

During the grant review and award process, the TSSWCB may take into consideration other factors including whether the applicant has demonstrated acceptable past performance as a grantee in areas related to programmatic and financial stewardship of grant funds.

TSSWCB may choose to award a grant contract from a different TSSWCB funding source than that for which the applicant applied.

TSSWCB is not obligated to award a grant at the total amount requested and/or within the budget categories requested. TSSWCB reserves the right to make awards at amounts above and/or below the stated funding levels. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the TSSWCB. The decisions made by the TSSWCB are final and are not subject to appeal.

Funding Priority

TSSWCB reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions.

Grant Award Notification

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted, and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds. TSSWCB may utilize a grant contract document and/or a notice of grant document once a decision is made to award a grant. The applicant will be given a deadline to accept the grant award and to return the appropriate document to the TSSWCB within the time prescribed by the TSSWCB. An applicant's failure to return the signed document to the TSSWCB within the prescribed time period will be construed as a rejection of the grant award, and the TSSWCB may de-obligate funds.

Special Conditions

The TSSWCB may assign special conditions at the time of the award. Until satisfied, these special conditions may affect the applicant's ability to receive funds. If special conditions are not resolved, the TSSWCB may de-obligate funds up to the entire amount of the grant award.

ELIGIBLE BUDGET CATEGORIES

Personnel

Fringe Benefits

Travel

Equipment

Supplies

Contractual

Construction

Other

Indirect

INELIGIBLE COSTS

Ineligible costs include, but are not limited to:

Contracting for grant activities that would otherwise be provided by employees of the grantee's organization

Payment for lobbying

Purchasing food and beverages except as allowed under Texas State Travel Guidelines

Purchasing or leasing vehicles

Purchasing promotional items or recreational activities

Paying for travel that is unrelated to the direct delivery of services that supports the project funded under this RFP

Paying consultants or vendors who participate directly in writing a grant application

Paying any portion of the salary or any other compensation for an elected government official

Payment of bad debt, fines or penalties

Purchasing any other products or services the TSSWCB identifies as inappropriate or unallowable

Any unallowable costs set forth in state or federal cost principles

Any unallowable costs set forth in the NPS Grant Program

STATE AND FEDERAL REQUIREMENTS

All applicants should review and be familiar with the TSSWCB administrative rules governing Nonpoint Source Grant Program. These rules

are published in Texas Administrative Code, Title 31, Part 17, Chapter 523, § 523.1(b)(2):

https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=17&ch=523&rl=1

In addition to the TSSWCB's administrative rules, applicants should be familiar with the Uniform Grant Management Standards (UGMS) and relevant Code of Federal Regulations (CFR) that relate to state, and if applicable, federal grant funding. UGMS can be found at: https://comptroller.texas.gov/purchasing/grant-management/. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200 can be found at: http://www.ecfr.gov.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's RFP and proposal submission packet, please visit https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program or contact Jana Lloyd at (254) 773-2250 ext. 224. All proposals must be submitted electronically (MS® Word) using the workplan template provided in this RFP; otherwise, proposals will be considered administratively incomplete and not considered for funding. All letters of support for the proposal, including letters from Project Partners confirming their role, must be received by the proposal due date to be considered. Submit proposals to jlloyd@tsswcb.texas.gov. Proposals must be received electronically by 5:00 p.m. CDT, September 20, 2024 to be considered.

FY2023 GRANT TIMELINE

Issuance of RFP August 9, 2024

Deadline for Submission of Proposals September 20, 2024

Proposal Evaluation by TSSWCB October-November 2024

Notification of Selected Proposals/Unsuccessful applicants December 2024

Work with applicants to Finalize Selected Proposals November- December 2024

Review of Selected Proposals by EPA January 2025

Submit Grant Application to EPA May 2025

Contract Award August 2025

Anticipated Project Start Date September 1, 2025

TRD-202403489
Heather Bounds
Government Affairs Specialist
Texas State Soil and Water Conservation Board
Filed: July 30, 2024

♦ ♦ ♦

Supreme Court of Texas

Fees Charged in the Supreme Court, in Civil Cases in the Courts of Appeals, Before the Judicial Panel on Multi-District Litigation, and in the Business Court

Supreme Court of Texas

Misc. Docket No. 24-9047

Fees Charged in the Supreme Court, in Civil Cases in the Courts of Appeals, Before the Judicial Panel on Multi-District Litigation, and in the Business Court

ORDERED that:

Effective September 1, 2024, the following fees apply except to persons exempt by law.

In the Supreme Court:

petition for review $155
additional fee if petition for review is granted $75
original proceeding $155
additional fee if original proceeding is granted $75
certified question from a federal court of appeals $180
direct appeal to the Supreme Court $205
any other proceeding filed in the Supreme Court $180
administering an oath with sealed certificate of oath $5
certified copy including certificate and seal .... $0.50 per page, $5 minimum
comparing and certifying copy of document .... $0.50 per page, $5 minimum
motion for rehearing $15
motion not otherwise listed $10
exhibit tendered for oral argument $25

In the Courts of Appeals:

appeal from a district or county court $205
original proceeding $155
administering an oath with sealed certificate of oath $5
certified copy including certificate and seal certification $1.00 per page, $5 minimum
comparing and certifying copy of document .... $1.00 per page, $5 minimum
motion for rehearing or for en banc reconsideration $15
motion not otherwise listed $10

exhibit tendered for oral argument.. $25

In the Supreme Court and the Courts of Appeals:

paper copy, no certificate or seal[1]............$0.10 per side of page or part of side of page
audio tape or oral argument (if available)[1]..$1 per tape
VHS video tape of oral argument (if available)[1].....................................$2.50 per tape
digital video disc of oral argument (if available)[1].......................................$3 per DVD
personnel, overhead, and document retrieval charges .... *see* 1 Admin. Code § 70.3

[1] A Court may authorize additional, reasonable charges for personnel, overhead, or document retrieval for services provided by the clerk or by contract with an outside entity.

Before the Judicial Panel on Multi-District Litigation:

motion to transfer to pretrial court.. $275
appeal of a pretrial court order by motion for rehearing $275
any other motion or document $50

In the Business Court:

filing fee for action originally filed in the business court[2] $2500
additional filing fee for action originally filed in the business court[3] $137
filing fee for action removed to the business court[2] $2500
any action listed in Loc. Gov't Code § 133.151(a)(2)[4] $80
any other motion[2].. $50
fees for services performed by the clerk[2] ... same as fees in Gov't Code §§ 51.318–.319
jury fee[5] .... as ordered by the business court

[2] This fee will be distributed to the fund to cover the costs for administering the business court.

[3] This fee stems from Loc. Gov't Code § 133.151 and will be distributed to the various state funds that would normally receive the fee as set out in that section.

[4] This fee stems from Loc. Gov't Code §§ 133.151 and 135.101 and will be distributed as follows: $45 to the various state funds that would normally receive the fee as set out in § 133.151 and $35 to the fund to cover the costs for administering the business court.

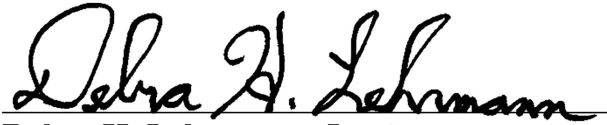
[5] The business court will set the jury fee in an order. The fee will include a $300 fee for staff time in summonsing jurors and the use of a jury summons

system; a fee for any needed security; a fee for juror pay pursuant to Gov't Code §§ 61.001, 61.002, and 61.0015; and a fee for actual processing costs related to summonsing jurors, including postage, printing costs, and copy costs. The jurisdiction providing the jury services must submit an invoice so that the business court will have the information necessary to issue the jury fee order. The business court will allocate these fees between the parties, and the fees will be paid directly to the jurisdiction providing the services.

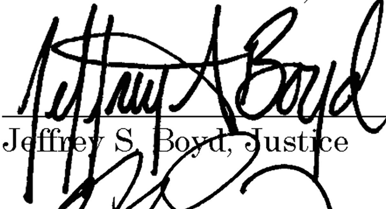
The fees for filings and actions in the business court have been adopted pursuant to H.B. 19. *See* Act of May 25, 2023, 88th Leg., R.S., ch. 380, § 1 (H.B. 19) (adopting TEX. GOV'T CODE § 25A.018). The order supersedes the fee provisions in Misc. Docket Nos. 15-9158 (August 28, 2015), 13-9127 (August 16, 2013), 07-9138 (August 28, 2007), 03-9151 (September 10, 2003), and 98-9120 (July 21, 1998).

Dated: July 26, 2024.

Nathan L. Hecht, Chief Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice

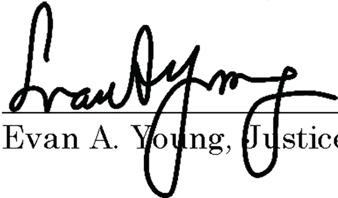
John P. Devine, Justice

James D. Blacklock, Justice

J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

TRD-202403378
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: July 26, 2024

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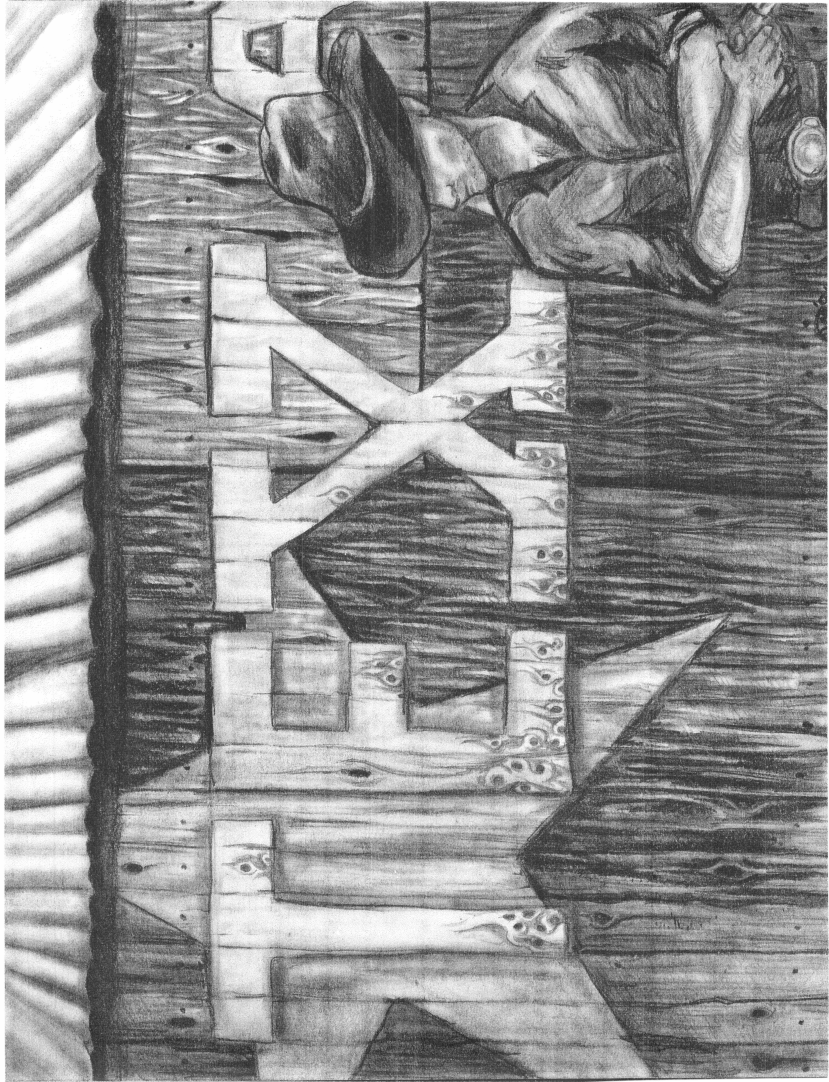

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "49 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 49 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1……..950 *(P)*

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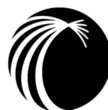

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