

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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

1 TAC §351.825

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.825, concerning the Texas Brain Injury Advisory Council (TBIAC).

BACKGROUND AND PURPOSE

The purpose of the proposal is to extend the TBIAC's abolition date; make revisions to ensure the rule meets the HHSC standards for its advisory committee rules, correct formatting, punctuation, and grammar, and update provisions to adhere to the Open Meetings Act. These amendments will also clarify member terms, outline reimbursement for specific membership categories travel expenses, and completion of required training. The Texas Administrative Code currently states that the section expires and the TBIAC is abolished on July 1, 2024. The TBIAC is established under the Texas Government Code Section 531.012 which specifies that Texas Government Code Chapter 2110 applies to this advisory committee. The proposed amendment extends the abolishment date by four additional years as permitted by Texas Government Code §2110.008.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §351.825(a) changes the word "subchapter" to "division" to specify exactly where §351.801 is located.

The proposed amendment to §351.825(b) adds a hyphen to the phrase "long term."

The proposed amendment to §351.825(c) updates grammar by updating the tense of the verbs, adds a hyphen to the phrase "long term," and adds that the TBIAC also has the task of adopting bylaws to guide its operation.

The proposed amendment to §351.825(d) replaces the word "immediate" with "immediately" and adds "Texas" before "Health and Human Services Commission Executive Council" for specificity.

The proposed amendment to §351.825(e) reformats the subsection and adds new paragraphs (2) and (3) to provide the requirements for open meetings including meeting frequency and the number of members that constitutes a quorum.

The proposed amendment to §351.825(f)(1) adds the factors considered in appointing members to the TBIAC. Provisions about staggering terms are deleted and moved to (f)(2). Edits are made for formatting and punctuation. Edits to subsection (f)(2) clarify that the Executive Commissioner will appoint a member to serve an unexpired term and add subparagraph (B) which provides that except as may be necessary to stagger terms to ensure a sufficient number of active members are serving the council to meet quorum, the term of each member is three years and a member may apply to serve one additional term.

The proposed amendment to §351.825(g)(2) removes the second sentence for clarity. Members serve three year terms and are able to serve until a new member has been appointed to their category, therefore the chair or vice chair may continue to serve until the replacement has been appointed.

The proposed amendment to §351.825(h) adds a reference to a chapter in the Texas Government Code that a member must be trained on and provides that a member must complete training on HHS ethics policy and other relevant HHS policies.

The proposed amendment to §351.825 adds new subsection (i) which describes travel allowances for council members. The remaining subsection is renumbered.

The proposed amendment to current §351.825(i), new subsection (j), extends the TBIAC's abolition and the section's expiration date to July 1, 2028. Punctuation is also corrected.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rules;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood, HHSC Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The Texas Brain Injury Advisory Council does not have expendable funds and does not provide or effect direct services to clients.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Laurie Pryor, Brain Injury Programs Director, has determined that for each year of the first five years the rule is in effect, the public benefit will be that the TBIAC will continue to exist for another four years and provide subject matter expertise and recommendations to the Executive Commissioner and agencies within the HHS system on items related to brain injury for four more years. This will continue to impact the lives of individuals with brain injury and their care partners to increase awareness, prevention, and the quality of and access to services.

Trey Wood, HHSC Chief Financial Officer, has also determined that for the first five years the amended rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule applies only to HHSC.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kristen Boessling at (512)706-7191, HHSC Office of Acquired Brain Injury.

Written comments on the proposal may be submitted to Kristen Boessling, Brain Injury Programs Liaison, 701 W. 51st Street, MC-3084; or by email to oabi@hhsc.state.tx.us.

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

indicate "Comments on Proposed Rule 23R023" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule.

The amendment affects Texas Government Code §531.0055 and Texas Government Code §531.012.

§351.825. Texas Brain Injury Advisory Council.

(a) Statutory authority. The Texas Brain Injury Advisory Council (TBIAC) is established under Texas Government Code §531.012 and is subject to §351.801 of this division [subchapter] (relating to Authority and General Provisions).

(b) Purpose. The TBIAC advises the Executive Commissioner and the Health and Human Services system on strategic planning, policy, rules, and services related to the prevention of brain injury; rehabilitation; and the provision of long-term [long term] services and supports for persons who have survived brain injuries to improve their quality of life and ability to function independently in the home and community.

(c) Tasks. The TBIAC performs the following tasks:

(1) informs [informing] state leadership of the needs of persons who have survived a brain injury and their families regarding rehabilitation and the provision of long-term [long term] services and supports to improve health and functioning that leads to achieving maximum independence in home and community living and participation;

(2) encourages [encouraging] research into the causes and effects of brain injuries as well as promising and best practice approaches for prevention, early intervention, treatment and care of brain injuries and the provision of long-term [long term] services and supports;

(3) recommends [recommending] policies that facilitate the implementation of the most current promising and evidence-based practices for the care, rehabilitation, and the provision of long-term [long term] services and supports to persons who have survived a brain injury;

(4) promotes [promoting] brain injury awareness, education, and implementation of health promotion and prevention strategies across Texas; [and]

(5) facilitates [facilitating] the development of partnerships among diverse public and private provider and consumer stakeholder groups to develop and implement sustainable service and support strategies that meet the complex needs of persons who have survived a brain injury and those experiencing co-occurring conditions; [and].

(6) adopts bylaws to guide the operation of the TBIAC.

(d) Reporting requirements.

(1) Reporting to Executive Commissioner. By November 1 of each year, the TBIAC files an annual written report with the Executive Commissioner covering the meetings and activities in the immediately [immediate] preceding fiscal year and reports any recommendations to the Executive Commissioner at a meeting of the Texas Health and Human Services Commission Executive Council. The report includes:

- (A) a list of the meeting dates;
- (B) the members' attendance records;
- (C) a brief description of actions taken by the TBIAC;
- (D) a description of how the TBIAC accomplished its tasks;
- (E) a description of activities the TBIAC anticipates undertaking in the next fiscal year;
- (F) recommendations made by the TBIAC, if any;
- (G) recommended amendments to this section; and
- (H) the costs related to the TBIAC, including the cost of HHSC staff time spent supporting the TBIAC's activities and the source of funds used to support the TBIAC's activities.

(2) Reporting to Texas Legislature. The TBIAC shall submit a written report to the Texas Legislature of any policy recommendations made to the Executive Commissioner by December 1 of each even-numbered year.

(e) Meetings [~~Open meetings~~].

(1) Open Meetings. The TBIAC complies with the requirements for open meetings under Texas Government Code Chapter 551 as if it were a governmental body.

(2) Frequency. The TBIAC will meet every three months.

(3) Quorum. Eight members constitutes a quorum.

(f) Membership.

(1) The TBIAC is composed of 15 members appointed by the Executive Commissioner representing the categories below. In selecting members to serve on the TBIAC [~~committee~~], HHSC considers the applicants' qualifications, background, geographic location, and interest in serving [~~may consider the applicants' geographic location~~. Except as may be necessary to stagger terms, the term of office of each member is three years. A member may apply to serve one additional term].

[(+)] [~~The TBIAC includes:~~]

(A) One [~~one~~] representative from acute hospital trauma units._[;]

(B) One [~~one~~] representative from post-acute rehabilitation facilities._[;]

(C) One [~~one~~] representative of a long-term care facility that serves persons who have survived a brain injury._[;]

(D) One [~~one~~] healthcare practitioner or service provider who has specialized training or interest in the prevention of brain injuries or the care, treatment, and rehabilitation of persons who have survived a brain injury._[;]

(E) One [~~one~~] representative of an institution of higher education engaged in research that impacts persons who have survived a brain injury._[;]

(F) Five [~~five~~] persons who have survived a brain injury representing diverse ethnic or cultural groups and geographic regions of Texas, with:

(i) at least one of these being a transition age youth (age 18-26);

(ii) at least one of these being a person who has survived a traumatic brain injury; and

(iii) at least one of these being a person who has survived a non-traumatic brain injury._[;]

(G) Four [~~four~~] family members actively involved in the care of loved ones who have sustained a brain injury, with:

(i) at least one of these being a person whose loved one has survived a traumatic brain injury; and

(ii) at least one of these being a person whose loved one has survived a non-traumatic brain injury._[; and]

(H) One [~~one~~] representative from the stroke committee of the Governor's Emergency Medical Services (EMS) & Trauma Advisory Council or other stakeholder group with a focus on stroke.

(2) Members are appointed for staggered terms so that the terms of five, or almost five, members expire on December 31 of each year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.

(A) [(3)] If a vacancy occurs, the Executive Commissioner will appoint a person [~~is appointed~~] to serve the unexpired portion of that term.

(B) Except as may be necessary to stagger terms, the term of each member is three years. A member may apply to serve one additional term.

(g) Officers. The TBIAC selects a chair and vice chair of the TBIAC from among its members. The chair or the vice chair [~~one of whom~~] must be a person who has survived a brain injury or a family member actively involved in the care of a loved one who has survived a brain injury.

(1) The chair serves until December 31 of each even-numbered year. The vice chair serves until December 31 of each odd-numbered year.

(2) A member may serve up to [~~serves no more than~~] two consecutive terms as chair or vice chair. [~~A chair or vice chair may not serve beyond their membership term.~~]

(h) Required Training. Each member must [~~shall~~] complete [~~all~~] training on relevant statutes and rules, including this section and §351.801 of this division; [~~subchapter, and~~] Texas Government Code §531.012, [~~and~~] Chapters 551, 552, and 2110; the HHS Ethics Policy; and other relevant HHS policies. Training will be provided by HHSC.

(i) Travel Reimbursement. To the extent permitted by the current General Appropriations Act, a member of the TBIAC may be reimbursed for their travel to and from meetings if funds are appropriated and available and in accordance with the HHSC Travel Policy.

(j) [(+)] Date of abolition. The TBIAC is abolished_[;] and this section expires_[;] on July 1, 2028 [~~2024~~], in compliance with Texas Government Code §2110.008(b).

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 January 11, 2024.

TRD-202400088



CHAPTER 382. WOMEN'S HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §382.1, concerning Introduction; §382.5, concerning Definitions; §382.7, concerning Client Eligibility; §382.9, concerning Application and Renewal Procedures; §382.15, concerning Covered and Non-covered Services; §382.17, concerning Health-Care Providers; §382.101, concerning Introduction; §382.105, concerning Definitions; §382.107, concerning Client Eligibility; §382.109, concerning Financial Eligibility Requirements; §382.113, concerning Covered and Non-covered Services; §382.115, concerning Family Planning Program Providers; §382.119, concerning Reimbursement; §382.121, concerning Provider's Request for Review of Claim Denial; §382.123, concerning Record Retention; §382.125, concerning Confidentiality and Consent; and §382.127, concerning FPP Services for Minors; and proposes the repeal of §382.3, concerning Non-entitlement and Availability; and §382.11, concerning Financial Eligibility Requirements.

BACKGROUND AND PURPOSE

The primary purpose of the proposal is to update eligibility and other Medicaid requirements in the Healthy Texas Women (HTW) program to describe the agency's compliance with the HTW Section 1115 Demonstration that was approved by the Centers for Medicare and Medicaid Services on January 22, 2020, and transitioned the majority of the program into Medicaid. For eligible minors, the HTW program remains fully funded by state general revenue.

Another purpose of the proposal is to comply with Texas Health and Safety Code §32.102, added by Senate Bill (S.B.) 750, 86th Legislature, Regular Session, 2019, which requires HHSC to provide enhanced postpartum care services, called HTW Plus, to eligible clients. HHSC made HTW Plus available to eligible clients enrolled in the HTW program beginning September 1, 2020.

Another purpose of the proposal is to comply with Texas Health and Safety Code §31.018, also added by S.B. 750, to include a requirement for women in HTW to receive referrals to the Primary Health Care Services Program.

Another purpose of the proposal is to make conforming amendments to the Family Planning Program (FPP) rules where necessary and update covered and non-covered services for HTW and FPP.

Other non-substantive clarifying changes were made throughout the rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §382.1, Introduction, replaces references to statutes that have expired with a reference to the original bill in §382.1(b) and deletes "non-federally funded services" from §382.1(c)(5) because it no longer applies to the majority of the HTW program under the authority of the HTW Section 1115 Demonstration. The HTW Section 1115 Demonstration is state

and federally funded through Medicaid. The proposed amendment also makes clarifications related to the use of state funds and minor changes to use "HTW program" consistently.

The proposed repeal of §382.3, Non-entitlement and Availability, deletes the rule as no longer necessary because it is no longer applicable to the HTW Section 1115 Demonstration. Within Medicaid, HTW is an entitlement program.

The proposed amendment to §382.5, Definitions, deletes the definition for "elective abortion" and adds a definition for "abortion" that aligns with the Texas Health and Safety Code. The proposed amendment adds definitions for "CHIP" and "HTW Plus" because they are new terms used in the proposed rules. The proposed amendment revises the terms "client," "covered service," "HTW," "HTW Provider," "Medicaid," "third-party resource," and "unintended pregnancy." The proposed amendment to "covered service" clarifies that a service reimbursable under the HTW program includes HTW Plus services to comply with Texas Health and Safety Code §32.102. The proposed amendments to "HTW" and "Medicaid" clarify that the terms refer to programs. The proposed amendment to "HTW Provider" specifies that HTW providers must be enrolled in the Texas Medicaid program and may also have a cost reimbursement contract with HHSC. The proposed amendment to "third-party resource" complies with federal Medicaid third-party resource requirements. The proposed amendment to "unintended pregnancy" makes the term plural to conform with the usage of the term in §382.1. The proposed amendment deletes the terms "child," "contraceptive method," "corporate entity," "health care provider," and "health clinic" because they are no longer used in Chapter 382, Subchapter A.

The proposed amendment to §382.7, Client Eligibility, updates eligibility requirements in the HTW program to reflect changes made to comply with the HTW Section 1115 Demonstration and federal Medicaid requirements, as well as Texas Health and Safety Code §32.102. The eligibility requirements updated include income, citizenship, HTW Plus eligibility criteria, period of eligibility, automatic eligibility determination, and third-party resources. The proposed amendment updates rule references and reformats the rule to improve readability of the rules.

The proposed amendment to §382.9, Application and Renewal Procedures, revises the title of the section to "Initial Application and Renewal Procedures." The proposed amendment also updates §382.9(a) to specify that women apply for HTW using the medical assistance application form and can apply for HTW online. The proposed amendment in §382.9(h)(2) adds that HTW clients can renew online. The proposed amendment complies with the HTW Section 1115 Demonstration and federal Medicaid requirements. The proposed amendment updates a rule reference and makes editorial changes to improve readability of the rules.

The proposed repeal of §382.11, Financial Eligibility Requirements, deletes the rule because updated financial and income eligibility requirements were added to proposed amended §382.7, Client Eligibility.

The proposed amendment to §382.15, Covered and Non-covered Services, adds language on HTW Plus services in §382.15(b) to comply with Texas Health and Safety Code §32.102 and updates language on covered and non-covered services for more specificity as to services available in the HTW program. The proposed amendment clarifies that women

receiving HTW Plus services can also receive HTW services listed in §382.15(a).

The proposed amendment to §382.17, Health-Care Providers, revises the title of the section to "HTW Providers." The proposed amendment also adds language to §382.17(a)(5) on requirements for HTW providers to refer women in HTW to HHSC programs like the Primary Health Care Services Program to comply with Texas Health and Safety Code §31.018. The proposed amendment to §382.17(e) changes the HTW provider requirement to certify compliance with §382.17(b) from annually to periodically using an HHSC -approved form. The proposed amendment deletes §382.17(h) because the initial certification period for the HTW program has passed.

The proposed amendment to §382.101, Introduction, replaces references to statutes that have expired with a reference to the original bill in §382.1(b) and makes clarifications related to the use of state funds and minor changes to use "FPP" consistently.

The proposed amendment to §382.105, Definitions, deletes the definition for "elective abortion" and adds a definition for "abortion" that aligns with the Texas Health and Safety Code. The proposed amendment replaces the definition for "contractor" with a definition for "grantee" to align current terminology. The proposed amendment revises the terms "covered service," "Family Planning Program provider," "Medicaid," "third-party resource," and "unintended pregnancy." The proposed amendment to "covered service" clarifies the definition using plain language. The proposed amendment to "Family Planning Program provider" removes the term "health-care" as it is included in the definition. The proposed amendment to "Medicaid" clarifies that the term refers to a program. The proposed amendment to "third-party resource" is consistent with third-party resource requirements used in HTW. The proposed amendment to "unintended pregnancy" makes the term plural to conform with the usage of the term in §382.101. The proposed amendment deletes the terms "corporate entity," "contraceptive method," and "health clinic," because the terms are not used in Chapter 382, Subchapter B.

The proposed amendment to §382.107, Client Eligibility, improves readability of the rules. The proposed amendment removes Medicaid for Pregnant Women from adjunctive eligibility as that program provides full health benefits.

The proposed amendment to §382.109, Financial Eligibility Requirements, improves readability of the rules.

The proposed amendment to §382.113, Covered and Non-covered Services, updates language on covered and non-covered services for more specificity as to services available in FPP and adds language on new services.

The proposed amendment to §382.115, Family Planning Program Health-Care Providers, improves readability; makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider;" and revises the title of the section to, "Family Planning Program Providers." The proposed amendment to §382.115(e) changes the FPP provider requirement to certify compliance with §382.115(b) from annually to before initially providing covered services using an HHSC-approved form.

The proposed amendment to §382.119, Reimbursement, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.121, Provider's Request for Review of Claim Denial, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.123, Record Retention, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.125, Confidentiality and Consent, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

The proposed amendment to §382.127, FPP Services for Minors, makes conforming changes to use the term, "FPP provider," instead of, "FPP health-care provider."

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed. The additional cost is due to HHSC's reimbursement for additional services provided through the HTW Plus and FPP service arrays.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$2,047,918 in fiscal year (FY) 2024, \$8,823,739 in FY 2025, \$10,904,489 in FY 2026, \$11,218,855 in FY 2027, and \$11,550,379 in FY 2028.

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 not require an increase in future legislative appropriations;
- (4) the proposed rules will not require an increase in fees paid to HHSC;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand and repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities related to the rule as there is no requirement to alter current business practices. In addition, no rural communities contract with HHSC in any program or service affected by the proposed rule.

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

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, women in their postpartum period will be able to receive additional HTW Plus benefits for 12 months and improve continuity of care between Medicaid or CHIP and HTW. Additionally, the rules are expected to maintain or decrease the number of Medicaid and CHIP paid deliveries, which will reduce annual expenditures for prenatal, delivery, and newborn and infant care.

Michelle Alletto, Chief Program and Services Officer, has determined that for the first five years the rules are in effect, clients receiving services through FPP will have access to an improved array of benefits to promote health and well-being.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because HTW and FPP services are available at no cost to the public and providers are reimbursed by HHSC for HTW and FPP covered services, including additional HTW Plus services.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Gina Gudzelak by email to: HealthyTexasWomen@hhsc.tx.state.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 21R082" in the subject line.

SUBCHAPTER A. HEALTHY TEXAS WOMEN

1 TAC §§382.1, 382.5, 382.7, 382.9, 382.15, 382.17

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendments also affect Texas Health and Safety Code §§31.018 and 32.102.

§382.1. Introduction.

(a) Governing rules. This subchapter sets out rules governing the administration of the Healthy Texas Women (HTW) program [(HTW)].

(b) Authority. This subchapter is authorized generally by Senate Bill 200, 84th Legislature, Regular Session, 2015 [Texas Government Code §531.0201(a)(2)(C)], which transferred [transfers] client services functions performed by the Texas Department of State Health Services to HHSC and required [; and Texas Government Code §531.0204, which requires] the HHSC Executive Commissioner to develop a transition plan which includes an outline of HHSC's reorganized structure and a definition of client services functions.

(c) Objectives. The HTW program is established to achieve the following overarching objectives:

(1) to increase access to women's health and family planning services to:

(A) avert unintended pregnancies;

(B) positively affect the outcome of future pregnancies; and

(C) positively impact the health and wellbeing of women and their families;

(2) to implement the state policy to favor childbirth and family planning services that do not include elective abortion or the promotion of elective abortion within the continuum of care or services;

(3) to ensure the efficient and effective use of state funds in support of these objectives and [to avoid the direct or indirect use of] that state funds are not directly or indirectly used to promote or support elective abortion;

(4) to reduce the overall cost of publicly-funded health care (including federally-funded health care) by providing low-income Texans access to safe, effective services that are consistent with these objectives; and

(5) to enforce Texas Human Resources Code §32.024(c-1) and any other state law that regulates the delivery of HTW [~~non-federally funded family planning~~] services, to the extent permitted by the Constitution of the United States.

§382.5. Definitions.

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

(1) Abortion--As defined in Texas Health and Safety Code §245.002.

(2) [(+)] Affiliate--

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

(i) common ownership, management, or control;

(ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this definition may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, articles of incorporation or a license, but do not include agreements related to a physician's participation in a physician group practice, such as a hospital group

agreement, staffing agreement, management agreement, or collaborative practice agreement.

(3) [(2)] Applicant--A female applying to receive services in the [under] HTW program, including a current client who is applying to renew.

(4) [(3)] Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

[(4) Child--An adoptive, step, or natural child who is under 19 years of age.]

(5) CHIP--The Texas State Children's Health Insurance Program.

(6) [(5)] Client--A female who is enrolled in the [receives services through] HTW program.

[(6) Contraceptive method--Any birth control options approved by the United States Food and Drug Administration, with the exception of emergency contraception].

[(7) Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, or a sole proprietorship.]

(7) [(8)] Covered service--A service that is reimbursable under the HTW program, including HTW Plus services [medical procedure for which HTW will reimburse an enrolled health-care provider].

[(9) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:]

[(A) to terminate a pregnancy that resulted from an act of rape or incest;]

[(B) in a case in which a female suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the female in danger of death or risk of substantial impairment of a major bodily function unless an abortion is performed; or]

[(C) in a case in which a fetus has a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving treatment, is incompatible with life outside the womb.]

(8) [(10)] Family planning services--Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.

(9) [(11)] Federal poverty level--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

[(12) Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency, health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.]

[(13) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in

three or more organ systems. The term does not include a clinic specializing in family planning services.]

(10) [(14)] HHSC--The Texas Health and Human Services Commission or its designee.

(11) HTW Plus--Healthy Texas Women Plus. An enhanced postpartum services package for women enrolled in the HTW program who are eligible for the services.

(12) [(15)] HTW program--The Healthy Texas Women program. A program administered by HHSC as outlined in this subchapter.

(13) [(16)] HTW provider--A [health-care] provider that is enrolled in the Texas Medicaid program and is qualified to perform covered services in the HTW program. An HTW provider with a cost reimbursement contract with HHSC may be reimbursed for providing [contracted with HHSC to provide] additional services as described in §382.21(a)(2) of this subchapter (relating to Reimbursement).

(14) [(17)] Medicaid program--The Texas Medical Assistance Program, a joint federal and state program provided for in Texas Human Resources Code Chapter 32, and subject to Title XIX of the Social Security Act, 42 U.S.C. §§1396 et seq.

(15) [(18)] Minor--In accordance with the Texas Family Code, a person under 18 years of age who has never been married and never been declared an adult by a court (emancipated).

(16) [(19)] Third-party resource--A person or organization, other than HHSC or a person living with a female [the] applicant or a client, who may be liable as a source of payment of the female applicant's or client's medical expenses, for example, a private health insurance company or liability insurance company [(for example, a health insurance company)].

(17) [(20)] Unintended pregnancies--Pregnancies that [pregnancy--Pregnancy] a female reports as either mistimed or undesired at the time of conception.

(18) [(21)] U.S.C.--United States Code.

§382.7. Client Eligibility.

(a) HTW Program Criteria. A female applicant is eligible for the [to receive services through] HTW program if she:

(1) meets the following age requirements:

(A) is 18 through 44 years of age[, inclusive]; or

(B) is 15 through 17 years of age[, inclusive,] and has a parent or legal guardian apply, renew, and report changes to her case on her behalf;

(2) is not pregnant;

(3) meets the income eligibility requirements for the HTW program as determined by HHSC in accordance with Chapter 366 Subchapter K of this title (relating to Modified Adjusted Gross Income Methodology) and her household income is equal to or less than 204.2 percent [has countable income (as calculated under §382.11 of this subchapter (relating to Financial Eligibility Requirements) that does not exceed 200 percent] of the federal poverty level;

(4) is a:

(A) United States citizen;[;]

(B) a United States national;[;] or

(C) an alien who qualifies under §366.513 of this title (relating to Citizenship) [§382.9(g) of this subchapter (relating to Application and Renewal Procedures)];

(5) resides in Texas;

(6) does not currently receive benefits through another [a] Medicaid program, CHIP [Children's Health Insurance Program], or Medicare Part A or B; and

(7) does not have creditable health coverage that covers the services provided in the HTW program [provides], except as specified in subsection (f) [(e)] of this section.

(b) HTW Plus Criteria.

(1) A client in the HTW program may also qualify to receive HTW Plus covered services if the client:

(A) meets the criteria in subsection (a) of this section; and

(B) has been pregnant within the past 12 months.

(2) HTW Plus services are available to a client for a period of not more than 12 months after the date of enrollment in the HTW program.

(c) [(b)] Age.

(1) For purposes of subsection (a)(1)(A) of this section, a female applicant is considered 18 years of age on the day of her 18th birthday and 44 years of age through the last day of the month of her 45th birthday.

(2) For purposes of subsection (a)(1)(B) of this section, a female applicant is considered 15 years of age the first day of the month of her 15th birthday and 17 years of age through the day before her 18th birthday.

(3) A female applicant is ineligible for the HTW program if her application is received the month before her 15th birthday or the month after she turns 45 years of age.

[(e) Third-party resources. An applicant with creditable health coverage that would pay for all or part of the costs of covered services may be eligible to receive covered services if she affirms, in a manner satisfactory to HHSC, her belief that a party may retaliate against her or cause physical or emotional harm if she assists HHSC (by providing information or by any other means) in pursuing claims against that third party. An applicant with such creditable health coverage who does not comply with this requirement is ineligible to receive HTW benefits.]

(d) Period of eligibility. A client is deemed eligible to receive covered services for 12 continuous months from the earliest day of the application month on which the female applicant meets all eligibility criteria [after her application is approved], unless:

(1) the client dies;

(2) the client voluntarily withdraws;

(3) the client no longer satisfies criteria set out in subsection (a) of this section;

(4) state law no longer allows the client [female] to be covered; or

(5) HHSC determines the client provided information affecting her eligibility that was false at the time of application.

[(e) Transfer of eligibility. A female who received services through the Texas Women's Health Program is automatically enrolled as an HTW client and is eligible to receive covered services for as long as she would have been eligible for the Texas Women's Health Program.]

(e) [(f)] Automatic Eligibility Determination [Auto-Enrollment].

(1) A client [female] who is receiving Medicaid or CHIP [for pregnant women] is automatically tested for eligibility for the [enrolled into] HTW program at the end of her Medicaid or CHIP [for pregnant women] certification period if she is not eligible for another Medicaid program or CHIP.

(2) Program coverage begins on the first day following the termination of her Medicaid or CHIP coverage.

(3) A client [female] enrolled in the [into] HTW program may [has the option to] opt out of the [receiving] HTW program. [To be auto-enrolled, a female must:]

[(1) be 18 to 44 years of age, inclusive, as defined in subsection (b) of this section;]

[(2) not be receiving active third-party resources at the time of auto-enrollment; and]

[(3) be ineligible for any other Medicaid or CHIP program.]

(f) Third party resources. All female applicants eligible for the HTW program must comply with §354.2313 of this title (relating to Duty of Applicant or Recipient to Inform and Cooperate). A female applicant with creditable health coverage or other third party resources that would pay for all or part of the costs of covered services may affirm, in a manner satisfactory to HHSC, her belief that someone may retaliate against her or cause physical or emotional harm if she assists HHSC by providing information or by any other means in pursuing claims against that third-party resource. A female applicant with such creditable health coverage who does not comply with §354.2313 of this title is ineligible to receive HTW benefits.

§382.9. Initial Application and Renewal Procedures.

(a) Application. A female, or a parent or legal guardian acting on her behalf if she is 15 through 17 years of age[, inclusive,] may apply for the HTW program [services] by completing an application for medical assistance [form] and providing documentation as required by HHSC.

(1) A female [An] applicant may obtain an application [in the following ways]:

(A) from a local benefits office of HHSC, [an HTW provider's office,] or any other location that makes the application [HTW applications] available;

(B) from the HTW program or HHSC website;

(C) by calling 2-1-1; or

(D) by any other means approved by HHSC.

(2) HHSC accepts [and processes] every application received through the following means:

(A) in person at a local HHSC benefits office [of HHSC];

(B) by fax;

(C) by [through the] mail; [or]

(D) online; or

(E) [(D)] by any other means approved by HHSC.

(b) Processing timeline. HHSC processes an [HTW] application for medical assistance by the 45th day after the date HHSC receives the application.

(c) Start of coverage. Program coverage[;] for a client [females] who is determined eligible [are not auto-enrolled] in accordance with §382.7 [§382.7(f)] of this subchapter (relating to Client Eligibility)[;] begins on the earliest [first] day of the application month on [in] which the client meets all eligibility criteria [HHSC receives a valid application].

(1) For female applicants 18 through 44 years of age[; inclusive,] a valid application has, at a minimum, the applicant's name, address, and signature.

(2) For female applicants 15 through 17 years of age[; inclusive,] a valid application has, at a minimum, the female applicant's name, address, and the signature of a parent or legal guardian.

(d) Social security number (SSN) required. In accordance with 42 U.S.C. §405(c)(2)(C)(i), HHSC requires a female [an] applicant to provide or apply for a social security number. If a female [an] applicant is not eligible to receive an SSN, the female applicant must provide HHSC with any documents requested by HHSC to verify the female applicant's identity. [HHSC requests, but does not require, budget group members who are not applying for HTW to provide or apply for an SSN.]

(e) Interviews. HHSC does not require an interview for purposes of an eligibility determination. A female [An] applicant may, however, request an interview for an initial or renewal application.

(f) Identity. A female [An] applicant must verify her identity the first time she applies to receive covered services.

(g) Citizenship.

(1) If a female [an] applicant is a United States citizen, she must provide proof of citizenship.

(2) If a female [the] applicant[;] who is otherwise eligible for the [to receive] HTW program [services,] is not a [an] United States citizen, HHSC determines her eligibility as described in [accordance with] §366.513 of this title (relating to Citizenship).

(3) Citizenship is only verified once, unless HHSC receives conflicting information related to citizenship. If a female [an] applicant's citizenship has already been verified by HHSC for eligibility for the Medicaid [or HTW] program, the female applicant is not required to re-verify her citizenship.

(h) Renewal. A client, [female,] or a parent or legal guardian acting on [her] behalf of the client if she is 15 through 17 years of age, [inclusive,] may renew her enrollment in the HTW program [services] by completing a renewal form as described in this subsection and providing documentation as required by HHSC.

(1) HHSC sends a [An HTW] client [will be sent] a renewal packet during the 9th [10th] month of her 12-month certification period for the HTW program.

(2) HHSC accepts and processes every renewal form received through the following means:

(A) in person at a local HHSC benefits office [of HHSC];

(B) by fax;

(C) by [through the] mail; [or]

(D) online; or

(E) [or] by any other means approved by HHSC.

§382.15. Covered and Non-covered Services.

(a) Covered services[. Services] provided through the HTW program include:

(1) contraceptive services;

(2) pregnancy testing and counseling;

(3) preconception health screenings for:

(A) obesity;

(B) hypertension;

(C) diabetes;

(D) cholesterol;

(E) smoking; and

(F) mental health;

(4) sexually transmitted infection (STI) services;

(5) limited pharmacological treatment for the following chronic conditions:

(A) hypertension;

(B) diabetes; and

(C) high cholesterol;

(6) breast and cervical cancer screening and diagnostic services:

(A) radiological procedures including mammograms;

(B) screening and diagnosis of breast cancer; and

(C) diagnosis and treatment of cervical dysplasia;

(7) immunizations;

(8) limited pharmacological treatment for postpartum depression;

(9) health history and physical exam; and

(10) covered HTW Plus services for clients who qualify for HTW Plus as described in §382.7(b) of this subchapter.

[(1) health history and physical;]

[(2) counseling and education;]

[(3) laboratory testing;]

[(4) provision of a contraceptive method;]

[(5) pregnancy tests;]

[(6) sexually transmitted infection screenings and treatment;]

[(7) referrals for additional services, as needed;]

[(8) immunizations;]

[(9) breast and cervical cancer screening and diagnostic services; and]

[(10) other services subject to available funding.]

(b) In addition to the HTW services above, covered HTW Plus services include:

(1) mental health counseling/treatment, including:

(A) individual, family, and group psychotherapy services; and

(B) peer specialist services;

- (2) substance use disorder treatment, including:
 - (A) screening, brief intervention, and referral for treatment;
 - (B) outpatient substance use counseling;
 - (C) smoking cessation services;
 - (D) medication-assisted treatment; and
 - (E) peer specialist services;
- (3) cardiovascular and coronary condition management, including:
 - (A) cardiovascular evaluation imaging and laboratory studies;
 - (B) blood pressure monitoring equipment; and
 - (C) anticoagulant, antiplatelet, and antihypertensive medications;
- (4) diabetes management, including:
 - (A) laboratory studies;
 - (B) additional injectable insulin options;
 - (C) blood glucose testing supplies;
 - (D) glucose monitoring supplies; and
 - (E) voice-integrated glucometers for women with diabetes who are visually impaired; and
- (5) asthma management, including:
 - (A) medications; and
 - (B) supplies.

(c) ~~[(b)]~~ Non-covered services in the [r Services not provided through] HTW program include:

- (1) counseling on and provision of abortion services; and
- ~~[(2) counseling on and provision of emergency contraceptives; and]~~
- (2) ~~[(3)]~~ other services that cannot be appropriately billed with a permissible procedure code.

§382.17. HTW Providers [Health-Care Providers].

- (a) Procedures. An HTW provider must:
 - (1) be enrolled as a Medicaid program provider in accordance with Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment);
 - (2) comply with subsection (b) of this section;
 - (3) ~~[(2)]~~ complete the [HTW] certification [~~process~~ as] described in subsection (e) of this section; and
 - (4) ~~[(3)]~~ comply with the requirements [~~set out~~] in Chapter 354, Subchapter A, Division 1 of this title (relating to Medicaid Procedures for Providers).
 - (5) ensure women in HTW receive information and referrals to HHSC programs like the Primary Health Care Services Program.

- (b) Requirements. An HTW provider must ensure that:
 - (1) the HTW provider does not perform or promote elective abortions outside the scope of the HTW program and is not an affiliate of an entity that performs or promotes elective abortions; and

(2) in offering or performing a covered [an HTW] service, the HTW provider:

- (A) does not promote elective abortion within the scope of HTW;
- (B) maintains physical and financial separation between its HTW activities and any elective abortion-performing or abortion-promoting activity, as evidenced by the following:

(i) physical separation of HTW services from any elective abortion activities, no matter what entity is responsible for the activities;

(ii) a governing board or other body that controls the HTW provider has no board members who are also members of the governing board of an entity that performs or promotes elective abortions;

(iii) accounting records that confirm that none of the funds used to pay for HTW services directly or indirectly support the performance or promotion of elective abortions by an affiliate; and

(iv) display of signs and other media that identify HTW and the absence of signs or materials promoting elective abortion in the HTW provider's location or in the HTW provider's public electronic communications; and

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" means advancing, furthering, advocating, or popularizing elective abortion by, for example:

(1) taking affirmative action to secure elective abortion services for an HTW client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion [health-care] provider fee, or arranging or scheduling an elective abortion procedure); however, the term does not include providing upon the patient's request neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a [health-care] provider;

(2) furnishing or displaying to an HTW client information that publicizes or advertises an elective abortion service or [health-care] provider; or

(3) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, an HTW provider must provide HHSC with all information HHSC requires to determine the HTW provider's compliance with this section.

(e) Certification. Before initially providing covered services and periodically thereafter [Upon initial application for enrollment in HTW], an HTW [a health-care] provider must certify its compliance with subsection (b) of this section using an HHSC-approved form and any other requirement specified by HHSC. [Each health-care provider enrolled in HTW must annually certify that the HTW provider complies with subsection (b) of this section.]

(f) HTW provider disqualification. If HHSC determines that an HTW provider fails to comply with subsection (b) of this section, HHSC disqualifies the [HTW] provider from the HTW program.

(g) Client assistance and recoupment. If an HTW provider is disqualified, HHSC takes appropriate action to:

(1) assist a [an HTW] client to find an alternate HTW provider; and

(2) recoup any funds paid to a disqualified HTW provider for covered [HTW] services performed during the period of disqualification.

~~[(h) Exemption from initial certification. The initial application requirement of subsection (g) of this section does not apply to a health care provider that certified and was determined to be in compliance with the requirements of the Texas Women's Health Program administered by HHSC pursuant to Texas Human Resources Code §32.024(e-1).]~~

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 January 10, 2024.

TRD-202400075

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 438-4373



1 TAC §382.2, §382.11

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The repeals also affect Texas Health and Safety Code §§31.018 and 32.102.

§382.3. Non-entitlement and Availability.

§382.11. Financial Eligibility Requirements.

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 January 10, 2024.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 438-4373



SUBCHAPTER B. FAMILY PLANNING PROGRAM

1 TAC §§382.101, 382.105, 382.107, 382.109, 382.113, 382.115, 382.119, 382.121, 382.123, 382.125, 382.127

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendments also affect Texas Health and Safety Code §§31.018 and 32.102.

§382.101. Introduction.

(a) Governing rules. This subchapter sets out rules governing the administration of the HHSC Family Planning Program (FPP). This program is separate from family planning services provided through Medicaid.

(b) Authority. This subchapter is authorized generally by Senate Bill 200, 84th Legislature, Regular Session, 2015 [Texas Government Code §531.0201(a)(2)(C)], which transferred [transfers] client services functions performed by the Texas Department of State Health Services to HHSC and required [; and Texas Government Code §531.0204, which requires] the HHSC Executive Commissioner to develop a transition plan which includes an outline of HHSC's reorganized structure and a definition of client services functions.

(c) Objectives. FPP [The HHSC Family Planning Program] is established to achieve the following overarching objectives:

(1) to increase access to health and family planning services to:

(A) avert unintended pregnancies;

(B) positively affect the outcome of future pregnancies;

and

(C) positively impact the health and well-being of women and their families;

(2) to implement the state policy to favor childbirth and family planning services that do not include elective abortion or the promotion of elective abortion within the continuum of care or services;

(3) to ensure the efficient and effective use of state funds in support of these objectives and that [to avoid the direct or indirect use of] state funds are not directly or indirectly used to promote or support elective abortion;

(4) to reduce the overall cost of publicly-funded health care (including federally-funded health care) by providing low-income Texans access to safe, effective services that are consistent with these objectives; and

(5) to enforce any state law that regulates the delivery of non-federally funded family planning services, to the extent permitted by the Constitution of the United States.

§382.105. Definitions.

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

(1) Abortion--As defined in Texas Health and Safety Code §245.002.

(2) [(1)] Affiliate--

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

- (i) common ownership, management, or control;
- (ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this definition may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, articles of incorporation or a license, but do not include agreements related to a physician's participation in a physician group practice, such as a hospital group agreement, staffing agreement, management agreement, or collaborative practice agreement.

(3) [(2)] Applicant--An individual applying to receive services under FPP, including a current client who is applying to renew.

(4) [(3)] Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

(5) [(4)] Client--Any individual seeking assistance from an FPP health-care provider to meet their family planning goals.

[(5) Contraceptive method--Any birth control option approved by the United States Food and Drug Administration, with the exception of emergency contraception.]

[(6) Contractor--An entity that HHSC has contracted with to provide services. The contractor is the responsible entity, even if a subcontractor provides the service.]

[(7) Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, or a sole proprietorship.]

(6) [(8)] Covered service--A service that is reimbursable under FPP [medical procedure for which FPP will reimburse a contracted health-care provider].

(9) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:]

[(A) to terminate a pregnancy that resulted from an act of rape or incest;]

[(B) in a case in which a female suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the female in danger of death or risk of substantial impairment of a major bodily function unless an abortion is performed; or]

[(C) in a case in which a fetus has a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving treatment, is incompatible with life outside the womb.]

(7) [(10)] Family Planning Program (FPP)--The non-Medicaid program administered by HHSC as outlined in this subchapter.

(8) [(11)] Family Planning Program [health-care] provider--A health-care provider that is contracted with HHSC and qualified to perform covered services.

(9) [(12)] Family planning services--Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.

(10) [(13)] Federal poverty level--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(11) Grantee--An entity that HHSC has contracted with to provide services. The grantee is the responsible entity, even if a subgrantee provides the service.

(12) [(14)] Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency, health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.

[(15) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in three or more organ systems. The term does not include a clinic specializing in family planning services.]

(13) [(16)] HHSC--The Texas Health and Human Services Commission or its designee.

(14) [(17)] Medicaid program--The Texas Medical Assistance Program, a joint federal and state program provided for in Texas Human Resources Code Chapter 32, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(15) [(18)] Minor--In accordance with the Texas Family Code, a person under 18 years of age who has never been married and never been declared an adult by a court (emancipated).

(16) [(19)] Point of Service--The location where an individual can receive FPP services.

(17) [(20)] Third-party resource--A person or organization, other than HHSC or a person living with an [the] applicant or a client, who may be liable as a source of payment of the applicant's or client's medical expenses, for example, a private health insurance company or liability insurance company [(for example, a health insurance company)].

(18) [(21)] Unintended pregnancies--Pregnancies that pregnancy--Pregnancy a female reports as either mistimed or undesired at the time of conception.

(19) [(22)] U.S.C.--United States Code.

§382.107. Client Eligibility.

(a) FPP Criteria. A male or female is eligible for [to receive services through] FPP if he or she:

- (1) [he or she] is 64 years of age or younger;
- (2) [he or she] resides in Texas; and
- (3) has countable income (as calculated under §382.109 of this subchapter (relating to Financial Eligibility Requirements) that does not exceed 250 percent of the federal poverty level (FPL).

(b) Contractors determine eligibility at the point of service in accordance with program policy and procedures.

(c) Adjunctive eligibility--An applicant is considered adjunctively (automatically) eligible for FPP services at an initial or renewal eligibility screening if the applicant can provide proof of active enrollment in one of the following programs:

(1) Children's Health Insurance Program (CHIP) Perinatal;

~~{(2) Medicaid for Pregnant Women;}~~

(2) ~~[(3)]~~ Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); or

(3) ~~[(4)]~~ Supplement Nutrition Assistance Program (SNAP).

§382.109. Financial Eligibility Requirements.

Calculating countable income. FPP determines an applicant's financial eligibility by calculating the applicant's countable income. To determine countable income, FPP adds the incomes listed in paragraph (1) of this section, less any deductions listed in paragraph (2) of this section, and exempting any amounts listed in paragraph (3) of this section.

(1) To determine income eligibility, FPP counts the income of the following individuals if living together:

(A) the individual age 18 through 64~~;~~ ~~inclusive,~~ applying for FPP;

(i) the individual's spouse; and

(ii) the individual's children age 18 and younger; or

(B) the individual age 17 or younger~~;~~ ~~inclusive,~~ applying for FPP;

(i) the individual's parent(s);

(ii) the individual's siblings age 18 and younger; and

(iii) the individual's children;

(2) In determining countable income, FPP deducts the following items:

(A) a dependent care deduction of up to \$200 per month for each child under two years of age, and up to \$175 per month for each dependent two years of age or older;

(B) a deduction of up to \$175 per month for each dependent adult with a disability; and

(C) child support payments.

(3) FPP exempts from the determination of countable income the following types of income:

(A) the earnings of a child;

(B) up to \$300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(C) Temporary Assistance to Needy Families (TANF);

(D) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program) (7 U.S.C. §§2011-2036), the Child Nutrition Act of 1966 (42 U.S.C. §§1771-1793), the National School Lunch Act (42 U.S.C. §§1751-1769), and the Older Americans Act of 1965 (42 U.S.C. §§3056, et seq.);

(E) foster care payments;

(F) payments made under a government housing assistance program based on need;

(G) energy assistance payments;

(H) job training payments;

(I) lump sum payments;

(J) Supplemental Security Income;

(K) adoption payments;

(L) dividends, interest and royalties;

(M) Veteran's Administration;

(N) earned income tax credit payments;

(O) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§5121 et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(P) educational assistance payments; and

(Q) crime victim's compensation payments.

§382.113. Covered and Non-covered Services.

(a) Covered services~~;~~ ~~Services~~ provided through FPP include:

(1) contraceptive services;

(2) pregnancy testing and counseling;

(3) preconception health screenings for:

(A) obesity;

(B) hypertension;

(C) diabetes;

(D) cholesterol;

(E) smoking; and

(F) mental health;

(4) sexually transmitted infection (STI) services;

(5) limited pharmacological treatment for the following chronic conditions:

(A) hypertension;

(B) diabetes; and

(C) high cholesterol;

(6) breast and cervical cancer screening and diagnostic services:

(A) radiological procedures including mammograms;

(B) screening and diagnosis of breast cancer; and

(C) diagnosis and treatment of cervical dysplasia;

(7) immunizations;

(8) limited pharmacological treatment for postpartum depression;

(9) health history and physical exam;

(10) mental health counseling/treatment, including:

(A) individual, family, and group psychotherapy services; and

(B) psychological testing administration and evaluation;

(11) health behavior intervention, including:

(A) screening, brief intervention, and referral for treatment;

(B) smoking cessation services; and

(C) medication-assisted treatment;

(12) cardiovascular and coronary condition management, including:

(A) cardiovascular evaluation imaging and laboratory

studies;

(B) blood pressure monitoring equipment; and

(C) antihypertensive medications; and

(13) diabetes management, including:

(A) laboratory studies;

(B) additional injectable insulin options; and

(C) blood glucose testing supplies.

~~[(1) health history and physical;]~~

~~[(2) counseling and education;]~~

~~[(3) laboratory testing;]~~

~~[(4) provision of a contraceptive method;]~~

~~[(5) pregnancy tests;]~~

~~[(6) sexually transmitted infection screenings and treatment;]~~

~~[(7) referrals for additional services, as needed;]~~

~~[(8) immunizations;]~~

~~[(9) breast and cervical cancer screening and diagnostic services;]~~

~~[(10) prenatal services; and]~~

~~[(11) other services subject to available funding.]~~

(b) Non-covered services ~~in~~[- Services not provided through] FPP include:

(1) counseling on and provision of abortion services; and

~~[(2) counseling on and provision of emergency contraceptives; and]~~

(2) [(3)] other services that cannot be appropriately billed with a permissible procedure code.

§382.115. *Family Planning Program [Health-Care] Providers.*

(a) Procedures. An FPP [health-care] provider must:

(1) be enrolled as a Medicaid program provider in accordance with Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment);

(2) comply with subsection (b) of this section;

(3) [(2)] must complete the FPP certification process as described in subsection (e)[(g)] of this section; and

(4) [(3)] must comply with the requirements set out in Chapter 354, Subchapter A, Division 1 of this title (relating to Medicaid Procedures for Providers).

(b) Requirements. An FPP health-care provider must ensure that:

(1) the FPP [health-care] provider does not perform or promote elective abortions outside the scope of FPP and is not an affiliate of an entity that performs or promotes elective abortions; and

(2) in offering or performing a covered [an FPP] service, the FPP [health-care] provider:

(A) does not promote elective abortion within the scope of FPP;

(B) maintains physical and financial separation between its FPP activities and any elective abortion-performing or abortion-promoting activity, as evidenced by the following:

(i) physical separation of FPP services from any elective abortion activities, no matter what entity is responsible for the activities;

(ii) a governing board or other body that controls the FPP [health-care] provider has no board members who are also members of the governing board of an entity that performs or promotes elective abortions;

(iii) accounting records that confirm that none of the funds used to pay for FPP services directly or indirectly support the performance or promotion of elective abortions by an affiliate; and

(iv) display of signs and other media that identify FPP services and the absence of signs or materials promoting elective abortion in the FPP [health-care] provider's location or in the FPP [health-care] provider's public electronic communications; and

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" means advancing, furthering, advocating, or popularizing elective abortion by, for example:

(1) taking affirmative action to secure elective abortion services for an FPP client (such as making an appointment, obtaining consent for the elective abortion, arranging for transportation, negotiating a reduction in an elective abortion provider fee, or arranging or scheduling an elective abortion procedure); however, the term does not include providing upon the patient's request neutral, factual information and nondirective counseling, including the name, address, telephone number, and other relevant information about a [health-care] provider;

(2) furnishing or displaying to an FPP client information that publicizes or advertises an elective abortion service or [health-care] provider; or

(3) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, an FPP [health-care] provider must provide HHSC with all information HHSC requires to determine the provider's compliance with this section.

(e) Certification. Before initially providing covered services, [Upon initial application for enrollment in FPP,] an FPP grantee [contractor] must certify its compliance with subsection (b) of this section using an HHSC-approved form and any other requirement specified by HHSC. [Each FPP contractor must annually certify that the contractor complies with subsection (b) of this section.]

(f) FPP provider [~~Provider~~] disqualification. If HHSC determines that an FPP [health-care] provider fails to comply with subsection (b) of this section, HHSC disqualifies the [~~FPP health-care]~~ provider from providing FPP services under this subchapter.

(g) Client assistance and recoupment. If an FPP [health-care] provider is disqualified from providing FPP services under this subchapter, HHSC takes appropriate action to:

(1) assist a [~~an FPP]~~ client to find an alternate FPP [health-care] provider; and

(2) recoup any funds paid to a disqualified provider for covered [~~FPP]~~ services performed during the period of disqualification.

§382.119. *Reimbursement.*

(a) Reimbursement.

(1) Covered services provided through FPP are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

(2) Entities that contract with HHSC to provide additional services related to family planning that are separate from services referenced in paragraph (1) of this subsection are reimbursed by HHSC in compliance with program standards, policy and procedures, and contract requirements unless payment is prohibited by law.

(b) Claims procedures. An FPP [health-care] provider must comply with Chapter 354, Subchapter A, Divisions 1 and 5 of this title (relating to Medicaid Procedures for Providers and relating to Physician and Physician Assistant Services).

(c) Improper use of reimbursement. An FPP [health-care] provider may not use any FPP funds received to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of elective abortions.

(d) An FPP [health-care] provider may not deny covered services to a client based on the client's inability to pay.

§382.121. *Provider's Request for Review of Claim Denial.*

(a) Review of denied claim. An FPP [health-care] provider may request a review of a denied claim. The request must be submitted as an administrative appeal under Chapter 354, Subchapter I, Division 3 of this title (relating to Appeals).

(b) Appeal procedures. An administrative appeal is subject to the timelines and procedures set out in Chapter 354, Subchapter I, Division 3 of this title and all other procedures and timelines applicable to an FPP [health-care] provider's appeal of a Medicaid program claim denial.

§382.123. *Record Retention.*

(a) FPP grantees [~~contractors~~] must maintain, for the time period specified by the HHSC, all records pertaining to client services, contracts, and payments.

(b) FPP grantees [~~contractors~~] must comply with the Medicaid program record retention requirements found in §354.1004 of this title (relating to Retention of Records).

(c) All records relating to services must be accessible for examination at any reasonable time to representatives of HHSC and as required by law.

§382.125. *Confidentiality and Consent.*

(a) Confidentiality required. An FPP [health-care] provider must maintain all health care information as confidential to the extent required by law.

(b) Written release authorization. Before an FPP [health-care] provider may release any information that might identify a particular client, that client must authorize the release in writing. If the client is a minor, the client's parent, managing conservator, or guardian, as authorized by Chapter 32 of the Texas Family Code or by federal law or regulations, must authorize the release.

(c) Confidentiality training. An FPP [health-care] provider's staff (paid and unpaid) must be informed during orientation of the importance of keeping client information confidential.

(d) Records monitoring. An FPP [health-care] provider must monitor client records to ensure that only appropriate staff and HHSC may access the records.

(e) Assurance of confidentiality. An FPP [health-care] provider must verbally assure each client that her records are confidential and must explain the meaning of confidentiality.

(f) Consent for minors. FPP services must be provided with consent from the minor's parent, managing conservator, or guardian only as authorized by Texas Family Code, Chapter 32, or by federal law or regulations.

(g) An [~~A~~] FPP [health-care] provider may not require consent for family planning services from the spouse of a married client.

§382.127. *FPP Services for Minors.*

(a) Minors must be provided individualized family planning counseling and family planning medical services that meet their specific needs as soon as possible.

(b) The FPP [health-care] provider must ensure that:

(1) counseling for minors seeking family planning services is provided with parental consent;

(2) counseling for minors includes information on use and effectiveness of all medically approved birth control methods, including abstinence; and

(3) appointment schedules are flexible enough to accommodate access for minors requesting services.

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-202400077

Karen Ray

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Texas Health and Human Services Commission

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For further information, please call: (512) 438-4373



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §84.500, §84.502

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter M, §84.500 and §84.502, regarding the Driver Education and Safety (DES) program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 84, implement Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The proposed rules are necessary to implement Senate Bill (SB) 2304, Section 3, 88th Legislature, Regular Session (2023), which amend Texas Education Code, Chapter 1001, to require that the curriculum of each driver education and driving safety course include information relating to the Texas Driving with Disability Program (program).

The program is designed, in collaboration with the Department, the Department of Public Safety, the Texas Department of Motor Vehicles, and the Governor's Committee on People with Disabilities, to develop informational materials for prospective students with a health condition or disability that may impede effective communication with a peace officer and receive special education services. Such information will provide an affected person with the option to voluntarily list any health condition with a peace officer on a person's vehicle registration information or on an application for an original driver's license. This information may serve to reduce issues that can arise at a traffic stop by alerting the peace officer that a motorist has a disability or health condition that affects effective communication at the start of the encounter. The information developed by these organizations, upon completion, will be placed on the Department website for the DES program, and incorporated within its Program Guides as part of a future rulemaking.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §84.500, Courses of Instruction for Driver Education Providers, by: (1) including the Texas Driving with Disabilities Program, adopted by SB 2304, in the educational objectives for driver training course curricula; and (2) re-organizing supplemental educational objectives within the rule section.

The proposed rules amend §84.502, Driving Safety Courses of Instruction, to include the Texas Driving with Disabilities Program, adopted by SB 2304, in the educational objectives for driving safety course curricula.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the proposed rules will facilitate a better understanding of the benefits offered to people in Texas who drive with disabilities by informing them and all students of the Texas Driving with Disabilities Program. The program provides more modes of awareness informing others of communication impediments for affected drivers, how individuals with such disabilities can interact with police officers, and makes additional information available to law enforcement about the impediment. This awareness helps promote the safety of officers and individuals driving with disabilities during traffic encounters.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no economic costs to persons who are required to comply with the proposed rules. All driver education school courses of instruction will have to be altered as to time and content to include information on the Texas Driving with Disabilities Program. While changing the content of their courses could result in a small cost to some providers, these costs are anticipated to be minimal, if any.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule 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, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules 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 agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand an existing regulation. The proposed rules expand an existing regulation by adding a new educational objective for driver training courses by requiring the inclusion of information in curricula about the Texas Driving with Disabilities Program.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 2304, 88th Legislature, Regular Session (2023).

§84.500. *Courses of Instruction for Driver Education Providers.*

(a) The educational objectives of driver training courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops in accordance with provisions of the Community Safety Education Act; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; leaving children in vehicles unattended; distractions; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor

vehicle; recreational water safety; reducing traffic violations, injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

[(a) The educational objectives of driver training courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops in accordance with provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature (2017)); reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.]

(b) This subsection contains requirements for driver education courses. All course content and instructional material must include current statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval. For courses offered in a language other than English, the course materials must be accompanied by a written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such course materials are subject to the approval of the department prior to its use by a driver education provider.

(1) Minor and adult driver education course.

(A) The driver education classroom phase for students age 14 and over must consist of:

(i) a minimum of 32 hours of classroom instruction. The in-car phase must consist of seven hours of behind-the-wheel instruction and seven hours of in-car observation in the presence of a person who holds a driver education instructor license; and

(ii) 30 hours of behind-the-wheel instruction, including at least 10 hours of nighttime instruction, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). The 30 hours of instruction must be endorsed by a parent or legal guardian if the student is a minor. Simulation hours must not be substituted for these 30 hours of instruction. Driver education training endorsed by the parent is limited to one hour per day.

(B) Providers are allowed five minutes of break per instructional hour for all phases. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car instruction, simulation, and multicar range must include the educational objectives established by the department in the POI-DE and the requirements of this subchapter.

[(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range must include the educational objectives established by the department in the POI-DE and meet the requirements of this subchapter. In addition, the educational objectives that must be provided to every student enrolled in a minor and adult driver education course must include information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act

(Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; leaving children in vehicles unattended; distractions; motor-eye awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety.]

(D) Driver education providers that desire to instruct students age 14 and over in a traditional classroom program must provide the same beginning and ending dates for each student in the same class of 36 or less. No student must be allowed to enroll and start the classroom phase after the seventh hour of classroom instruction has begun.

(E) Students must proceed in the sequence identified by and approved for that driver education provider.

(F) Students must receive classroom instruction from an instructor who is approved and licensed by the department. An instructor must be in the classroom and available to students during the entire 32 hours of instruction, including self-study assignments. Instructors must not have other teaching assignments or administrative duties during the 32 hours of classroom instruction.

(G) Videos, tape recordings, guest speakers, and other instructional media that present concepts required in the POI-DE may be used as part of the required 32 hours of traditional classroom instruction.

(H) Self-study assignments occurring during regularly scheduled class periods must not exceed 25 percent of the course and must be presented to the entire class simultaneously.

(I) Each classroom student must be provided a driver education textbook designated by the commissioner or access to instructional materials that are in compliance with the POI-DE approved for the school. Instructional materials, including textbooks, must be in a condition that is legible and free of obscenities.

(J) A copy of the current edition of the "Texas Driver Handbook" or instructional materials that are equivalent must be furnished to each student enrolled in the classroom phase of the driver education course.

(K) Each student, including makeup students, must be provided their own seat and table or desk while receiving classroom instruction. A provider must not enroll more than thirty-six (36) students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the provider's location.

(L) When a student changes providers, the provider must follow the current transfer policy developed by the department.

(M) All classroom phases of driver education, including makeup work, must be completed within the timelines stated in the original student contract. This must not circumvent the attendance and progress requirements.

(N) All in-car lessons must consist of actual driving instruction. No provider must permit a ratio of more than four students per instructor or exceed the seating and occupant restraint capacity of the vehicle used for instruction. Providers that allow one-on-one instruction shall notify the parents in the contract.

(O) A student must have a valid driver's license or learner license in his or her possession during any behind-the-wheel instruction.

(P) All in-car instruction provided by the provider must begin no earlier than 5:00 a.m. and end no later than 11:00 p.m.

(Q) A provider may use multimedia systems, simulators, and multicar driving ranges for in-car instruction in a driver education program. Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specification developed by DPS and the department. A licensed driver education instructor must be present during use of multimedia systems, simulators, and multicar driving ranges.

(R) Four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of behind-the-wheel instruction and one hour of in-car observation. Two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind-the-wheel instruction and one hour of in-car observation relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to actual behind-the-wheel instruction.

(S) In a minor and adult driver education program, a student may apply to the DPS for a learner license after completing the objectives found in Module One: Traffic Laws of the POI-DE.

(T) Each provider owner that teaches driver education courses must collect adequate student data to enable the department to evaluate the overall effectiveness of the driver education course in reducing the number of violations and accidents of persons who successfully complete the course. The department may determine a level of effectiveness that serves the purposes of the Code.

(U) The instructor must be physically present in appropriate proximity to the student for the type of instruction being given. A driver education instructor, or provider owner must sign or stamp all completed classroom instruction records.

(2) Driver education course exclusively for adults. Courses offered in a traditional classroom setting or online to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222(c) and §521.1601, must be offered in accordance with the following guidelines.

(A) Traditional approval process. The department may approve a driver education course exclusively for adults to be offered traditionally if the course meets the following requirements.

(i) Application. The driver education provider must submit a completed application along with the appropriate fee.

(ii) Instructor license required. Students must receive classroom instruction from a licensed driver education instructor.

(iii) Minimum course content. The driver education course exclusively for adults must consist of six clock hours of classroom instruction that meets the minimum course content and instruction requirements contained in the POI-Adult Six-Hour.

(iv) Course management. An approved adult driver education course must be presented in compliance with the following guidelines.

(I) The instructor must be physically present in appropriate proximity to the student for the type of instruction being given. A licensed driver education instructor, or provider owner must sign or stamp all completed classroom instruction records.

(II) A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent must be furnished to each student enrolled in the course.

(III) Self-study assignments, videos, tape recordings, guest speakers, and other instructional media that present topics required in the course must not exceed 150 minutes of instruction.

(IV) Each student, including makeup students, must be provided their own seat and table or desk while receiving classroom instruction. A provider must not enroll more than 36 students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the provider's location.

(V) All classroom instruction, including makeup work, must be completed within the timelines stated in the original student contract.

(VI) A minimum of 330 minutes of instruction is required.

(VII) The total length of the course must consist of a minimum of 360 minutes.

(VIII) Thirty minutes of time, exclusive of the 330 minutes of instruction, must be dedicated to break periods or to the topics included in the minimum course content.

(IX) Students must not receive a driver education certificate of completion unless that student receives a grade of at least 70 percent on the highway signs examination and at least 70 percent on the traffic laws examination as required under Texas Transportation Code, §521.161.

(X) The driver education provider must make a material effort to establish the identity of the student.

(B) Online approval process. The department may approve a driver education course exclusively for adults to be offered online if the course meets the following requirements.

(i) Application. The applicant for an online driver education provider license must submit a completed application along with the appropriate fee.

(ii) Request for approval. The request for approval must include a syllabus cross-reference, contract, and instructional records.

(iii) Online Provider license required. A person or entity offering an online driver education course exclusively for adults must hold an online driver education provider license.

(I) The online driver education provider must be responsible for the operation of the online course.

(II) Students must receive classroom instruction from a licensed driver education instructor.

(iv) Course content. The online course must meet the requirements of the course identified in §1001.1015 of the Code.

(I) Course topics. The course requirements described in the POI-Adult Six-Hour must be met.

(II) Length of course. The course must be six hours in length, which is equal to 360 minutes. A minimum of 330 minutes of instruction must be provided. Thirty minutes of time, exclusive of the 330 minutes of instruction, must be dedicated to break periods or to the topics included in the minimum course content. All break periods must be provided after instruction has begun and before the comprehensive examination and summation.

(III) Required material. A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent must be furnished to each student enrolled in the course.

(IV) Editing. The material presented in the online course must be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(V) Irrelevant material. Advertisement of goods and services, and distracting material not related to driver education must not appear during the actual instructional times of the course.

(VI) Minimum content. The online course must present sufficient content so that it would take a student 360 minutes to complete the course. In order to demonstrate that the online course contains sufficient minutes of instruction, the online course must use the following methods.

(-a-) Word count. For written material that is read by the student, the course must contain the total number of words in the written sections of the course. This word count must be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(-b-) Multimedia presentations. For multimedia presentation, the online course must calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 150 minutes.

(-c-) Charts and graphs. The online course may assign one minute for each chart or graph.

(-d-) Time allotment for questions. The online course may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(-e-) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 330 minutes, the online course has demonstrated the required amount of minimum content.

(-f-) Alternate time calculation method. In lieu of the time calculation method, the online course may submit alternate methodology to demonstrate that the online course meets the 330-minute requirement.

(v) Personal validation. The online course must maintain a method to validate the identity of the person taking the course. The personal validation system must incorporate one of the following requirements.

(I) Provider-initiated method. Upon approval by the department, the online course may use a method that includes testing and security measures that validate the identity of the person taking the course. The method must meet the following criteria.

(-a-) Time to respond. The student must correctly answer a personal validation question within 90 seconds.

(-b-) Placement of questions. At least two personal validation questions must appear randomly during each instructional hour, not including the final examination.

(-c-) Exclusion from the course. The online course must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(-d-) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(II) Third party data method. The online course must ask a minimum of twelve (12) personal validation questions randomly throughout the course from a bank of at least twenty (20) questions drawn from a third party data source. The method must meet the following criteria.

(-a-) Time to respond. The student must correctly answer a personal validation question within 90 seconds.

(-b-) Placement of questions. At least two personal validation questions must appear randomly during each instructional hour, not including the final examination.

(-c-) Exclusion from the course. The online course must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(-d-) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(vi) Content validation. The online course must incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(I) Timers. The online course must include built-in timers to ensure that 330 minutes of instruction have been attended and completed by the student.

(II) Testing the student's participation in multimedia presentations. The online course must ask at least one course validation question following each multimedia clip of more than 180 seconds.

(-a-) Test bank. For each multimedia presentation that exceeds 180 seconds, the online course must have a test bank of at least four questions.

(-b-) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question must be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(-c-) Failure criteria. If the student fails to answer the question correctly, the online course must require the student to view the multimedia clip again. The online course must then present a different question from its test bank for that multimedia clip. The online course may not repeat a question until it has asked all the questions from its test bank.

(-d-) Answer identification. The online course must not identify the correct answer to the multimedia question.

(III) Course participation questions. The online course must test the student's course participation by asking at least two questions each from Chapter Four, Topics Two through Eight in the POI-Adult Six Hour.

(-a-) Test bank. The test bank for course participation questions must include at least ten questions each from Chapter Four, Topics Two through Eight in the POI-Adult Six-Hour.

(-b-) Placement of questions. The course participation questions must be asked at the end of the major unit or section in which the topic is covered.

(-c-) Question difficulty. Course participation questions must be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(IV) Comprehension of course content. The online course must test the student's mastery of the course content by ad-

ministering at least 30 questions covering the highway signs and traffic laws required under Texas Transportation Code, §521.161.

(-a-) Test banks (two). Separate test banks for course content mastery questions are required for the highway signs and traffic laws examination as required under Texas Transportation Code, §521.161, with examination questions drawn equally from each.

(-b-) Placement of questions. The mastery of course content questions must be asked at the end of the course (comprehensive final examination).

(-c-) Question difficulty. Course content mastery questions must be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(vii) Retest the student. If the student misses more than 30 percent of the questions asked on an examination, the online course must retest the student using different questions from its test bank. The student is not required to repeat the course, but may be allowed to review the course prior to retaking the examination. If the student fails the comprehensive final examination three times, the student fails the course.

(viii) Student records. The online course must provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The provider must ensure that the student record is readily, securely, and reliably available for inspection by a department representative. The student records must contain the following information:

(I) the student's first, middle, and last name;

(II) the student's date of birth and gender;

(III) a record of all questions asked and the student's responses;

(IV) the name or identity number of the staff member entering comments, retesting, or revalidating the student;

(V) both answers and a reasonable explanation for the change if any answer to a question is changed by the provider for a student who inadvertently missed a question; and

(VI) a record of the time the student spent in each unit and the total instructional time the student spent in the course.

(ix) Waiver of certain education and examination requirements. A licensed driver education instructor must determine that the student has successfully completed and passed a driver education course exclusively for adults prior to waiving the examination requirements of the highway sign and traffic law parts of the examination required under Texas Transportation Code, §521.161, and signing the ADE-1317 driver education completion certificate.

(x) Age requirement. A person must be at least 18 years of age to enroll in a driver education course exclusively for adults.

(xi) Issuance of certificate. Not later than the 15th working day after the course completion date, the provider must issue an ADE-1317 driver education certificate only to a person who successfully completes an approved online driver education course exclusively for adults.

(xii) Access to instructor and technical assistance. The provider must establish hours that the student may access an instructor trained in the adult driver education curriculum, and for technical assistance. With the exception of circumstances beyond the control of the provider, the student must have access to the instructor and technical assistance during the specified hours.

(xiii) Additional requirements for online courses. Courses delivered via the Internet or technology must also comply with the following requirements.

(I) Re-entry into the course. An online course may allow the student re-entry into the course by username and password authentication or other means that are as secure as username and password authentication.

(II) Navigation. The student must be provided orientation training to ensure easy and logical navigation through the course. The student must be allowed to freely browse previously completed material.

(III) Audio-visual standards. The video and audio must be clear and, when applicable, the video and audio must be synchronized.

(IV) Course identification. All online courses must display the driver education provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(V) Domain names. Each provider offering an online course must offer that online course from a single domain.

(VI) A driver education provider offering an online course may accept students redirected from a website as long as the student is redirected to the webpage that clearly identifies the name and license number of the provider offering the online course. This information must be visible before and during the student registration and course payment processes.

(3) Compliance with Texas Transportation Code, §521.1601. Persons age 18 to under 25 years of age must successfully complete either a minor and adult driver education course or the driver education course exclusively for adults. Partial completion of either course does not satisfy the requirements of rule or law.

(4) Issuance of certificate. A licensed provider or instructor may not issue an ADE-1317 adult driver education certificate to a person who is not at least 18 years of age.

§84.502. *Driving Safety Courses of Instruction.*

This section contains requirements for traditional classroom driving safety courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Courses of instruction must not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course must be submitted by the driving safety provider and approved prior to being offered.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act [(Senate Bill 30, 85th Regular Legislature (2017))]; the proper use of child passenger safety seat systems; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; reducing traffic violations; reducing

traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the driving safety provider must provide written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to the approval of the department prior to its use in a driver safety course. To be approved, each driving safety provider must submit as part of the application a course content guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to techniques of instruction, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions must be used by each driving safety provider that offers the course and include the following requirements:

(I) appropriate standards to ascertain the attendance of students. All driving safety providers must use appropriate standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(II) if the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(III) any period of absence for any portion of instruction will require that the student complete that portion of instruction in a manner determined by the driving safety provider; and

(IV) conditions for dismissal and conditions for re-entry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials must not be used in excess of 165 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials to be provided for use by each student as a guide to the course. The department may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, work-book activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide must identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written

questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in Chapter Four of the COI-Driving Safety. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the department.

(C) Course and time management. Approved driving safety courses must be presented in compliance with the following guidelines and must include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course must consist of a minimum of 360 minutes.

(iii) Sixty (60) minutes of time, exclusive of the 300 minutes of instruction, must be dedicated to break periods or to the topics included in the minimum course content. All break periods must be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures such as enrollment must not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting must allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day must provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks must be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics must be approved by the department as part of the course approval, and for each student, the course must be taught in the order identified in the approved application.

(viii) Students must not receive a uniform certificate of course completion unless that student receives a grade of at least 70 percent on the final examination.

(ix) In a traditional classroom setting, there must be sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class must have no more than 50 students.

(x) The driving safety provider must make a material effort to establish the identity of the student.

(D) Minimum course content. Driving Safety course content, including video and multimedia, must include current statistical data, references to law, driving procedures, and traffic safety methodology, as shown in the COI-Driving Safety to assure student mastery of the subject matter.

(E) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course. The comprehensive examination for each driving safety course must include at least two questions from the required units set forth in Chapter Four, Topics Two through Twelve of the COI-Driving Safety, for a total of at least 20 questions. The final examination questions

shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Provider-designated persons who offer or provide instruction must not assist students in answering the final examination questions but may facilitate alternative testing. Students must not be given credit for the driving safety course unless they score 70 percent or more on the final test. The provider must identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the final examination. The provider may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(F) Requirements for authorship. The course materials must be written by individuals or organizations with recognized experience in writing instructional materials.

(G) Renewal of course approval. The course approval must be renewed every even-numbered year.

(i) For approval, the course owner shall update all the course content methodology, procedures, statistical data, and references to law with the latest available data.

(ii) The department may alter the due date of the renewal documents by giving the approved course six months' notice. The department may alter the due date in order to ensure that the course is updated six months after the effective date of new state laws passed by the Texas Legislature.

(H) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(I) The department may revoke approval of any course given to a provider under any of the following circumstances:

(2) Any information contained in the application for the course approval is found to be untrue;

(3) The school has failed to maintain the courses of study on the basis of which approval was issued;

(4) The provider has been found to be in violation of the Code, and/or this chapter; or

(5) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A).

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 January 11, 2024.

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER G. APPLY TEXAS ADVISORY COMMITTEE

19 TAC §1.128

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter G, §1.128 concerning the Authority and Specific Purposes of the Apply Texas Advisory Committee. Specifically, this amendment will change the reference to rule 4.11, to the correct rule 4.10.

Laura Brennan, Assistant Commissioner for College and Career Advising has determined that for each of the first five years the section is 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.

Laura Brennan, Assistant Commissioner for College and Career Advising, 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 provide to institutions of higher education a reference to the accurate rule. 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 Laura Brennan, Assistant Commissioner for College and Career Advising, P.O. Box 12788, Austin, Texas 78711-2788, or via email at CRI@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Chapter 1, Subchapter A, General Provisions, §1.15, which provides the authority for the Commissioner of Higher Education to approve proposed Board rules for publication in the *Texas Register*.

This proposed amendment affects Title 19, Texas Administrative Code, Chapter 1.

§1.128. *Authority and Specific Purposes of the Apply Texas Advisory Committee.*

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §51.762, and in accordance with the Texas Education Code, §61.0331, regarding requirements for Negotiated Rulemaking. Moreover, the committee is governed in accordance with the Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter A, §1.6 (relating to Advisory Committees [~~General Provisions~~]).

(b) Purposes. Apply Texas Advisory Committee is created to provide the Board with advice and recommendation(s) regarding the common admission applications and the Apply Texas System, in accordance with Chapter 4, Subchapter A, §4.10 [~~§4.11~~] of this title (relating to Common Admission Application Forms).

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 January 11, 2024.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 427-6585



CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.10

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter A, §4.10, concerning the Common Admission Application Forms. Specifically, this amendment will align the rule with the General Appropriations Act, House Bill 1, Article III, Section 9 (88th Legislature, Regular Session), Cost Recovery for the Common Application Form, which provides the Coordinating Board with the authority to recover costs related to the common application form for each general academic institution, each participating public two-year institution, and each participating independent institution.

Laura Brennan, Assistant Commissioner for College and Career Advising has determined that for each of the first five years the section is 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.

Laura Brennan, Assistant Commissioner for College and Career Advising, 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 allow options for recovering costs related to the common application form including not recovering costs if appropriate appropriations are identified. 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 Laura Brennan, Assistant Commissioner for College and Career Advising, P.O. Box 12788, Austin, Texas 78711-2788, or via email at CRI@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the General Appropriations Act, House Bill 1, Article III, Section 9 (88th Legislature, Regular Session), which provides the Coordinating Board with the authority to recover costs related to the common application form for each general academic institution, each participating public two-year institution, and each participating independent institution.

This proposed amendment affects rules in Title 19, Texas Administrative Code, Chapter 4.

§4.10. *Common Admission Application Forms.*

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Apply Texas Advisory Committee--An advisory committee composed of representatives of general academic teaching institutions, community college districts, public state colleges, and public technical institutes, authorized by Texas Education Code, §51.762 and established in accordance with Board rules, Chapter 1, Subchapter G, §§1.128 - 1.134 of this title (relating to Apply Texas Advisory Committee), to provide the Texas Higher Education Coordinating Board assistance in developing and implementing admissions application forms and procedures.

(2) Apply Texas System--The state's system for applying for admission to Texas public institutions of higher education. The System includes an access portal for completing common application forms; help desks to provide users assistance; and a portal through which Texas high school counselors access status data regarding student progress in applying for admission to and financial aid for college.

(b) Acceptance of Admission Applications.

(1) Public community colleges, public state colleges, and public technical institutes shall accept freshman and undergraduate transfer applications submitted using the Board's electronic common admission application forms.

(2) General academic teaching institutions shall accept freshman and undergraduate transfer applications submitted using either the Board's electronic or printed forms.

(c) Common Application Forms.

(1) General application information provided on the common application form shall include:

(A) biographical information including gender, ethnicity, and date of birth;

(B) educational information including coursework, extracurriculars, community and volunteer service, and awards/honors;

(C) residency; and

(D) certification of information.

(2) Adjustments to Paper Forms. When sending a printed common application form to a student with or without other materials, an institution shall not alter the form in any way and shall include instructions for completing the form, general application information, and instructions for accessing a list of deadlines for all institutions.

(d) Outreach to Public High Schools.

(1) The Coordinating Board shall seek advice and recommendation(s) from high school counselors representative of diverse Texas public school districts regarding the common application and the Apply Texas System.

(2) The Coordinating Board shall ensure that copies of the freshman common admission application forms and information for their use are available to appropriate personnel at each Texas public high school. The Coordinating Board will work with institutions and high schools to ensure that all high schools have access to either the printed or electronic common application forms.

(e) Data to be Collected.

(1) Common application forms are to include questions needed for determining an applicant's residence status with regard to higher education and other information the Board considers appropriate.

(2) Each general academic teaching institution, public community college, public state college, and public technical institute shall collect information regarding gender, race/ethnicity, and date of birth as part of the application process and report this information to the Coordinating Board. Common application forms do not have to be the source of those data.

(3) Institutions of higher education may require an applicant to submit additional information within a reasonable time after the institution has received a common application form.

(f) Publicity. The Board shall publicize in both electronic and printed formats the availability of the common admission forms.

(g) Subcontract for Technical Support. The Coordinating Board shall enter into a contract with a public institution of higher education or third-party vendor to maintain the electronic common application system for use by the public in applying for admission to participating institutions and for distribution of the electronic application to the participating institutions designated by the applicant.

(h) Costs.

(1) Participating institutions may charge a reasonable fee for the filing of a common application form.

(2) Operating costs of the system [will] may be paid for by all institutions required to use the common application plus independent and health-related institutions that contract to use the electronic application.

(3) Each participating institution [shall] may pay a portion of the cost based on the percentage of its enrollment compared to the total enrollment of all participating institutions based on the certified enrollment data of the most recent fall semester. The Coordinating Board will monitor the cost of the system and notify the institutions on an annual basis of their share of the cost. Billings for the services for the coming year will be calculated and sent to the institutions by September 1 of each fiscal year and payments must be received no later than December 1 of each fiscal year.

(4) The Coordinating Board [shall] may send participating institutions reminders of payment amounts and the due date. Institutions failing to pay their share of the cost by the due date may be denied access to in-coming application data until such time that payments are received.

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 January 11, 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) 427-6585



SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §§4.51 - 4.63

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter C, §§4.51 - 4.63, concerning the Texas Success Initiative. Specifically, this repeal will allow the Coordinating Board to adopt new rules relating to college readiness standards.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, 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.

Dr. Jennielle Strother, Assistant Commissioner for Student Success 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 allowing the Coordinating Board to adopt modernized college readiness standards. 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. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at CRI@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 51.344, which provides the Coordinating Board with the authority to adopt rules relating to Texas Education Code, Chapter 51, Subchapter F-1, relating to the Texas Success Initiative.

The proposed repeal affects Texas Education Code, Chapter 51, Subchapter F-1, Section 51.344, relating to the Texas Success Initiative.

§4.51. *Purpose.*

§4.52. *Authority.*

§4.53. *Definitions.*

§4.54. *Exemptions, Exceptions, and Waivers.*

§4.55. *Assessment and Placement.*

§4.56. *Assessment Instrument.*

§4.57. *College Ready Standards.*

§4.58. *Advisement and Plan for Academic Success.*

§4.59. *Determination of Readiness to Perform Entry-Level Freshman Coursework.*

§4.60. *Evaluation and Reporting.*

§4.61. *Limited Waiver of Rules.*

§4.62. *Required Components of Developmental Education Programs.*

§4.63. *Privacy of Student Information.*

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 January 11, 2024.



19 TAC §§4.51 - 4.62

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter C, §§4.51 - 4.62, concerning college readiness standards and the Texas Success Initiative (TSI). The TSI is a system established in statute for assessing whether students have met requirements to be deemed college-ready, requiring advising and academic assistance supporting students' successful course completions and momentum towards meeting academic and career goals. Specifically, this new section will modernize existing rules related to the TSI to reflect best practices in the delivery of developmental education.

Rule 4.51 provides the purpose and authority for this subchapter. Rules establishing the TSI derive from Texas Education Code (TEC), chapter 51, subchapter F-1, and the Coordinating Board's authority to promulgate TSI-related rules is established in TEC, §51.344.

Rule 4.52 sets out categories of students to whom TSI and college readiness requirements do not apply. This rule implements statutory language in TEC, §51.332, which carves out certain student categories (like students in military service, or students who have already earned an associate or baccalaureate degree) from TSI requirements. This rule clarifies that college readiness standards do not apply to a high school student who is a non-degree seeking student and an institution shall not require a non-degree seeking high school student to be assessed for college readiness. This revision aligns the rule to TEC, §51.333, which applies to an entering undergraduate student.

Rule 4.53 contains definitions for the subchapter. The Coordinating Board proposes to refine the definitions to match current practices and developmental education and other support models more closely - for example, by changing the Advising definition to reflect that students receive college guidance from a wide variety of sources. The rule adds definitions for degree seeking and non-degree seeking students to clarify which students are required to meet college readiness standards. These definitions implement TEC, §51.9685, and will be applicable across the definitions in Board rules.

Rule 4.54 lists the standards set by the Coordinating Board for institutions to determine whether a student has met requirements for exemption from the TSI. Statute provides for students to qualify for TSI exemption upon achieving certain scores on assessments or upon completion of certain college-level coursework (TEC, §51.338). Rule 4.54 complies by establishing benchmarks for commonly administered assessments like the SAT and the ACT, as well as stating how students can qualify for TSI exemptions through demonstrations of success on prior college-level coursework. Revisions to this section align the exemptions to the Education Code, chapter 51, subchapter F-1, and eliminate obsolete assessment instruments and standards. The section additionally clarifies that students who have successfully earned college credit in math or English via dual credit are deemed exempt from TSI assessment because the student has

demonstrated that they are ready to perform college level course work through course completion. Additionally, a student who has earned the Texas First Diploma is exempt from TSI assessment because a student must meet standards that demonstrate early readiness from college pursuant to TEC, §28.0253, in order to earn the diploma.

Rule 4.55 outlines steps for institutions to assess and place students on an individualized basis, including delivering pre-assessment information to students and describing relevant factors to place students in appropriate coursework or interventions. This rule carries out statutory provisions, including TEC, §51.333(b).

Rule 4.56 establishes the Texas Success Initiative Assessment Instrument (TSIA and TSIA2) in rule, which is the Coordinating Board-approved assessment instrument required by TEC, §51.334. Test results are valid for a five-year period, and institutions must follow Coordinating Board and vendor requirements to administer the assessment.

Rule 4.57 sets out the benchmarks required on the TSIA for a student to demonstrate college readiness as required by TEC, §51.334(c). The Coordinating Board designates benchmarks with the objective of ensuring appropriate placement of students to achieve success in coursework.

Rule 4.58 requires institutions to develop advising and academic success plans for non-exempt students who do not meet college readiness assessment benchmarks. These plans must be individualized to the student and created in partnership with the student, a best practice required by law (TEC, §51.335). The Coordinating Board encourages institutions to adopt Non-Course-Based models where possible, to address needs in a targeted manner intended to keep students engaged and enrolled in their programs.

Rule 4.59 states how institutions may determine whether to enroll students in college-level coursework.

Rule 4.60 complies with a statutory requirement that the Coordinating Board periodically evaluate effectiveness of the TSI program by setting out required reporting necessary to conduct the evaluation (TEC §51.343).

Rule 4.61 describes the required components of a developmental education program, in keeping with statutory requirements in TEC, §51.336(e). The revised rule gives institutions greater flexibility to design and offer different models of developmental education to students.

Rule 4.62 pertains to the privacy of student information. This provision ensures compliance with federal law and state law on data privacy (TEC, 51.344(c)).

Dr. Jennielle Strother, Assistant Commissioner for Student Success, 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.

Dr. Jennielle Strother, Assistant Commissioner for Student Success 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 modernization of the current college readiness rules in alignment with advancements in delivering innovative developmental education models in 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 Dr. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at CRI@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 51.344, which provides the Coordinating Board with the authority to adopt rules to implement Texas Education Code, Chapter 51, Subchapter F-1, relating to the Texas Success Initiative.

The proposed new section affects Texas Education Code, §§51.331-51.344, 61.07611, and 61.0762; and Texas Administrative Code, Title 19, Part 1, §§2.3, 4.85, 4.86, 4.155, and 21.52.

§4.51. Purpose and Authority.

(a) The purpose of this subchapter is to establish the college readiness standards and assessment instruments for students, including implementing the Texas Success Initiative for Texas public institutions of higher education. It is the intent of the Texas Higher Education Coordinating Board that Texas public institutions of higher education use the flexibility and responsibility granted under these rules to improve individualized programs to ensure the success of students in higher education.

(b) Under Texas Education Code, §51.344, the Board is authorized to adopt rules to implement the provisions of Texas Education Code, chapter 51, subchapter F-1, Texas Success Initiative.

§4.52. Applicability.

(a) Except as set out in subsection (b) of this section, this subchapter applies to each entering undergraduate student not otherwise exempt under §4.54 of this subchapter (relating to Exemption).

(b) This subchapter does not apply to the following students, and an institution shall not require these students to demonstrate college readiness pursuant to this subchapter. The following figure contains the full list of student categories to whom this subchapter does not apply.

Figure: 19 TAC §4.52(b)

(1) A student who has earned an associate or baccalaureate degree from an institution of higher education;

(2) A student who transfers to an institution of higher education from a private or independent institution of higher education or an accredited out-of-state institution of higher education and who has satisfactorily completed college-level coursework in the corresponding subject area, as transcribed or otherwise determined by the receiving institution;

(3) A student who is enrolled in a certificate program of one year or less at a public junior college, a public technical institute, or a public state college;

(4) A student enrolled in high school who is a non-degree-seeking student as defined in §4.53(8) of this subchapter (relating to Definitions);

(5) A student who is serving on active duty as a member of the armed forces of the United States, the Texas National Guard, or as a member of a reserve component of the armed forces of the United States; or

(6) A student who on or after August 1, 1990, was honorably discharged, retired, or released from active duty as a member of the armed forces of the United States or the Texas National Guard or service as a member of a reserve component of the armed forces of the United States.

§4.53. Definitions.

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

(1) Acceleration--The reorganization of instruction and curricula in ways that expedite the completion of coursework or credentials based on an assessment of students' strengths and needs. It involves a departure from a traditional multi-course sequence in favor of a more streamlined approach to academic support, resulting in students' achievement of college readiness in one year or less. Some examples include, but are not limited to, non-course-based options (NCBOs), emporium models, co-requisites, course-pairing, and computer-assisted instruction.

(2) Advising--The ongoing and intentional process by which students receive guidance in selecting and navigating their choice of courses or majors, accessing campus and community services, and developing career goals and short/long-term plans. Advising may be provided by faculty, staff members, peer mentors, interactive technology-based resources, or other means.

(3) Assessment--The use of a Board-approved instrument to determine the academic skills of an undergraduate student and evaluate the likelihood that a student is ready to enroll and succeed in entry-level academic coursework, with or without academic support.

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

(5) Compressed or Intensive Course--A course that addresses the same learning outcomes as a traditional course but meets in a shortened overall time period and generally has the same number of contact hours as a traditional course (e.g., four weeks at twelve contact hours per week or eight weeks at six contact hours per week instead of sixteen weeks at three contact hours per week), thus allowing for multiple courses to be completed in the same time period as one traditional course.

(6) Contextualized Coursework--Strategies that accelerate learning for learners whereby contextualized coursework integrates career subject matter with pre-college skills development in reading, writing, and mathematics.

(7) Co-requisite (also known as corequisite, mainstreaming, or course pairing)--An instructional strategy whereby an undergraduate student as defined in paragraph (23) of this section is co-enrolled or concurrently enrolled in a developmental education course or in NCBO academic support as defined in paragraph (18) of this section and the entry-level academic course of the same subject matter within the same semester. The developmental education component should provide support aligned directly with the learning outcomes, instruction, and assessment of the entry-level academic course, and make necessary adjustments as needed to advance the student's success in the entry-level course. Participation in and completion of the entry-level academic course may not be contingent upon a student's performance in the developmental education course or NCBO.

(8) Non-Degree-Seeking Student--A student who has not filed a degree plan with an institution of higher education and is not required to do so pursuant to Texas Education Code, §51.9685.

(9) Developmental Education Course or Developmental Course--A non-credit course designed to address a student's skills, strengths and needs in the areas of reading, writing, integrated reading and writing (IRW), mathematics, and student success, to help that student be ready to succeed in entry-level academic coursework.

(10) Developmental Education--Non-credit Developmental Education Courses or Non-Course-Based Developmental Education Interventions such as co-requisites, tutorials, laboratories, interactive modules, and other means of assistance that may be included in a student's academic plan to help the student succeed in entry-level academic coursework.

(11) Differentiated Instruction--Different instructional processes used to engage a student based on their individual strengths, skills, motivational attitudes, and learning needs and preferences.

(12) Differentiated Placement--Advising and placement of students based on individual strengths and needs.

(13) Entry-level academic course (sometimes referred to as an entry-level freshman course or freshman-level academic coursework)--Any college level course for academic credit in which a first-time in college student might typically enroll. An entry-level course may not have prerequisite college courses. These courses (or their local equivalents based on the Texas Common Core Numbering System) may include, but are not limited to, ENGL 1301, HIST 1301, PSYC 2301, GOVT 2305/2306, MATH 1314/1414/1324/1332/1342, SOCI 1301, PHIL 1301, SPCH 1311/1315, COSC 1301, HUMA 1301, ARTS 1301, and BIOL 1306/1406.

(14) Institution of Higher Education or institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(15) Mathematics Pathway Models--Developmental and basic academic skills coursework and interventions designed to prepare students for academic and workforce training programs and careers with mathematics content relevant for their programs.

(16) Measurable Learning Outcomes--Knowledge, skills, and abilities students should be able to demonstrate upon completion of a course or intervention.

(17) Minimum Passing Standards--A score that must be attained by a student in reading, writing, and mathematics on an assess-

ment instrument designated for use by institutions of higher education by the board that indicates the student's readiness to enroll in entry-level academic courses as defined in paragraph (13) of this section. These scores are set forth in §4.57 of this subchapter (relating to Texas Success Initiative Assessment College Readiness Standards).

(18) Non-Course-Based Developmental Education Interventions (also known as NCBO or Non-Semester-Length Interventions)--Interventions that are selected or designed to address a student's specific identified academic skills, strengths, and learning needs, to effectively and efficiently prepare the student to succeed in college-level work. These interventions must be overseen by an instructor of record and are beyond academic advising or learning support activities provided generally to all students in a course, program, or institution; interventions may include, but are not limited to, individual or group tutoring, supplemental instruction, interactive online resources, emporium models, or labs.

(19) Non-Degree Credit Course--A specific course which may not be counted toward a degree or certificate. The term includes developmental education, pre-collegiate, and general continuing education courses.

(20) Professional Development--The provision of ongoing and systematic learning opportunities for educators and support staff to support the use of research-based strategies, methodologies, and effective instructional practices to support the design and delivery of programs, coursework, and interventions advancing the cognitive and non-cognitive skills of students pursuing post-secondary courses and credentials including certificates and degrees.

(21) Program Evaluation--Systematic methods of collecting, analyzing, and using information to examine and assess the costs, efficiency, and effectiveness of courses, interventions, and policies.

(22) TSI Assessment--A Board-approved assessment instrument designated in §4.56 of this subchapter (relating to Texas Success Initiative Assessment Instrument) pursuant to Texas Education Code, §51.334, for use by institutions of higher education to assess a student's readiness to enroll in an entry-level academic course.

(23) Undergraduate Student--A student, other than a high school student enrolled in college-level coursework for dual credit, who enrolls at a Texas public institution of higher education in a course or program of study leading to a certificate, degree, or other undergraduate credential.

§4.54. Exemption.

(a) For the purpose of demonstrating exemption under subsection (b) of this section, the Board shall ensure that the passing standard on each approved assessment meets the college readiness standard under §4.57(a) of this subchapter (relating to Texas Success Initiative Assessment College Readiness Standards).

(b) A student who achieves the passing standard on an assessment as set out in this subsection shall be deemed exempt from the requirements of the Texas Success Initiative. An institution shall not require an exempt student to provide any additional demonstration of college readiness and shall allow an exempt student to enroll in an entry-level academic course as defined in §4.53(13) of this title (relating to Definitions). The following figure contains the full list of assessments, minimum required scores, and eligible exemptions.
Figure: 19 TAC §4.54(b)

(1) For a period of five (5) years from the date of testing, a student who is tested and performs at or above the following standards that cannot be raised by institutions:

(A) ACT. A student who has achieved the applicable standard under this subsection shall be deemed exempt under this subchapter.

(i) ACT administered prior to February 15, 2023: composite score of 23 with a minimum of 19 on the English test shall be exempt for both the reading and writing sections of the TSI Assessment, and/or 19 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment.

(ii) ACT administered on or after February 15, 2023: a combined score of 40 on the English and Reading (E+R) tests shall be exempt for both reading and writing or ELAR sections of the TSI Assessment. A score of 22 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment. There is no composite score.

(iii) The use of scores from both the ACT administered prior to February 15, 2023, and the ACT administered after February 15, 2023, is allowable, as long as the benchmarks set forth in clause (ii) of this subparagraph are met.

(B) SAT. A student who has achieved the applicable standard under this subsection shall be deemed exempt under this subchapter.

(i) SAT administered on or after March 5, 2016: a minimum score of 480 on the Evidenced-Based Reading and Writing (EBRW) test shall be exempt for both reading and writing sections of the TSI Assessment. A minimum score of 530 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment. There is no minimum combined EBRW and mathematics score.

(ii) Mixing or combining scores from the SAT administered prior to March 5, 2016, and the SAT administered on or after March 5, 2016, is not allowable.

(C) GED: minimum score of 165 on the Mathematical Reasoning subject test shall be exempt for the mathematics section of the TSI Assessment. A minimum score of 165 on the Reasoning Through Language Arts (RLA) subject test shall be exempt for the English Language Arts Reading (ELAR) section of the TSI Assessment.

(D) HiSET: minimum score of 15 on the Mathematics subtest shall be used to determine exemption on the mathematics section of the TSI Assessment. A minimum score of 15 on the Reading subtest and a minimum score of 15 on the Writing subtest, including a minimum score of 4 on the essay, shall be exempt for the English Language Arts Reading (ELAR) section of the TSI Assessment.

(E) STAAR End of Course Test. A student who achieves a minimum score of 4000 on STAAR English III EOC shall be exempt for both reading and writing.

(c) A student who has met one of the following criteria shall be exempt from the requirements of the Texas Success Initiative for the respective content area in which they have demonstrated college readiness. The following chart contains the full list of course and program completions and eligible exemptions.
Figure: 19 TAC §4.54(c)

(1) A student who successfully completes a college preparatory course under Texas Education Code, §28.014, is exempt for a period of twenty-four (24) months from the date of high school graduation with respect to the content area of the course, under the following conditions:

(A) The student enrolls in the student's first college-level course in the exempted content area in the student's first year of enrollment in an institution of higher education; and

(B) The student enrolls at the institution of higher education:

(i) that partnered with the school district in which the student is enrolled to provide the course, or

(ii) with an institution that deems the student TSI-met based on the completion of a course that meets the requirements of subsection (c)(1) of this section.

(2) A student who has previously enrolled in any public, private, or independent institution of higher education or an accredited out-of-state institution of higher education and:

(A) has met college readiness standards in mathematics, reading, or writing as determined by the receiving institution, or

(B) who has satisfactorily completed college-level coursework in mathematics, reading, or writing with a grade of 'C' or better, including a high school student who has earned college credit for a dual credit course or a course offered under §4.86 of this chapter (relating to Optional Dual Credit or Dual Enrollment Program: College Connect Courses), with a grade of 'C' or better.

(3) A student who has earned the Texas First Diploma under chapter 21, subchapter D of this title (relating to Texas First Early High School Completion Program).

(d) An institution may exempt a non-degree-seeking or non-certificate-seeking student not otherwise exempt under this section.

(e) In accordance with the requirements of this subchapter, an institution shall not require a student who is exempt in mathematics, reading, and/or writing or to whom this subchapter is inapplicable under §4.52 of this subchapter (relating to Applicability) to be assessed under this subchapter or to enroll in developmental coursework or interventions in the corresponding area of exemption. This limitation does not restrict an institution from advising a student to complete additional coursework or interventions to increase the likelihood of the student's success in completing the courses and program in which the student enrolls.

(f) ESOL Waiver--An institution may grant a temporary waiver from the assessment required under this title for students with demonstrated limited English proficiency in order to provide appropriate ESOL/ESL coursework and interventions. The waiver must be removed after the student attempts 15 credit hours of developmental ESOL coursework at a public junior college, public technical institute, or public state college; nine (9) credit hours of developmental ESOL coursework at a general academic teaching institution; or prior to enrolling in entry-level academic coursework, whichever comes first, at which time the student would be assessed by the institution with a Board-approved instrument as defined by §4.56 of this subchapter (relating to Texas Success Initiative Assessment Instrument). Funding limits as defined in Texas Education Code, §51.340, for developmental education still apply.

§4.55. Assessment and Placement.

(a) An institution shall assess, by an instrument approved in §4.56 of this subchapter (relating to Texas Success Initiative Assessment Instrument), the academic skills of each entering, non-exempt undergraduate student as defined in §4.53(23) of this subchapter (relating to Definitions) prior to enrollment of the student.

(b) For each student, including a student who is exempt as provided by §4.54 of this subchapter (relating to Exemption) or who has been determined by an institution to be ready to enroll in entry-level academic courses as provided by §4.54, institutions are strongly encouraged to provide the student with advising, appropriate course and program placement, and support based on the individual student's

skills, strengths, and needs, to increase the likelihood of the student's success in completing the courses and program in which the student enrolls.

(c) Under exceptional circumstances, an institution may permit a student to enroll in entry-level academic coursework without assessment but shall require the student to be assessed not later than the end of the first semester of enrollment in entry-level academic coursework.

(d) Prior to the administration of an approved instrument in §4.56, a test administrator shall provide to the student a pre-assessment activity or activities that address at a minimum the following components in an effective and efficient manner, such as through workshops, orientations, and/or online modules:

(1) Importance of assessment for identifying a student's academic skills, strengths, and needs;

(2) Assessment process and components, including practice with feedback of sample test questions in all disciplinary areas;

(3) Developmental education options offered by the institution including Non-Course-Based Options; and/or

(4) Institutional and/or community student resources (e.g., supplemental instruction, tutoring, transportation, childcare, basic needs support, or emergency financial aid).

(e) For placement of a non-exempt undergraduate student not meeting standards as defined in §4.57(a) of this subchapter (relating to Texas Success Initiative Assessment College Readiness Standards), institutions shall use for determination of appropriate courses, interventions, and other support the student's TSI Assessment results and accompanying Diagnostic Profile, along with other relevant information such as:

(1) High school Grade Point Average/class ranking;

(2) Prior academic coursework or work experience;

(3) Demonstrated personal achievement (e.g., leadership, motivation, self-efficacy); and

(4) Family-life issues (e.g., job, childcare, transportation, finances).

(f) An institution offering collegiate-level credit to students via a Multi-Institution Teaching Center (MITC) or a university system center, or to in-state students by distance learning delivery systems shall ensure that students are assessed as required by this section.

(g) An institution may not use the assessment or the results of the Board-approved assessment instrument as provided by §4.56 as a condition of admission to the institution.

§4.56. Texas Success Initiative Assessment Instrument.

(a) Effective fall 2013, the Texas Success Initiative Assessment (TSIA) is the only Board-approved assessment instrument used under this title.

(b) Effective January 11, 2021, the TSIA, Version 2.0 (TSIA2) replaced the TSIA as the only Board-approved TSI assessment instrument offered under this title.

(c) A student is entitled to use a TSIA or TSIA2 test result for a period of no more than five years after the date of testing to meet the requirements of this subchapter.

(d) Each administrator of the TSI Assessment must follow the requirements and processes for test administration as set forth by the Coordinating Board and the test vendor.

§4.57. Texas Success Initiative Assessment College Readiness Standards.

(a) For the purpose of this section and §4.54(b)(1) of this subchapter (relating to Exemption), the Board shall approve a passing standard ("cut score") on an assessment that corresponds to a 70-75% likelihood of a student earning an 'A', 'B', or 'C' in a college level course for which the assessment instrument is used to establish college readiness.

(b) Effective the institution's first class day of fall 2017, for a student who is not otherwise exempt under this subchapter, the institution shall use the following minimum college readiness standards (also known as "cut scores") for reading, mathematics, and writing on the TSI Assessment (TSIA) to determine a student's readiness to enroll in entry-level freshman coursework:

(1) Reading 351;

(2) Mathematics 350; and

(3) Writing:

(A) a placement score of at least 340, and an essay score of at least 4; or

(B) a placement score of less than 340 and an ABE Diagnostic level of at least 4 and an essay score of at least 5.

(c) Effective January 11, 2021, for a student who is not otherwise exempt under this subchapter, an institution shall use the following minimum college readiness standards (also known as "cut scores") for English Language Arts Reading (ELAR) and mathematics on the TSI Assessment, Version 2.0 (TSIA2) to determine a student's readiness to enroll in entry-level academic coursework:

(1) Mathematics (for college-level coursework with mathematics-intensive designation by the offering institution):

(A) a College Readiness Classification (CRC) score of at least 950; or

(B) a CRC score below 950 and a Diagnostic level of 6.

(2) ELAR (for college-level coursework with reading, writing, or reading and writing-intensive designation by the offering institution):

(A) a College Readiness Classification (CRC) score of at least 945 and an essay score of at least 5; or

(B) a CRC score below 945 and a Diagnostic level of 5 or 6 and an essay score of at least 5.

(d) An institution shall use the TSI Assessment (TSIA or TSIA2) diagnostic results, along with other holistic factors, in their consideration of courses and/or interventions addressing the educational and training needs of undergraduate students not meeting the college readiness standards as defined in subsections (a) - (c) of this section.

(e) An institution shall not require higher or lower college readiness standards on any or all portions of the TSI Assessment (TSIA or TSIA2) to determine a student's readiness to enroll in entry-level academic coursework.

(f) For a student with an existing plan for academic success as required in §4.58 of this title (relating to Advisement and Plan for Academic Success), the institution shall revise the plan as needed to align with the college readiness standards as defined in subsections (a) - (c), as applicable, of this section.

§4.58. Advisement and Plan for Academic Success.

(a) For each undergraduate student as defined in §4.53(23) of this subchapter (relating to Definitions) who fails to meet the mini-

mum passing standards described in §4.57 of this subchapter (relating to Texas Success Initiative Assessment College Readiness Standards), an institution shall:

(1) Establish a program to advise the student regarding developmental education support necessary to ensure the readiness of that student in performing freshman-level academic coursework.

(2) Determine a plan, working with the student, for the student's academic success, which shall include developmental education and may include provisions for enrollment in appropriate non-developmental coursework. Institutions must ensure developmental education courses and interventions meet at minimum the criteria set forth in the Lower Division Academic Course Guide Manual (ACGM).

(b) Each plan for academic success shall:

(1) Be designed on an individual basis to provide the best opportunity for each student to succeed in obtaining his or her career and/or academic goals. At a minimum, the individual plan shall address:

(A) Career advising;

(B) Recommended Developmental Education options;

(C) Campus and/or community student support services/resources;

(D) Degree plan or plan of study;

(E) Regular interactions between student and designated points of contact (e.g., advisor, faculty member, peer or community mentor, etc.);

(F) Registration for next semester/next steps; and

(G) Differentiated placement.

(2) Promote the most efficient and cost-effective developmental education options to increase the likelihood of the student's success in college level courses and programs; institutions are strongly encouraged to assign students to Non-Course-Based options where feasible.

(3) Provide to the student a description of the developmental education options and other resources and interventions recommended to increase the likelihood the student will succeed in entry-level and subsequent academic coursework and complete their selected program.

(4) Provide to the student an appropriate measure for determining readiness to perform freshman-level academic coursework, as described in §4.59 of this subchapter (relating to Determination of Readiness to Enroll and Succeed in Entry-Level Academic Coursework).

(c) Each institution shall apply all state and federal laws pertaining to individuals with disabilities when assessing and advising such students.

(d) An institution must advise any student who is exempt from the TSI assessment as outlined in §4.54 of this subchapter (relating to Exemption) who earns less than a 'C' in the student's first college-level course in the exempted content area of Developmental Education Interventions available to the student to increase the likelihood that the student will succeed in subsequent college courses and complete their selected program, especially through Non-Course-Based options.

(e) For undergraduate students enrolled in a corequisite model as defined in §4.53(7) who fail to satisfactorily complete the freshman-level course, the institution of higher education must:

(1) review the plan developed for the student under this section and, if necessary, work with the student to revise the plan; and

(2) offer to the student a range of resources including Non-Course Based Options to assist the student in becoming ready to perform freshman-level academic coursework in the applicable subject area(s).

§4.59. Determination of Readiness to Enroll and Succeed in Entry-Level Academic Coursework.

(a) An institution shall determine when a student is ready to enroll and succeed in entry-level academic coursework using:

(1) Student performance on one or more assessments as provided by §4.57 of this subchapter (relating to Texas Success Initiative Assessment College Readiness Standards), including scores resulting from a student's retaking of a board approved assessment instrument; and

(2) Developmental Courses or Non-Course-Based Developmental Education Interventions.

(b) An institution may enroll a non-exempt, undergraduate student who has not met the readiness standard on the TSI Assessment in an entry-level academic course if the student is co-enrolled in developmental education, as defined in §4.53(7) of this subchapter (relating to Definitions). Successful completion of the entry-level academic course with a grade of 'C' or better shall be demonstration of the student's college readiness for the corresponding subject area, as provided in §4.54(c)(3) of this subchapter (relating to Exemption), independent of the student's performance in Developmental Courses or Non-Course-Based Developmental Education Interventions.

(c) A student may retake a Board-approved assessment instrument at any time, subject to availability, to determine the student's readiness to perform entry-level freshman coursework.

(d) An institution shall, as soon as practicable and feasible, indicate a student's readiness in reading, mathematics, and writing on the transcript of each student. Student readiness in mathematics shall be indicated as either:

(1) ready for entry-level mathematics coursework; or

(2) ready only for non-Algebra intensive courses, including MATH 1332/1342/1442 (or their local equivalent).

§4.60. Evaluation and Reporting.

(a) The Coordinating Board shall evaluate the effectiveness of the Texas Success Initiative on a statewide basis and with respect to each institution, assessment, and strategy used to assess and support student success in entry-level academic courses and completion of programs. This evaluation shall be based primarily on students' success in subsequent courses and progress towards completion in their academic programs. To inform this evaluation, each institution shall analyze and report to the Coordinating Board on the annual Developmental Education Program Survey (DEPS) the fiscal and/or instructional impacts of the following on student outcomes, along with other success-related topics as requested:

(1) Technological delivery of developmental education courses that allows students to complete course work;

(2) Diagnostic assessments to determine a student's specific educational needs to allow for appropriate developmental instruction;

(3) Modular developmental education course materials;

(4) Use of tutors and instructional aides to supplement developmental education course instruction as needed for particular students;

(5) Internal monitoring mechanisms used to identify a student's area(s) of academic difficulty; and

(6) Periodic updates of developmental education course materials.

(b) At the end of each semester, each institution shall report to the Coordinating Board the following information for each undergraduate student: Social Security Number (SSN), semester credit hours (SCH), grade points earned, ethnicity, gender, date of birth, Texas Success Initiative status, initial assessment instrument, score on initial assessment, type of developmental education received for each area (reading, mathematics, writing), and grade in first related non-developmental course.

§4.61. Required Components of Developmental Education Programs.

(a) Each institution of higher education shall develop and administer a developmental education program using research-based practices that include all the following components:

(1) assessment;

(2) differentiated placement and instruction based on an individual student's skills, strengths, and needs;

(3) faculty development;

(4) student support services;

(5) program evaluation;

(6) integration of technology; and

(7) Non-Course-Based Options.

(b) Each institution of higher education shall develop and implement corequisite model(s) of developmental education as defined in §4.53(7) of this subchapter (relating to Definitions) for developmental mathematics and integrated reading/writing (IRW) courses and interventions for all the institution's non-exempt students, except as provided under subsection (c) of this section.

(c) An institution may enroll the following students in a developmental education course as necessary to address deficiencies in the students' readiness to perform freshman-level academic coursework:

(1) a student assessed at Diagnostic levels 1-4 on the Board-approved assessment instrument as provided by §4.56 of this subchapter (relating to Texas Success Initiative Assessment Instrument);

(2) a student enrolled in adult education; or

(3) a student enrolled in a degree plan not requiring an entry-level academic mathematics course.

(d) An institution must inform a student enrolled in a mathematics pathway model (e.g., New Mathways Project, modular/Emporium models, etc.) that successful completion of this model will result in meeting the mathematics college readiness standard only for specific college credit courses. The institution must also inform the student that changing degree plans may require the student to complete additional developmental education support or Non-Course-Based Developmental Education Interventions.

(e) As part of subsection (a)(7) of this section, each institution shall offer at least one section of each entry-level academic course

per developmental education subject area that incorporates non-course-based interventions (NCBO).

§4.62. Privacy of Student Information.

Each institution of higher education must ensure that the Texas Success Initiative and the collection and release of any related data is administered in a manner that complies with federal law regarding confidentiality of student medical or educational information, including the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information.

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 January 12, 2024.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 427-6537



SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §§4.81 - 4.86

The Texas Higher Education Coordinating Board (Coordinating Board) proposes repeal of Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter D, §§4.81 - 4.86 relating to dual credit partnerships and funding. Specifically, this repeal replaces existing rules that are aligned to new dual credit requirements and opportunities with streamlined reporting for institutions.

The repeal is proposed under Education Code, §§28.009(b), 28.0095, 61.059(p), 130.001(b)(3) - (4) and 130.008, which provides the Coordinating Board with the authority to regulate dual credit partnerships between public institutions of higher education and secondary schools with regard to lower division courses, and provide funding for dual credit courses, including courses offered under the FAST program.

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

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as

a result of administering the section will be the replacement with new dual credit requirements and opportunities with streamlined reporting for institutions. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

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

The repeal is proposed under Education Code, sections 28.009(b), 28.0095, 61.059(p), 130.001(b)(3) - (4) and 130.008, which provides the Coordinating Board with the authority to regulate dual credit partnerships between public institutions of higher education and secondary schools with regard to lower division courses, and provide funding for dual credit courses, including courses offered under the FAST program.

The proposed repeal affects chapter 4, subchapter D, §§4.81 - 4.86.

§4.81. *Purpose.*

§4.82. *Authority.*

§4.83. *Definitions.*

§4.84. *Institutional Agreements.*

§4.85. *Dual Credit Requirements.*

§4.86. *Optional Dual Credit or Dual Enrollment Program: College Connect Courses.*

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 January 11, 2024.

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Texas Higher Education Coordinating Board

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19 TAC §§4.81 - 4.87

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter D, §§4.81 - 4.87, concerning dual credit partnerships between secondary schools and Texas public colleges. These new rules are designed to replace existing rules §§4.81 - 4.86, which the Coordinating Board will repeal. Negotiated rulemaking was used in the development of these proposed rules. Reports of negotiated rulemaking committees are public information and are available upon request from the Coordinating Board.

Prior to the 88th Legislative Session, Education Code, §61.059(p), defined how the state can fund dual credit courses. With the Legislature's addition of the Financial Aid for Swift Transfer (FAST) Program in Education Code, §28.0095, the Coordinating Board is replacing its dual credit rules to ensure alignment of the Coordinating Board's rules and to clarify which dual credit courses the agency can fund in the base and performance tiers under Education Code, chapter 130A. The proposed new rules clarify reporting and funding requirements for institutions and make the definitions uniform across the Coordinating Board's rules. The Coordinating Board will use the definitions for dual credit of its rules and will streamline the institutions' compliance and reporting obligations.

Rule 4.81, Purpose, establishes the purpose of the subchapter, to provide rules and regulations for public institutions of higher education to establish partnerships with secondary schools to provide dual credit instruction.

Rule 4.82, Authority, contains the legal authority for chapter 4, subchapter D, which is contained in Education Code, §§28.009(b), 28.0095, 61.059(p), 130.001(b)(3) and (4), and 130.008.

Rule 4.83, Definitions, lists definitions pertinent for dual credit education.

Paragraph (10) ("Dual Credit Course or Dual Enrollment Course") defines a dual credit or dual enrollment course. This definition includes several definitions in statute: Education Code, §28.009(a-4), providing a general definition in Title 2 of the Education Code, relating to Public Education; Education Code, §28.0095(3), establishing a definition of dual credit for purposes of the FAST program; Education Code, §61.059(p), defining dual credit hours eligible for funding through appropriations; and Education Code, §130.008(a-1), defining dual credit specifically for public junior colleges. These statutory definitions structure the permissible subject matter areas in subparagraph (10)(B), including courses in the core curriculum under Education Code, §61.821; courses identified as part of a field of study curriculum under Education Code, §61.823; courses satisfying a foreign language requirement; and career and technical education courses counting towards an industry-recognized credential, certificate, or associate degree. This definition stipulates that institutions must offer dual credit and dual enrollment courses, including courses that are eligible for FAST funding, pursuant to an agreement between the secondary-level education provider and the institution of higher education.

Subparagraphs (10)(C) - (E) concern dual enrollment courses, a model for providing joint high school and college credit that, under some definitions, allows students to earn two separate

grades in the high school and college levels. Education Code uses the term "dual enrollment," including providing specific funding for dual enrollment courses delivered through community colleges under H.B. 8 (Education Code, §130A.101(c)(3)), but does not specifically define the term. Proposed Coordinating Board rules thus provide a needed definition for the dual enrollment model of joint credit delivery, aligned with widespread industry usage of the term. The new definition of "dual credit" includes what was previously described as "dual enrollment" since the two course structures are fundable in the same manner pursuant to Education Code, §28.0095.

Paragraphs (1) ("Avocational Course") and (3) ("Career and Technical Education Course") concern related concepts within the career and technical education category. Statute allows for students to take dual credit courses in career and technical subjects (as opposed to academic subjects) when that course counts toward an industry-recognized credential, certificate, or associate degree (Education Code, §28.0095(3)(D)); see also Education Code §61.059(p)(3). The proposed "career and technical education course" definition excludes certain categories unlikely to count later toward a student's credential, including avocational courses as defined in Education Code, §130.351(2).

Paragraphs (8) ("Credit"), (11) ("Equivalent of a Semester Credit Hour"), (15) ("Locally Articulated College Credit"), and (19) ("Semester Credit Hour") relate to the units of measurement for each course that count toward a larger credential. Dual credit courses must confer credit toward a larger credential or degree, as required by statute and reflected in the "credit" definition in the proposed rules (Education Code, §28.009(a-1)). Institutions denominate credit differently for different types of courses: for academic courses, credit is denominated in semester credit hours (SCH), as reflected in paragraph (19); for career and technical courses, credit is denominated in contact hours, and so paragraph (11) accordingly contains a conversion of contact hours to SCH. Additionally, institutions may choose to use students' fulfillment of certain pre-identified requirements as career and technical education credits, as recognized in paragraph (15).

Paragraph (4) ("Certificate") establishes a single, clear definition for a term with multiple potential meanings in the higher education sector, connecting the dual credit rule to the definition established in statute (Education Code, §61.003(12)).

Paragraphs (12) ("Field of Study Curriculum (FOSC)") and (16) ("Program of Study Curriculum (POSC)") recognize two statutorily established curricula designed by the Legislature to improve the portability of the credits students earn across Texas public institutions. FOSC establishes a set of courses for students to take in certain disciplines with guaranteed transfer and applicability to a major across Texas public institutions (Education Code, §61.823); POSC establishes a similar set of courses for students enrolled in career and technical education programs (Education Code, §61.8235).

Paragraphs (5) ("College Board Advanced Placement") and (14) ("International Baccalaureate Diploma Program") define two common advanced academic programs intended to prepare students for college.

Paragraphs (2) ("Board"), (6) ("Commissioner"), and (7) ("Coordinating Board") establish specific roles related to the Coordinating Board, including specifying that "Board" means the governing board of the agency, "Coordinating Board" refers to the agency

including agency staff, and "Commissioner" meaning the Commissioner of Higher Education. These definitions clearly distinguish between different but related entities, specifically identifying responsible parties within the rule text.

Similarly, paragraphs (13) ("Institution of Higher Education or Institution"), (17) ("Public Two-Year College"), and (18) ("School District") define commonly used categories of educational providers, in each case connecting definitions in rule with commonly understood terms defined in statute (Education Code, chapter 12 and §61.003).

Paragraph (9) ("Degree-Seeking Student") defines a student seeking a degree as one who has filed, or is required to file, a degree plan pursuant to Education Code, §51.9685. This provision of statute requires dual credit students to file degree plans by the end of the regular semester immediately following the semester in which they earn at least 15 SCH, or by the end of the first semester if the student already enters with at least 15 SCH (Education Code, §51.9685(c-2)). While it was commonly understood that a high-school student with at least 15 SCHs was a degree-seeking student, there was no definition in statute or rule previously.

Rule 4.84, Institutional Agreements, establishes parameters for the institutional agreements between school districts or private schools and institutions of higher education, required for institutions to offer dual credit coursework. Subsection (b) lists required elements of these agreements, which includes the minimum content necessary to establish a successful dual credit framework in alignment with Education Code, §28.009(b-2). These elements provide for transparent exchange of necessary data and information and establish important safeguards for students, including adequate and appropriate academic support. The Coordinating Board is updating this section of the rules to clarify that such agreements must address the joint participation of the school district and an institution of higher education in the FAST program.

Rule 4.85, Dual Credit Requirements, stipulates course eligibility, student eligibility, requirements for the location and composition of the class, standards for faculty, and baseline academic policies. The Coordinating Board amends this rule to provide greater clarity around which students are eligible to enroll in dual credit courses based on whether the student is TSI-exempt or has met college readiness standards. Pursuant to this rule a student may enroll in dual if the student is: (a) non-degree seeking, (b) exempt from the requirements of TSI, or (c) has met the college readiness standards. The unamended provisions of this section ensure that each institution retains latitude to apply its general academic policies to dual credit students and that the quality of instruction for high school students is the same as that of the institution's regular college students.

Subsection (a) stipulates course eligibility for dual credit, including those defined in proposed rule 4.83 that are included in the institution's undergraduate course inventory. Institutions may not offer remedial or developmental education as dual credit, although this limitation does not prohibit institutions from enrolling students not yet deemed college-ready in dual credit, including in College Connect Courses as established by this subchapter.

Subsection (b) relates to students eligible to enroll in dual credit courses. State law requires students entering college classes demonstrate college readiness, show that those standards do not apply, or qualify for an exemption from those standards under the Texas Success Initiative (TSI) (Education Code, chap-

ter 51, subchapter F-1). Institutions may exempt students who are non-degree seeking or non-certificate seeking from TSI requirements under Education Code, §51.338; as defined in the proposed rule's definitions, non-degree-seeking students may include students not yet required to file degree plans under Education Code, §51.9685. Institutions have latitude to determine whether a student may enroll in dual credit coursework, in keeping with typical accreditation requirements that institutions exercise oversight over student admissions and enrollment.

Subsection (c) and (d) relate to the physical location and student composition of the dual credit class. The Coordinating Board authorizes the offering of distance education courses under Education Code, §61.0512; the proposed rule notes that any dual credit offered through distance education should comply with existing Coordinating Board rules under Texas Administrative Code chapter 2, subchapter J. Dual credit classes may consist of dual credit students only or a mixture of dual credit and college students. Institutions may also offer dual credit classes composed of a mixture of dual credit and non-dual credit high school students if that is the only financially viable way to offer dual credit, for example in rural districts with very small total enrollments of dual credit students. The rule sets out parameters for these mixed classes to ensure appropriate standards for the dual credit students.

Subsections (e), (f), and (g) relate to general academic policies for dual credit courses, which should match the standards used for non-dual credit college courses. In selecting and managing faculty to teach dual credit courses, public junior colleges must abide by Education Code, §130.008(g); in addition, under the proposed rule, faculty would need to meet accreditation requirements and qualify as instructors of record with the institution of higher education. Similarly, dual credit course curriculum, instruction, grading, support services, transcribing and other academic policies should match what institutions offer their non-dual credit students. This requirement in the proposed rule ensures dual credit students experience a full college-level education and reinforces standards typically required by federally recognized institutional accreditors.

Rule 4.86, Optional Dual Credit or Dual Enrollment Program: College Connect Courses, sets parameters for a new dual credit model institutions may optionally provide, called College Connect Courses. These courses allow students not yet deemed college ready to experience college-level coursework in a supportive environment, in which institutions provide supplemental content to help prepare students. Students must meet the eligibility requirements stipulated in proposed rule 4.85. Amendment to 4.86(c) authorizes a student who has earned more than 14 SCHs, and is not otherwise college ready, to take a College Connect course in math or communications offered by an institution. This amendment will allow a high-school student who may be classified as degree seeking but is not yet college ready to gain exposure to college-level content and have the opportunity to demonstrate college readiness in math or ELA by earning a grade of C or better in the course.

Rule 4.87, Funding, connects the dual credit rules with Coordinating Board funding provisions. Under statute, all public institutions of higher education may receive appropriations for eligible dual credit courses under Education Code, §61.059(p). In addition, any participating public institution of higher education may receive dual credit funding for eligible courses through the FAST program, as established in Education Code, §28.0095, Texas Administrative Code, chapter 13, subchapter Q, and subsection

(c) and (e) of the proposed rule. Public junior colleges may receive funding through the newly established Community College Finance Program for eligible dual credit courses that meet the proposed rule's requirements, in accordance with Education Code, §130A.101(c)(3), Texas Administrative Code, chapter 13, subchapter P or S, and subsection (a) of the proposed rule.

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

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the sections will be the increased access to dual credit courses, college course experience for students, and streamlined reporting for institutions. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules or will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic & Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Elizabeth.mayer@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 Education Code, §§28.009(b) and (b-3), 28.0095(j), 130.001(b)(3)-(4) and 130.008(a-3), which provide the Coordinating Board with the authority to regulate dual credit partnerships between public institutions of higher education and secondary schools with regard to lower division courses.

The proposed new sections affect Texas Administrative Code, chapter 4, subchapter D.

§4.81. Purpose.

This subchapter provides rules and regulations for public institutions of higher education to engage in dual credit partnerships with secondary

schools, including partnerships for participation in the Financial Aid for Swift Transfer (FAST) Program pursuant to chapter 13, subchapter Q of this title (relating to Financial Aid for Swift Transfer (FAST) Program).

§4.82. Authority.

Education Code, §§28.009(b), 28.0095, 61.059(p), 130.001(b)(3) - (4) and 130.008, provide the Coordinating Board with the authority to regulate dual credit partnerships between public institutions of higher education and secondary schools with regard to lower division courses, and provide funding for dual credit courses, including courses offered under the FAST program.

§4.83. Definitions.

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

(1) Avocational Course--A course of study in a subject or activity that is usually engaged in by a person in addition to the person's regular work or profession for recreation or in relation to a hobby, including a community interest course, as defined in Education Code, §130.351(2).

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

(3) Career and Technical Education Course--A workforce or continuing education college course offered by an institution of higher education for which a high school student may earn credit toward satisfaction of a requirement necessary to obtain an industry-recognized credential, certificate, or associate degree.

(A) A career and technical education course is listed in the Workforce Education Course Manual (WECM).

(B) For the purpose of this subchapter, this definition excludes:

(i) an avocational course;

(ii) a continuing education course that is ineligible for conversion as articulated college credit; and

(iii) a continuing education course that does not meet the institution's program or instructor accreditation standards.

(4) Certificate--A Certificate Program as defined in Education Code, §61.003(12).

(5) College Board Advanced Placement (also referred to as Advanced Placement or AP)--College-level courses and exams available to secondary students under the auspices of an approved College Board program.

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

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

(8) Credit--College credit earned through the successful completion of a college career and technical education or academic course that fulfills specific requirements necessary to obtain an industry-recognized credential, certificate, associate degree, or other academic degree.

(9) Degree-Seeking Student--A student who has filed a degree plan with an institution of higher education or is required to do so pursuant to Education Code §51.9685.

(10) Dual Credit Course or Dual Enrollment Course--A course that meets the following requirements:

(A) The course is offered pursuant to an agreement under §4.84 of this subchapter (relating to Institutional Agreements).

(B) A course for which the student may earn one or more of the following types of credit:

(i) joint high school and junior college credit under Education Code, §130.008, or

(ii) another course offered by an institution of higher education, for which a high school student may earn semester credit hours or equivalent of semester credit hours toward satisfaction of:

(I) a course defined in paragraph (3) of this section that satisfies a requirement necessary to obtain an industry-recognized credential, certificate, or an associate degree;

(II) a foreign language requirement at an institution of higher education;

(III) a requirement in the core curriculum, as that term is defined by Education Code, §61.821, at an institution of higher education; or

(IV) a requirement in a field of study curriculum developed by the Coordinating Board under Education Code, §61.823.

(C) Dual credit includes a course for which a high school student may earn credit only at an institution of higher education (previously referred to as a dual enrollment course) if the course meets the requirements of this section.

(D) A student may earn a single grade toward both the college course and the high school credit or may earn two separate grades where the high school grade only reflects a student's mastery of secondary content.

(E) Dual credit and dual enrollment are synonymous in Title 19, Part 1 of these rules unless otherwise expressly provided by rule.

(F) Each dual credit course must meet the requirements of this subchapter.

(11) 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. This may be expressed as a decimal of 1.6 continuing education units of instruction which equals one semester credit hour of instruction. In a continuing education course, not fewer than 16 contact hours are equivalent to one semester credit hour.

(12) Field of Study Curriculum (FOSC)--A Board-approved set of courses authorized under subchapter B of this chapter (relating to Transfer of Credit, Core Curriculum and Field of Study Curricula) that satisfies lower-division requirements for a baccalaureate degree in a specific academic area at a general academic teaching institution. A field of study curriculum is designed to facilitate transfer of courses toward designated academic degree programs at public junior colleges, public technical institutes, or universities.

(13) Institution of Higher Education or Institution--A public institution of higher education as defined in Education Code, §61.003(8).

(14) International Baccalaureate Diploma Program (also referred to as IB)--The curriculum and examinations leading to an International Baccalaureate diploma awarded by the International Baccalaureate Organization.

(15) Locally Articulated College Credit--Credit earned through a high school course that fulfills specific requirements iden-

tified by a college for a career and technical education course and provides a pathway for high school students to earn credit toward a technical certificate or technical degree at a partnering institution of higher education upon high school graduation.

(16) Program of Study Curriculum (POSC)--A block of courses which is designed to progress in content specificity for an industry or career cluster while also incorporating rigorous college and career readiness standards, authorized under Education Code, §61.8235. A POSC generally incorporates multiple entry and exit points for participating students with portable demonstrations of technical or career competency, including credit transfer agreements or industry-recognized credentials.

(17) Public Two-Year College--Any public junior college, public technical institute, or public state college as defined in Education Code, §61.003.

(18) School District--Under this subchapter, school district includes a charter school or district operating under Education Code, chapter 12, unless otherwise specified.

(19) Semester Credit Hour--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.

§4.84. Institutional Agreements.

(a) Need for Institutional Agreements. For any dual credit partnership between a school district or private school and an institution, an agreement must be approved by the governing boards or designated authorities (e.g., superintendent or chief academic officer) of both the public school district or private secondary school, as applicable, and the institution prior to the offering of such courses. Each institution shall report to the Coordinating Board a list of school districts and private schools with which it has agreements under this section, and the URL where these agreements are posted on the institution's Internet website.

(b) Elements of Institutional Agreements. An Institutional Agreement entered into or renewed between an institution and a school district or private school, including a memorandum of understanding or articulation agreement, shall include the following elements:

- (1) Eligible Courses;
- (2) Student Eligibility;
- (3) Location of Class;
- (4) Student Composition of Class;
- (5) Faculty Selection, Supervision, and Evaluation;
- (6) Course Curriculum, Instruction, and Grading;
- (7) Academic Policies and Student Support Services;
- (8) Transcribing of Credit;

(9) Funding, including the sources of funding for courses offered under the program, including, at a minimum, the sources of funding for tuition, transportation, and any required fees, instructional materials, or textbooks for students participating in the program, including for students eligible to take dual credit courses at no cost to the

student under the FAST program, under Texas Administrative Code, chapter 13, subchapter Q;

(10) All requirements for joint implementation of the FAST program under Education Code, §28.0095, including ensuring the accurate and timely exchange of information necessary for an eligible student to enroll at no cost in a dual credit course, for eligible public schools and students participating in the FAST program, under Texas Administrative Code, chapter 13, subchapter Q;

(11) Defined sequences of courses that apply to academic or career and technical education program requirements at the institution or industry-recognized credentials, where applicable;

(12) Specific program goals aligned with the statewide goals developed under Education Code, §§28.009(b-1), 130A.004, and 130A.101(c)(3);

(13) Coordinated advising strategies and terminology related to dual credit and college readiness, including strategies to assist students in selecting courses that will satisfy applicable high school and college requirements for the student's intended program;

(14) Provision for the alignment of endorsements described by Education Code, §28.025(c-1), offered by the school district and dual credit courses offered under the agreement that apply toward those endorsements with postsecondary pathways and credentials at the institution and industry-recognized credentials;

(15) Identification of tools, including online resources developed by the Texas Education Agency, Coordinating Board, or the Texas Workforce Commission, to assist counselors, students, and families in selecting endorsements offered by the school district and college courses offered by the institution under the agreement;

(16) A procedure for establishing the course credits that may be earned under the agreement, including developing a course equivalency crosswalk or other method of identifying the number of high school and college credits that may be earned for each course completed through the program;

(17) A description of the academic supports and, if applicable, other support that will be provided to students participating in the program (e.g., transportation to and from a college campus);

(18) The respective roles and responsibilities of the institution of higher education and the school district or private school in providing the program and ensuring the quality of instruction and instructional rigor of the program;

(19) A requirement that the school district and the institution consider the use of free or low-cost open educational resources in courses offered under the program; and

(20) Designation of at least one employee of the school district or private school, or the institution as responsible for providing academic advising to a student who enrolls in a dual credit course under the program before the student begins the course.

(c) Each Agreement must be posted each year on the institution of higher education's and the school district's respective Internet websites.

§4.85. Dual Credit Requirements.

(a) Eligible Courses.

(1) An institution may offer any dual credit course as defined in §4.83(10) of this subchapter (relating to Definitions).

(2) A dual credit course offered by an institution must be in the approved undergraduate course inventory of the institution.

(3) An Early College High School may offer any dual credit course as defined in §4.83(10) or Education Code, §28.009 and §130.008, subject to the provisions of subchapter G of this chapter (relating to Early College High Schools).

(4) An institution may not offer a remedial or developmental education course for dual credit. This limitation does not prohibit an institution from offering a dual credit course that incorporates Non-Course-Based College Readiness content or other academic support designed to increase the likelihood of student success in the college course, including any course offered under §4.86 of this subchapter (relating to Optional Dual Credit Program: College Connect Courses).

(b) Student Eligibility.

(1) A high school student is eligible to enroll in dual credit courses if the student:

(A) is not a degree-seeking student as defined in §4.83(9) of this subchapter (relating to Definitions);

(B) demonstrates that he or she is exempt under the provisions of the Texas Success Initiative as set forth in §4.54 of this chapter (relating to Exemption); or

(C) demonstrates college readiness by achieving the minimum passing standards under the provisions of the Texas Success Initiative as set forth in §4.57 of this chapter (relating to Texas Success Initiative Assessment College Readiness Standards) on relevant section(s) of an assessment instrument approved by the Board as set forth in §4.56 of this chapter (relating to Assessment Instrument).

(2) A student who is enrolled in private or non-accredited secondary schools or who is home-schooled must satisfy paragraph (1) of this subsection.

(3) An institution may require a student who seeks to enroll in a dual credit course to meet all the institution's regular prerequisite requirements designated for that course (e.g., a minimum score on a specified placement test, minimum grade in a specified previous course, etc.).

(4) An institution may impose additional requirements for enrollment in specific dual credit courses that do not conflict with this subchapter.

(5) An institution is not required, under the provisions of this section, to offer dual credit courses for high school students.

(c) Location of Class. An institution may teach dual credit courses on the college campus or on the high school campus. For dual credit courses taught exclusively to high school students on the high school campus and for dual credit courses taught via distance education, the institution shall comply with chapter 2, subchapter J of this title (relating to Approval of Distance Education for Public Institutions).

(d) Composition of Class. A dual credit course may be composed of dual credit students only or of a mixture of dual credit and college students. Notwithstanding the requirements of subsection (e) of this section, exceptions for a mixed class that combines dual credit students and high school credit-only students may be allowed when the creation of a high school credit-only class is not financially viable for the high school and only under one of the following conditions:

(1) If the course involved is required for completion under the State Board of Education High School Program graduation requirements;

(2) If the high school credit-only students are College Board Advanced Placement or International Baccalaureate students; or

(3) If the course is a career and technical education course and the high school credit-only students are eligible to earn articulated college credit.

(e) Faculty Selection, Supervision, and Evaluation. Each institution shall apply the standards for selection, supervision, and evaluation for instructors of dual credit courses as required by the institution's accreditor. A high school teacher may only teach a high school course offered through a dual credit agreement if the teacher is approved by the institution offering the dual credit course.

(f) Course Curriculum, Instruction, and Grading. The institution shall ensure that a dual credit course offered at a high school is at least equivalent in quality to the corresponding course offered at the main campus of the institution with respect to academic rigor, curriculum, materials, instruction, and methods of student evaluation. These standards must be upheld regardless of the student composition of the class, location, and mode of delivery.

(g) Academic Policies and Student Support Services.

(1) Regular academic policies applicable to courses taught at an institution's main campus must also apply to dual credit courses. These policies may include the appeal process for disputed grades, drop policy, the communication of grading policy to students, when the syllabus must be distributed, etc. Additionally, each institution is strongly encouraged to provide maximum flexibility to high school students in dual credit courses, consistent with the institution's academic policies, especially with regard to drop policies, to encourage students to attempt rigorous courses without potential long-term adverse impacts on students' academic records.

(2) Each student in a dual credit course must be eligible to utilize the same or comparable support services that are afforded college students on the main campus. The institution is responsible for ensuring timely and efficient access to such services (e.g., academic advising and counseling), to learning materials (e.g., library resources), and to other benefits for which the student may be eligible.

(3) A student enrolled in a dual credit course at an institution shall file a degree plan with the institution as prescribed by Education Code, §51.9685.

(h) Transcribing of Credit. Each institution or high school shall immediately transcribe the credit earned by a student upon a student's completion of the performance required in the course.

§4.86. Optional Dual Credit or Dual Enrollment Program: College Connect Courses.

(a) Authority. These rules are authorized by Education Code, §§28.009(b), 28.0095, 130.001(b)(3) - (4), and 130.008.

(b) Purpose. The purpose of this rule is to encourage and authorize public institutions of higher education to deliver innovatively designed dual credit courses that integrate both college-level content in the core curriculum of the institution alongside college-readiness content and skills instruction. These innovatively designed courses will allow students the maximum flexibility to obtain college credit and provide integrated college readiness skills to students who are on the continuum of college readiness and will benefit from exposure to college-level content.

(c) Student eligibility. An eligible student must be enrolled in a public school district or open-enrollment charter as defined in Education Code, §5.001(6), and meet the requirements of §4.85(b) of this subchapter (relating to Dual Credit Requirements). Notwithstanding §4.85(b), an institution may enroll a high school student who is not exempt or college ready under the requirements of §4.54 or §4.57 of this chapter (relating to Exemption and Texas Success Initiative Assess-

ment College Readiness Standards, respectively) in a math or communications College Connect Course offered by the institution.

(d) Course content. The following standards apply to delivery of College Connect Courses offered under this rule:

(1) An institution may only offer College Connect Courses within the institution's core curriculum in accordance with §4.28 of this chapter (relating to Core Curriculum).

(2) An institution must also incorporate supplemental college readiness content to support students who have not yet demonstrated college readiness, as defined in §4.57, within these courses. An institution may deliver this supplemental instruction through a method at their discretion, including through embedded course content, supplemental coursework, or other methods.

(e) The Coordinating Board may provide technical assistance to an institution of higher education or school district in developing and providing these courses.

(f) Additional Academic Policies.

(1) College Connect Courses offered through dual credit must confer both a college-level grade and a secondary-level grade upon a student's successful completion of the course. A grade conferred for the college-level course may be different from the secondary-level grade, to reflect whether a student has appropriately demonstrated college-level knowledge and skills as well as secondary-level knowledge and skills. An institution may determine how a student enrolled in this course may earn college credit, whether through college-level course completion or successful completion of a recognized college-level assessment that the institution would otherwise use to award college credit.

(2) An institution must enter into an institutional agreement with the secondary school according to §4.84 of this subchapter (relating to Institutional Agreements) to offer College Connect Courses.

(3) An institution is strongly encouraged to provide the maximum latitude possible for a student to withdraw from the college-level course component beyond the census date, while still giving the student an opportunity to earn credit toward high school graduation requirements, in accordance with §4.85(g) of this subchapter (relating to Dual Credit Requirements).

(4) Hours earned through this program before the student graduates from high school that are used to satisfy high school graduation requirements do not count against the limitation on formula funding for excess semester credit hours under §13.104 of this title (relating to Exemptions for Excess Hours).

(g) Funding and Tuition. The Coordinating Board shall fund College Connect Courses in accordance with §4.87 of this subchapter (relating to Funding).

§4.87. Funding.

(a) A public junior college may submit for funding any course that meets the requirements of this subchapter as provided in chapter 13, subchapter S of this title (relating to Community College Finance Program), or chapter 13, subchapter P of this title (relating to Community College Finance Program for Fiscal Year 2024).

(b) A public junior college may report a course for funding for which a high school student may earn college credit that does not otherwise meet the requirements of this subchapter for the purpose of calculating base tier funding according to the provisions of chapter 13, subchapter S or subchapter P of this title. Such a course is not considered a dual credit or dual enrollment course under Title 19, Part 1.

(c) An institution may submit a dual credit course for funding under the FAST program of chapter 13, subchapter Q of this title (relating to Financial Aid for Swift Transfer (FAST) Program) only if the course meets all requirements of that subchapter.

(d) This section does not apply to students enrolled in approved early college education programs under Education Code, §29.908.

(e) Nothing in this subchapter shall be construed to prohibit an Early College High School under Education Code, §28.908, from participating in or receiving funding under the FAST program of chapter 13, subchapter Q of this title.

(f) An institution may waive all or part of tuition and fees for a Texas high school student enrolled in a course for which the student may receive dual course credit.

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) 427-6182



SUBCHAPTER V. NON-DISCRIMINATION IN INTERCOLLEGIATE ATHLETICS

19 TAC §§4.350 - 4.353

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter V, §§4.350 - 4.353 concerning the compliance with non-discrimination in the intercollegiate athletic competition for Texas public institutions of higher education. Specifically, this new subchapter requires collegiate athletes to compete on the team according to their biological sex as correctly stated on their birth certificate.

Texas Education Code, Chapter 61, Subchapter Z, Chapter 51, Section 51.980, also requires the Coordinating Board to develop rules to ensure compliance with state and federal law regarding the confidentiality of student medical information, including Chapter 181, Health and Safety Code, and the Health Insurance Portability and Accountability Act of 1996.

Rule 4.350, Authority, indicates the specific section of the Texas Education Code that provides the agency with authority to adopt rules.

Rule 4.351, Definitions, provides definitions aligned to the Save Women's Sports Act.

Rule 4.352, Participation in Athletic Competition Based on Biological Sex, requires institutions to comply with the provisions in the Save Women's Sports Act.

Rule 4.353, Confidentiality and Privacy, provides that in implementing the provisions of statute, each institution shall comply

with all state and federal laws, as required in Texas Education Code, §51.980(g).

Jerel Booker, Assistant 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.

Jerel Booker 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 promote fairness in intercollegiate athletic competition for public institutions of higher education students. 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 Jerel Booker, Assistant Deputy Commissioner for Academic Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at CRI@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 51.980, which provides the Coordinating Board with the authority to adopt rules as necessary to implement non-discrimination in the intercollegiate athletic competition legislation.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter V.

§4.350. Authority.

Authority for this subchapter is provided in Texas Education Code, chapter 51, subchapter Z, §51.980, Intercollegiate Athletic Competition Based on Biological Sex.

§4.351. Definitions.

In addition to the words and terms defined in §4.3 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) Biological Sex--Has the meaning assigned under Texas Education Code, §51.980(d).

(2) Athletic Competition--Has the meaning assigned under Texas Education Code, §51.980(a)(1).

§4.352. Participation in Athletic Competition Based on Biological Sex.

Each institution of higher education shall ensure compliance with Texas Education Code, §51.980.

§4.353. Confidentiality and Privacy.

Nothing in this subchapter limits or waives the protection of confidential student information, including but not limited to student educational records or student medical information under state or federal law, including Chapter 181, Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), or birth certificate records under state 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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Nichole Bunker-Henderson
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For further information, please call: (512) 427-6247



SUBCHAPTER X. PARENTING AND PREGNANT STUDENTS

19 TAC §§4.370 - 4.376

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter X, §§4.370 - 4.376, concerning the establishment of rules pertaining to Parenting and Pregnant Students. Specifically, this new subchapter provides information necessary for the implementation and administration of the statute.

Texas Education Code (TEC), Chapter 51, Subchapter Z, §51.9357 and §§51.982 - 51.983, requires the Coordinating Board to adopt rules relating to the protection of pregnant and parenting students, resources for such students, and reporting requirements. The new rules provide clarity and guidance to students, institutions of higher education, and Coordinating Board staff for the implementation of the program.

Specifically, these new sections will outline the authority and purpose, definitions, parenting student early registration, the liaison officer, protections for pregnant and parenting students, and reporting requirements.

Rules 4.370 and 4.371, Purpose and Authority, respectively, indicate the specific sections of the TEC that provide the Coordinating Board with authority to issue these rules, as well as the purpose of the Parenting and Pregnant Student rules.

Rule 4.372, Definitions, provides definitions for words and terms within the Parenting and Pregnant Student rules. The definitions

are proposed to provide clarity for words and terms that are integral to the understanding and administration of the Parenting and Pregnant Student rules.

Rule 4.373, Parenting Student Early Registration, outlines the requirements for early course/program registration or pre-registration for parenting students at institutions. These requirements are proposed to ensure parenting students have access to early registration or pre-registration and aims to provide them with the necessary information to make informed decisions about their academic schedules, including their eligibility for early registration access. This section is proposed based on TEC, §51.983, which directs the Coordinating Board to adopt rules as necessary to implement early registration for parenting students.

Rule 4.374, Liaison Officer, outlines the requirements that institutions must appoint a liaison officer for students who are parents or guardians of children under 18. The requirements are proposed to establish a robust support system through liaison officers, offering a range of resources to meet the unique needs of parenting students, while promoting accessibility, privacy, and a comprehensive approach to support the academic and personal success of parenting students. This section is proposed based on TEC, §51.9357, which directs the Coordinating Board to adopt rules as necessary to implement the designation of a liaison officer for parenting students.

Rule 4.375, Protections for Pregnant and Parenting Students, outlines additional protections for pregnant and parenting students, emphasizing provisions related to absences, academic accommodations, access to course materials, and the option for a leave of absence to supplement existing protections outlined in Title IX. The additional protections are proposed to ensure a supportive educational environment for pregnant and parenting students. The requirements are proposed to provide a comprehensive approach to support pregnant and parenting students. This section is proposed based on TEC, §51.982, which directs the Coordinating Board to adopt rules as necessary to implement protections for pregnant and parenting students.

Rule 4.376, Reporting, outlines the reporting requirements for institutions must be fulfilled by May 1st of every year, which allows for a thorough assessment of the experiences faces by this student demographic. This reporting requirement is proposed to foster a comprehensive understanding of the educational landscape for parenting students, including collecting the contact details of the liaison officer to facilitate communication and support of parenting students. This section is proposed based on TEC, §51.9357, which directs the Coordinating Board to adopt rules as necessary to implement the designation of a liaison officer and the reporting required by institutions for parenting students.

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

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

Dr. Jennielle Strother has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increase

in number of parenting and pregnant students who pursue and successfully complete higher education opportunities. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will create a government program required by statute;
- (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 Dr. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at CRI@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, Chapter 51, Subchapter Z, §51.9357 and §§51.982 - 51.983, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Parenting and Pregnant Student program.

The proposed new section affects Texas Education Code §51.9357 and §§51.982 - 51.983.

§4.370. Purpose.

The purpose of this subchapter is to establish rules to require public institutions of higher education to provide protections for pregnant and parenting students, provide access to resources through the designation of a liaison officer, and allow access to early registration.

§4.371. Authority.

The authority for this subchapter is found in Texas Education Code, chapter 51, subchapter z §51.9357 and §§51.982 - 51.983, which authorizes the Coordinating Board to adopt rules relating to the protection of pregnant and parenting students, resources for such students, and reporting requirements.

§4.372. Definitions.

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

(1) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(2) Parenting Student--A student enrolled in an institution of higher education who is the parent or legal guardian of a child under 18 years of age.

§4.373. Parenting Student Early Registration.

If an institution provides early registration or pre-registration for courses or programs to any group of students, then the institution shall:

(1) Provide a parenting student who meets said definition at the start of the semester registration period with equal access to early registration or pre-registration; and

(2) Provide a parenting student information on their eligibility for early registration or pre-registration.

§4.374. Liaison Officer.

(a) An institution is required to designate a minimum of one employee to serve as a liaison officer for current or incoming students at the institution who are the parent or guardian of a child younger than 18 years of age.

(b) The liaison officer or officers shall be knowledgeable of and provide a parenting student information on and access to resources designed to assist in their successful and timely degree or certificate completion. Such resources include:

- (1) Medical and behavioral health coverage and services;
- (2) Public health benefit programs, including programs related to food security, affordable housing, and housing subsidies;
- (3) Parenting and child-care resources;
- (4) Employment assistance;
- (5) Transportation assistance;
- (6) Academic success services; and
- (7) Other resources provided by the Coordinating Board.

(c) An institution shall not condition student access to the liaison officer or officers or any resources on the student being required to consent to the release of their personally identifiable information. Any such consent must be voluntary.

(d) The institution shall post contact information for the liaison officer or officers and maintain that information on the institution's website in a manner that is readily available to current or incoming students at the institution who are the parent or guardian of a child younger than 18 years of age.

§4.375. Protections for Pregnant and Parenting Students.

(a) In addition to the discrimination protections provided to pregnant or parenting students pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., institutions shall provide pregnant or parenting students the additional protections as set forth in this section. To the extent of conflict between federal law and these rules, a student shall be entitled to the most liberal benefit afforded by law.

(b) An institution shall excuse absences related to a student's pregnancy or childbirth without a doctor's certification that such absence is necessary for no more than five consecutive school days or ten days in any thirty-day period.

(1) An institution shall allow a student a reasonable time to make up or complete any assignments or assessments missed due to such an absence.

(2) An institution shall provide a student with access to all course materials that are made available to any other student with an excused absence. This may include instructional materials, laboratory access, and recordings of class lectures.

(c) An institution shall permit but not require a parenting or pregnant student to take a leave of absence related to a student's pregnancy or parenting status for a minimum of one semester without a showing of medical need.

(1) An institution shall make every reasonable effort to accommodate pregnant and parenting students within their degree program's curriculum and accreditation requirements. A student taking a leave of absence under this section may be taken with the advanced approval of the student's department.

(2) The institution shall implement policies and procedures to ensure that a student meets with the institution's scholarships and financial aid office prior to beginning a leave of absence to receive information on financial impacts due to the leave of absence under this section.

(d) An institution shall ensure that a student in good academic standing at the time a leave of absence commences may return to their degree or certificate program in good academic standing, not be required to reapply for admission, and may complete their degree or certificate program by fulfilling the requirements in effect at the time the leave of absence commenced.

§4.376. Reporting.

(a) An institution must report the name and contact information of their liaison officer or officers no later than May 1st of each year in the manner required by the Coordinating Board.

(b) An institution shall report information regarding parenting students no later than May 1st of each year. The following data is required to be reported annually:

- (1) Number of parenting students;
- (2) Aggregate demographic data including age, race, ethnicity, and sex; and
- (3) Aggregate academic data including enrollment status, graduation, transfer, and withdraw rates.

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 7. DEGREE GRANTING
COLLEGES AND UNIVERSITIES OTHER THAN
TEXAS PUBLIC INSTITUTIONS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §7.8

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 7, Subchapter A, §7.8, concerning Institutions Not Accredited by a Board-Recognized Accreditor. Specifically, this amendment will identify specific Board-approved required Certificate of Authority fees in rule.

The Coordinating Board is authorized to set and collect fees regarding Certificates of Authority.

Texas Education Code, §61.305(c), requires the Coordinating Board to set an initial fee for a Certificate of Authority in an amount not to exceed the average cost of reviewing the application, including the cost of necessary consultants.

Texas Education Code, §61.307(b), requires the Coordinating Board to set a fee to cover the cost of program evaluation for an amendment to a Certificate of Authority.

Texas Education Code, §61.308(b), requires the Coordinating Board to set a renewal fee in an amount not to exceed the average cost of reviewing the application, including the cost of necessary consultants.

Prior to a site visit, the Coordinating Board expends considerable staff and consultant time reviewing each initial and renewal application. The Coordinating Board pays consultants a stipend for their time in reviewing the application and participating in the site review. Amendments to an existing Certificate of Authority require considerable staff time and may require review by a consultant if the amendment is extensive.

The Education Code requires the Board to set a fee in an amount not to exceed the average cost of reviewing the application, including the cost of necessary consultants. In 2016, the Board set the renewal and application fees at \$5,000 each plus travel. The Board has not increased the fee since 2016; however, the Board now seeks to include the average travel expenses within the flat fee charged for applications, renewals, and amendments for Certificates of Authority.

During the most recent years, 2022 and 2023, consultant fees, which are paid out of the \$5,000 fee, were \$3,500 for each Certificate of Authority application and travel fees averaged \$3,550. Therefore, applicants paid an average total of \$8,550.

Instead of charging travel expenses after the site visit, the average travel expenses have been included in the increased flat fee amount for each of the categories. The proposed fees are as follows:

1. Certificate of Authority application fee: \$8,000
2. Certificate of Authority renewal fee: \$8,000
3. Certificate of Authority amendment fee: \$800

This amendment would incorporate the specific fees into rule.

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

As the proposed fee amendments would result in an overall cost reduction, adoption of the proposed rules would not have an adverse economic effect on small businesses, micro-businesses, or rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer 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 Certificate of Authority fees which are sufficient to cover the cost of consultant fees and travel expenses. There are no additional anticipated economic costs to persons who are required to comply with the

sections as proposed other than the amount of fees which must be paid.

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 require an increase 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 Cathie Maeyaert, Director, Private Postsecondary Institutions, P.O. Box 12788, Austin, Texas 78711-2788, or via email at cathie.maeyaert@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 61.305(c), which provides the Coordinating Board with the authority to set an initial fee for a Certificate of Authority in an amount not to exceed the average cost of reviewing the application, including the cost of necessary consultants; 61.307(b), which provides the Coordinating Board with the authority to set a fee to cover the cost of program evaluation for an amendment to a Certificate of Authority; and 61.308(b) which provides the Coordinating Board with the authority to set a renewal fee in an amount not to exceed the average cost of reviewing the application, including the cost of necessary consultants.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 7, Subchapter A, §7.8.

§7.8. Institutions Not Accredited by a Board-Recognized Accreditor. An institution which is not accredited by a Board-recognized accreditor and which does not meet the definition of institution of higher education contained in Texas Education Code, §61.003, must follow the Certificate of Authority process in paragraphs (1) - (9) of this section in order to offer degrees or courses leading to degrees in the state of Texas. Institutions are encouraged to contact the Board staff before filing a formal application.

- (1) - (3) (No change.)
- (4) Fees Related to Certificates of Authority.

(A) Each biennium the Board shall set the fees for applications for Certificates of Authority, which shall not exceed the average cost, in the preceding two fiscal years, of staff time, review and consultation with applicants, and evaluation of the applications by necessary consultants, including the cost of such consultants.

(B) Each biennium, the Board shall also set the fees for amendments to add additional degree programs to Certificates of Authority.

(C) The Commissioner shall request changes in the fees at a Board quarterly meeting.

(D) The current Board-approved Certificate of Authority fees are as follows:

(i) Certificate of Authority application fee: \$8,000.

(ii) Certificate of Authority renewal fee: \$8,000.

(iii) Certificate of Authority amendment fee: \$800.

(5) - (10) (No change.)

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6527



CHAPTER 10. GRANT PROGRAMS

SUBCHAPTER RR. TEXAS INNOVATIVE ADULT CAREER EDUCATION (ACE) GRANT PROGRAM

19 TAC §§10.870 - 10.878

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter RR, §§10.870 - 10.878, concerning the Texas Innovative Adult Career Education (ACE) Grant Program. Specifically, this new subchapter provides information necessary for the implementation and administration of the Program to develop, support, or expand program of eligible nonprofit workforce intermediary and job training organizations and of eligible nonprofit organizations providing job training to veterans and low-income students prepare to enter high demand and higher earning occupations. Negotiated rulemaking was used in the development of these proposed rules. Reports of negotiated rulemaking committees are public information and are available upon request from the Coordinating Board.

Texas Education Code (TEC), chapter 136, §136.001 and §§136.005 -136.007 requires the Coordinating Board to adopt rules for the administration of the program, including rules providing for application and evaluation process.

Specifically, these new sections will outline the authority, purpose, definitions, eligibility, application process, evaluation, grant awards, reporting requirements, and additional requirements which are necessary to administer the Texas Innovative Adult Career Education Grant Program.

Rule 10.870 indicates the purpose of the Texas Innovative Adult Career Education Grant Program.

Rule 10.871 indicates the specific sections of the TEC that provide the agency with authority to issue these rules.

Rule 10.872 provides definitions for words and terms within the Texas Innovative Adult Career Education Grant rules. The definitions are proposed to provide clarity for words and terms that are integral to the understanding and administration of the Texas Innovative Adult Career Education Grant rules.

Rule 10.873 outlines the requirements that the organizations must fulfill to participate in the Texas Innovative Adult Career Education Grant Program. The requirements are proposed to: (a) clarify the type of organization eligible to participate, (b) provide rules specific to requirements the Coordinating Board is proposing to ensure effective administration of the Texas Innovative Adult Career Education Grant Program, such as the requirement that each organization enter into an agreement with one or more public junior colleges, public state colleges, or public technical institutes, (c) provides rules specific to the type of students the job training and student services assist. This section is proposed based on TEC, §136.007, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Innovative Adult Career Education Grant Program.

Rule 10.874 outlines the application process that eligible organizations will undergo to qualify for funding consideration.

Rule 10.875 outlines the evaluation process and award criteria factors organizations must meet, such as (a) student completion of developmental education at partnering institutions, (b) student persistence rates at partnering institutions, (c) certificate or degree completion rates at partnering institutions at comparable institutions within a three-year period, (d) student entry into careers requiring credentials that result in higher earnings. This section outlines the evaluation process and the services the Coordinating Board includes to evaluate applicants for their evidence-based programs for low income and veteran students.

Rule 10.876 outlines the process for grant award amounts and how the Coordinating Board will advance awards to a grantee. The proposed rule provides what the grant award may be used to cover in the grantee application, and that the determination of the allowability of administrative costs will be set forth in the Request for Application.

Rule 10.877 outlines the reporting requirements for the Texas Innovative Adult Career Education Grant Program. The proposed rule provides the type of activities and information grantees must submit during the grant period.

Rule 10.878 outlines the additional requirements related to the Texas Innovative Adult Career Education Grant Program, such as the Coordinating Board's right to reject applications and cancel grant solicitation, and that grantees must sign a notice of grant award to receive funds.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, 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 for the Texas Innovative Adult Career Education Grant Program. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Dr. Jennielle Strother has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increase in the number of low-income students or veterans prepared to enter careers in high demand and significantly higher earning occupations that they may not have been able to access

otherwise. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Participation in the Texas Innovative Adult Career Education Grant Program is voluntary.

Government Growth Impact Statement

- (1) the rules will not create a government program required;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will 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 CRI@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 136.007, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Texas Innovative Adult Career Education Grant Program.

The proposed new section affects Texas Education Code, Sections 136.001 and 136.005 -136.007.

§10.870. Purpose.

The purpose of this subchapter is to administer the Texas Innovative Adult Career Education (ACE) Grant Program to provide grants to eligible entities to develop, support, or expand workforce intermediary and job training programs for veterans and low-income students to enter careers in high-demand and/or higher earning occupations.

§10.871. Authority.

The authority for this subchapter is found in Texas Education Code, chapter 136, §136.001 and §§136.005 -136.007. Texas Innovative Adult Career Education (ACE) Grant Program, which provides the Board with the authority to adopt rules to administer the ACE Grant Program.

§10.872. Definitions.

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

- (1) Board or THECB--The Texas Higher Education Coordinating Board.
- (2) Low-Income Student--A student whose household income is at or below a certain percentage of the Department of Health and Human Service's federal poverty guidelines. The percentage shall be set forth in the RFA.
- (3) Nonprofit Organization--An organization exempt from federal income taxation under §501(a), Internal Revenue Code of 1986, as an organization described by §501(c)(3) of that Code.
- (4) Nonprofit Workforce Intermediary and Job Training Organization--A nonprofit organization that engages in comprehensive

long-term job training in partnership with a public junior college, public state college, or public technical institute and provides labor market intermediary services to participating students.

(5) Program--Texas Innovative Adult Career Education (ACE) Grant Program established under Texas Education Code, chapter 136.

(6) Public Junior College, Public State College, and Public Technical Institute--An institution as defined by Texas Education Code, §61.003.

(7) Request for Applications (RFA)--The written announcement requesting the submission of applications for available grant funding. The RFA sets forth the terms and conditions of the Program.

(8) Veteran--A person who:

(A) has served in:

(i) the Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States;

(ii) the state military forces as defined by §431.001, Government Code, other than the Texas State Guard; or

(iii) an auxiliary service of one of those branches of the armed forces; and

(B) received an honorable or general discharge from the branch of service in which the person served.

§10.873. Eligibility.

To be eligible to apply for and receive funding under the Program an entity must:

(1) Be a Nonprofit Organization;

(2) Be a Workforce Intermediary and Job Training Organization;

(3) Have a governance structure that is led by or includes recognized leaders of broad-based community organizations and executive-level or managerial-level members of the local business community;

(4) Have executed partnership agreements with one or more public junior colleges, public state colleges, or public technical institutes that meet the criteria set forth in §10.875(b)(1) - (4) of this subchapter (relating to Evaluation);

(5) Provide job training and evidence-based coordinated services that assist students with applying for jobs through employment to:

(A) Low-income students; or

(B) Veterans; and

(6) Any other eligibility criteria set forth in the RFA.

§10.874. Application Process.

(a) Unless otherwise specified in the RFA, eligible entities may submit a maximum of one application.

(b) To qualify for funding consideration, an eligible applicant must submit an application to THECB. Each application must:

(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 proper authorization on or before the day and time specified by the RFA.

§10.875. Evaluation.

(a) THECB shall competitively select applicants for funding based on requirements and award criteria provided in the RFA.

(b) Award criteria will include whether the applicant at a minimum has met or will meet the following factors:

(1) Student completion of developmental education at the partnering public junior college(s), public state college(s), or public technical institute(s) at a rate that meets or exceeds that set forth in the RFA;

(2) Student persistence rates at the partnering public junior college(s), public state college(s), or public technical institute(s) at a rate that meets or exceeds that set forth in the RFA;

(3) Certificate or degree completion rates at the partnering public junior college(s), public state college(s), or public technical institute(s) at a rate greater than demographically comparable institutions within a three-year period; and

(4) Student entry into careers requiring credentials that result in higher earnings prior to enrollment in the program.

(c) If the applicant is providing services to veterans, the award criteria will include whether the applicant at a minimum has met or will meet the following factors:

(1) The factors set forth in subsection (b)(1) - (4); and

(2) Certificate or degree completion rates at the partnering public junior college(s), public state college(s), or public technical institute(s) result in the student's rapid attainment of civilian workforce credentials as defined by the RFA.

(d) THECB will evaluate applicants, in part, on the development, support or expansion of evidenced based services to low-income students or veterans to successfully gain employment in high demand and higher-earning occupations. Such services may include:

(1) Outreach activities that inform students of the program-
ming available;

(2) Assessment activities that create a pathway based on the student's interest and assessing the readiness and performance based on test scores, grade point averages, or any other instruments adopted/approved by the Board;

(3) Case management activities;

(4) Support services provided to students to aid in student completion of job attainment;

(5) Developmental education;

(6) Job training instruction; and

(7) Career placement services.

(e) THECB will evaluate applicants on whether they are able to meet the matching funds criteria set forth in the RFA, if any. For purposes of this section, matching funds may be obtained from any source available to the organization including in-kind contributions, administrative costs, community or foundation grants, individual contributions or donations, and local governmental agency operating funds.

§10.876. Grant Awards.

(a) The amount of funding available to the program is dependent on the legislative appropriation for the program for each biennial state budget. THECB will provide award levels and estimated number of awards in the RFA.

(b) ACE Grant Program awards shall be subject to THECB 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 grantee award to best fulfill the purpose of the RFA.

(d) THECB may advance grant awards to a grantee through periodic installments. If the RFA requires matching contributions, the grantee must demonstrate through financial reporting that the grantee has complied with the matching funds requirement before THECB will issue the next periodic installment.

(e) Determination of the allowability of administrative costs, including indirect, will be set forth in the RFA.

(f) Grant awards will be based on the criteria set forth in the RFA and may be used to cover Program tuition, fees, instructional resources, and services allowed in the grantee application as defined in §10.875(d) of this subchapter (relating to Evaluation).

§10.877. Reporting Requirements.

Interim and Final Reporting for the ACE Grant Program. Grantees must submit program and expenditure reports and student reports, if applicable, to THECB in the format required by THECB during the grant period and at its conclusion as required by the RFA. Grantees shall provide information that includes, but is not limited to, the following:

(1) Status of the grant project activities;

(2) Budget expenditures by budget category;

(3) Student enrollment and demographic data as applicable;

(4) Job placement and salary data as applicable;

(5) Matching contributions, if applicable; and

(6) Any other information required by the RFA.

§10.878. Additional Requirements.

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

(b) Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by THECB staff.

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 January 12, 2024.

TRD-202400122

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 427-6537



**CHAPTER 12. OPPORTUNITY HIGH SCHOOL
DIPLOMA PROGRAM**

**SUBCHAPTER A. OPPORTUNITY HIGH
SCHOOL DIPLOMA PROGRAM**

19 TAC §§12.1 - 12.9

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 12, Subchapter A, §§12.1 - 12.9, concerning the Opportunity High School Diploma Program. Specifically, this new section will clarify and ensure institutions' ability to offer the Opportunity High School Diploma Program as provided in new Texas Education Code, chapter 130, subchapter A.

The Coordinating Board proposes the establishment of the Opportunity High School Diploma Program rule framework to provide an alternative means by which an adult student who has dropped or stopped out of high school is able to enroll in a career and technical education program at a public junior college and may earn a high school diploma through concurrent enrollment. The proposed new rules provide clarity and guidance to students, participating institutions, and the Coordinating Board staff for the program's implementation.

Specifically, these new sections will outline the authority and purpose, definitions, program design and administration, program requirements, institutional and student eligibility, program approval process, required reporting, and funding necessary to administer the Opportunity High School Diploma Program.

Rule 12.1, Purpose, states the purpose of this new rule, which is to implement the Opportunity High School Diploma Program to provide an adult student who has dropped or stopped out of high school the opportunity to earn a high school diploma equivalent to one awarded under Texas Education Code, §28.025, via concurrent enrollment in a career and technical education program and a competency-based education program at a public junior college.

Rule 12.2, Authority, authorizes the Coordinating Board to adopt rules as necessary to implement Texas Education Code, chapter 130, subchapter O: Opportunity High School Diploma Program, as promulgated under Texas Education Code, §130.458.

Rule 12.3, Definitions, provides definitions for words and terms within Opportunity High School Diploma rules. The definitions provide clarity for words and terms that are key to the understanding and administration of the program.

Rule 12.4, Program Design and Administration, states that the Commissioner must consult with the Texas Education Agency and Texas Workforce Commission to determine program elements and competencies. Additionally, it provides that a public junior college must submit an application to the Coordinating Board to receive approval to offer this program. This section is proposed based on Texas Education Code, §130.458, which directs the Board to adopt rules as necessary to implement the Opportunity High School Diploma Program.

Rule 12.5, Program Requirements, outlines the general and curricular requirements necessary to ensure that the Opportunity High School Diploma Program offered by a public junior college adequately prepares students for postsecondary education or additional career and technical education. This section establishes the five core program competencies a public junior college must include, and measure with Board-approved assessments, in a program and allows latitude in the addition of curricular elements designed to meet regional employers' or specific workforce needs. This section also establishes the criteria for competency assessment and transcription, location of program delivery, and awarding of a high school diploma for successful completion of the program. This section implements Texas Ed-

ucation Code, §130.458, which directs the Board to adopt rules as necessary to implement the Opportunity High School Diploma Program.

Rule 12.6, Eligible Institutions and Students, specifies eligibility for public junior colleges and/or consortiums applying to offer, and students seeking to participate in, the Opportunity High School Program. This section lists the permissible types of entities that a public junior college can enter into a consortium with to expand access for students. The section also details student eligibility requirements that make the program available to a wide range of adult students.

Rule 12.7, Program Approval Process, lists the required elements in an eligible public college's application including compliance with §12.5 of this subchapter, consultation with local workforce and employer, and any pertinent consortia agreements. The section also outlines the process for approval that the Coordinating Board and the Commissioner of Higher Education will follow after applications are submitted as well as the notification of approved programs to the public. This section is proposed based on Texas Education Code, §130.458, which directs the Coordinating Board to adopt rules as necessary to implement the Opportunity High School Diploma Program.

Rule 12.8, Required Reporting, details the required reporting a public junior college with an approved program will have to submit to the Coordinating Board in order to measure program effectiveness. The rules require each public junior college to submit data through the Education Data System and to comply with its reporting standards. The Coordinating Board will utilize this data to prepare and submit a progress report to the Legislature no later than December 1, 2026.

Rule 12.9, Funding, establishes that the Coordinating Board shall consult with the Texas Workforce Commission on the identification of available funding for the program. This section is proposed based on Texas Education Code, §130.458, which directs the Coordinating Board to adopt rules as necessary to implement the Opportunity High School Diploma Program.

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 ability to provide an alternative means by which an adult student enrolled in a career and technical education program at a public junior college may earn a high school diploma at the college through concurrent enrollment in a competency-based education 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 create 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 Lee.Rector@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new subchapter is proposed under Texas Education Code, §130.458, which provides the Coordinating Board with the authority to adopt rules as necessary to implement Texas Education Code, Chapter 130, Subchapter O: Opportunity High School Diploma Program.

The proposed new subchapter affects Texas Education Code, Chapter 130, Subchapter O, and Texas Education Code, §28.025.

§12.1. Purpose.

The purpose of this subchapter is to implement the Opportunity High School Diploma Program. The Opportunity High School Diploma Program is intended to provide an alternative means by which an adult student enrolled in a career and technical education program at a public junior college may earn a high school diploma at a college through concurrent enrollment in a competency-based education program.

§12.2. Authority.

Texas Education Code, §130.458, authorizes the Board to adopt rules as necessary to implement Texas Education Code, Chapter 130, Subchapter O: Opportunity High School Diploma Program.

§12.3. Definitions.

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

- (1) Board--the governing body of the agency known as the Texas Higher Education Coordinating Board.
- (2) Commissioner--The Commissioner of Higher Education.
- (3) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.
- (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.
- (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.
- (6) Opportunity High School Diploma Program, Opportunity Diploma Program, or Program--Unless context indicates other-

wise, means the Opportunity High School Diploma Program established under this subchapter.

(7) Public Junior College--A public institution of higher education as defined in Texas Education Code, §61.003(2).

(8) Public School District--A public school district is a 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.

§12.4. Program Design and Administration.

(a) The Coordinating Board shall administer this program in consultation with the Texas Education Agency and the Texas Workforce Commission. A public junior college shall submit an application for approval to the Coordinating Board to offer this program.

(b) The Commissioner will consult with the Texas Workforce Commission Chairman's Tri-Agency Workforce Council in determining program elements and competencies.

§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 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) Curricular Requirements. An approved public junior college shall embed 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. 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.

(c) Prior Learning and Program Completions. A public junior college approved to offer this program must determine each student's competence in each of the five core program competencies set out in subsection (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. A student may be determined to have satisfied required learning

outcomes for one or more core program competencies based on the student's prior learning.

(2) Documentation of a student's prior learning in the five core program competencies may include the following: transcribed high school grades; transcribed 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.

(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) The Coordinating Board will publish a list of the approved assessments on the agency's website.

(5) A public junior college that is approved to offer the program must use an approved assessment to evaluate each student's competence in the five core program competencies as required under subsection (b) of this section.

(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.

(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.

§12.6. Eligible Institutions and Students.

(a) Eligible Institutions.

(1) A public junior college may submit an application to the Coordinating Board for approval to offer an Opportunity High School Diploma Program.

(2) Subject to approval under this subchapter, an eligible public junior college may enter into agreement to offer the program in consortium with one or more public junior colleges, general academic teaching institutions, public school districts, or nonprofit organizations. An public junior college's application shall describe the role of each member of the consortium in delivering the program elements.

(b) Eligible Students. An institution may admit an adult student without a high school diploma to the Opportunity High School Diploma Program. Adult student means a student aged 18 or older on the date of first enrollment in the program. An institution shall concurrently enroll each eligible student in a career and technical education program.

§12.7. Program Approval Process.

(a) Required Elements of Program Approval Application. 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(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.

(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 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 approved to offer this program shall report student enrollments and completions to the Coordinating Board through the Education Data System, in compliance with the data reporting standards established for that system.

(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.

§12.9. Funding.

(a) An Opportunity High School Diploma is a Fundable Outcome as defined in §13.556 of this title (relating to Performance Tier: Fundable Outcomes).

(b) The Commissioner shall confer with the Texas Workforce Commission to identify additional funding to implement 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.

Filed with the Office of the Secretary of State on January 12, 2024.

TRD-202400127

Nichole Bunker-Henderson
General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 427-6344



CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER N. TEXAS RESKILLING AND UPSKILLING THROUGH EDUCATION (TRUE) GRANT PROGRAM

19 TAC §13.406

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter N, §13.406, concerning the review process for the Texas Reskilling and Upskilling Through Education (TRUE) Grant Program. Specifically, this amendment will add employers to the list of workforce stakeholders that can partner with eligible institutions to analyze job postings and identify employers hiring roles with skills developed by education and training programs funded by TRUE. TRUE grant applications that indicate this kind of workforce stakeholder partnership will be given preference in application review.

The proposed amendment is identical to an amendment made to the TRUE Grant Program during the 88th Legislative Session (R). The Coordinating Board is authorized by Texas Education Code, Chapter 61, Subchapter T-2, §§61.882(b)1-866, which provides the authority to administer the TRUE Grant Program in accordance with the subchapter and rules adopted under the subchapter.

Dr. Tina Jackson, Assistant Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there are 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.

Dr. Tina Jackson 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 an important additional category of workforce stakeholder involved in the determination of regional high demand occupations. 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 Dr. Sheri Ranis, Director for Workforce Education and Innovation, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Sheri.Ranis@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, Chapter 61, Subchapter T-2, §§61.882(b)1-866 which provides the Coordinating Board with the authority to administer the TRUE Grant Program.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter N, §13.406(b)(4).

§13.406. Review Criteria.

- (a) (No change.)
- (b) Projects may be given preference that:
 - (1) - (3) (No change.)
 - (4) Partner with employers, local chambers of commerce, trade associations, economic development corporations, and local workforce boards to analyze job postings and identify employers hiring roles with the skills developed by the training programs.

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

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Texas Higher Education Coordinating Board

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SUBCHAPTER S. COMMUNITY COLLEGE FINANCE PROGRAM

19 TAC §§13.550 - 13.558, 13.560 - 13.564

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter S, §§13.550 - 13.558 and 13.560 - 13.564, concerning the administration of the new community college finance system established by House Bill 8 (88R). Specifically, this new section will replace rules in subchapter P, chapter 13, starting in fiscal year 2025 and contains a number of modifications relating to specific issue areas, as detailed below.

The Coordinating Board initially adopted rules relating to the new community college finance system on an emergency basis in August 2023, including chapter 13, subchapter P, allowing for the implementation of H.B. 8 by the start of the 2024 fiscal year. The proposed rules contain the following substantive changes to the rules previously adopted by the Coordinating Board:

1. Guidance on permissible expenditures of state-appropriated funds, aligned with restrictions contained in the 2024-2025 General Appropriations Act and Texas Education Code Section 130.003(c) (see proposed rule 13.562)
2. Requirements for institutions receiving a scale adjustment under the Base Tier Allocation to submit a report on participation in shared services, implementing Texas Education Code §130A.054(e) (see proposed rule 13.563)
3. Clarification of the Structured Co-Enrollment Fundable Outcome definition, including that these outcomes do not also in-

clude courses fundable under the Dual Credit or Dual Enrollment Fundable Outcome (see proposed rule 13.553(30))

4. Modification of the methodology used to calculate the tuition and fees used in the Base Tier Allotment, designed by the Coordinating Board to improve the accuracy, timeliness, and transparency of this value (see proposed rule 13.554(d))

5. Clarification of the Transfer Fundable Outcome to ensure that dual credit hours do not count towards more than one fundable outcome (see proposed rules 13.533(32) and 13.556(e))

6. Refinement of the methodology for calculating Adult Learners, intended to reinforce institutions' incentives to encourage timely completion based on a student's credential (see proposed rule 13.557)

7. Addition of Third-Party Credentials as a new Fundable Outcome, in recognition of institutions enabling students to earn credentials of value conferred by third-party providers (see proposed rule 13.556)

8. Clarification and addition of greater detail of the Credential of Value Baseline filter, the minimum benchmark credentials must meet for fundability, which is met by producing a positive return on investment relative to a high school diploma within ten years (see proposed rule 13.556)

9. Addition of a new Credential of Value Premium as a Fundable Outcome that rewards an institution when a student earns a credential of value quickly enough that they are projected to achieve a positive return on investment on or before the year in which the majority of graduates from comparable programs are projected to achieve a positive return on investment (see proposed rule 13.556)

10. Recognition of completion of an Opportunity High School Diploma - a new program established by H.B. 8 (88R) - as a Fundable Outcome under the Performance Tier (see proposed rule 13.556)

11. Revision of the Dual Credit and Dual Enrollment Fundable Outcome to ensure that the hours reported by institutions do not count towards multiple fundable outcomes and to include completion of the Texas First program, established by S.B. 1888 (87R) (see proposed rule 13.556)

12. Revisions to certain workforce credential definitions, including Occupational Skills Awards (OSAs), Continuing Education Certificates, and Institutional Credentials Leading to Licensure or Certification (ICLCs), to align more closely with industry practices; this includes redefining ICLCs to fund only the conferring of a credential (see proposed rule 13.553)

13. Specification that the Coordinating Board will apply the rules in effect for the fiscal year in which the funding was delivered, clarifying for institutions which rules will apply as the Coordinating Board continues to refine the community college finance system (see proposed rule 13.552)

14. Exclusion of credentials awarded to non-resident students enrolled in distance education programs from eligibility for funding in alignment with restrictions on contact hour funding (see proposed rule 13.556(b)).

The proposed subchapter S maintains continuity with existing rules in subchapter P while proposing the changes listed above and ensuring the applicability of the rules beyond the 2024 fiscal year.

Rule 13.550, Purpose, establishes the purpose of subchapter S to implement the new community college finance system established by H.B. 8 (88R).

Rule 13.551, Authority, establishes the portions of the Texas Education Code (TEC) that authorize the Coordinating Board to adopt rules pertaining to community college finance.

Rule 13.552, Applicability, states that the Coordinating Board will apply the rules in effect for the fiscal year in which the funding was delivered, unless otherwise provided. This provision provides guidance to institutions on which rules will apply as the Coordinating Board iterates and refines the community college finance framework.

Rule 13.553, Definitions, lists definitions pertinent to the community college finance system. Whereas the current subchapter P uses this section to elaborate on policy details, this section provides only general meanings of terms and reserves substantive policy detail for the sections described below.

Rule 13.554, Base Tier Allotment, establishes the calculations used to determine Base Tier funding that the legislature entitled community colleges to receive under TEC, §§130A.051 - 130A.056. To summarize, Base Tier funding is calculated as Instruction and Operations (I&O) minus Local Share. If Local Share is greater than Instructions and Operations, then Base Tier funding is zero.

Specifically, Rule 13.554(b) establishes the I&O funding amount, corresponding to TEC, §130A.052, as Contact Hour Funding plus the product of the Weighted Full-Time Student Equivalents (Weighted FTSE) multiplied by Basic Allotment. The rule explicitly defines the calculations used to derive Full-Time Student Equivalents based on contact hours and semester credit hours reported to the Coordinating Board by community college districts. Hours reported are weighted by student characteristics as instructed by TEC, §130A.054 at levels based on the higher cost of educating students with certain characteristics (e.g., adult learners are weighted the highest due to the higher cost of educating the student). In accordance with TEC, §130A.055, the rule defines Contact Hour Funding as the institution's reported base-year contact hours, weighted by the average cost to provide each contact hour in each discipline as defined in the Report of Fundable Operating Expenses. The Basic Allotment rate and contact hour funding rate are set by the commissioner from funding amounts derived from the General Appropriations Act, in accordance with TEC, §§130A.053 and 130A.055.

Rule 13.554(d) establishes Local Share as the amount of maintenance and operations ad valorem tax revenue generated by \$0.05 per \$100 of taxable property value in a college's taxing district plus the amount of tuition and fee revenue that would be generated by charging the average amount of tuition and fees charged by community college districts in the state of Texas to each in-district FTSE, in accordance with TEC, §130A.056. Specifically, the Coordinating Board will calculate estimated tax revenue for each district as the actual amount of current tax revenue collected in Fiscal Year 2022 multiplied by the ratio of the maintenance and operations tax rate to the total tax rate, divided by the product of the maintenance and operations tax rate and 100 and multiplied by five. This estimation takes into account that not all property taxes owed are able to be collected by institutions due to delinquent or late collections over which the institutions have no control.

The Coordinating Board will estimate tuition and fee revenue for Local Share by summing 1) the average of tuition and fees

charged by community colleges to in-district students two fiscal years prior multiplied by non-dual credit or dual enrollment FTSEs during the fiscal year two years prior and 2) the amount of tuition set per SCH for the Financial Aid for Swift Transfer (FAST) program, multiplied by dual credit or dual enrollment SCHs for the fiscal year two years prior. The Coordinating Board will source tuition and fee data from the Integrated Fiscal Reporting System, which captures the most recent actual tuition and fees charged by Texas community colleges. Using the average tuition and fee rate specific to in-district students avoids unduly penalizing colleges that have above-average percentages of in-district students and/or that provide substantial discounts to their in-district students. Using the two different tuition rates, depending on the type of student, provides further equity in the method of estimating tuition and fee revenue across the community college districts by avoiding an undue penalty on colleges participating in the FAST program and those with higher percentages of dual credit or dual enrollment students, regardless of their participation in FAST.

Rule 13.555, Performance Tier Funding, establishes the basic components of the Performance Tier portion of community college funding, codified under TEC, chapter 130A, subchapter C. Performance Tier funding consists of the number of Fundable Outcomes each community college produces, weighted according to certain Fundable Outcome Weights and multiplied by relevant rates. The Coordinating Board intends to adopt forthcoming rules with specific rates per fundable outcome prior to the start of fiscal year 2025. The subsequent sections describe each of these components in greater detail.

Rule 13.556, Performance Tier: Fundable Outcomes, describes the outcomes that are eligible to receive performance tier funding. Outcomes consist of the categories of 1) fundable credentials; 2) credential of value premium; 3) dual credit fundable outcomes; 4) transfer fundable outcomes; 5) structured co-enrollment fundable outcomes; and 6) Opportunity High School Diploma fundable outcomes.

Specifically, Rule 13.556(b) defines the credentials eligible for funding under the Community College Finance System, which include associate degrees, bachelor's degrees, Level 1 and 2 certificates, Advanced Technical Certificates, Continuing Education Certificates, Occupational Skills Awards (OSAs), Institutional Credentials Leading to Licensure or Certification (ICLCs), and Third-Party Credentials. Pursuant to H.B. 8 and TEC, §130A.101(c)(1), this section also establishes the manner by which the Coordinating Board will determine whether a credential qualifies as a credential of value and is thereby fundable. Otherwise fundable credentials are credentials of value when the majority of graduates are projected to achieve a positive return on investment relative a high school graduate with no additional credentials within ten years, whereas OSAs, ICLCs, and Third-Party Credentials are credentials of value when they require a minimum amount of instruction and meet other programmatic requirements.

Rule 13.556(c) establishes the credential of value premium as a fundable outcome that rewards an institution when a student earns a credential of value quickly enough that they are projected to achieve a positive return on investment at least one year sooner than the year in which the majority of graduates are projected to reach that threshold. It also requires that the Coordinating Board annually publish the "target year" by which a student in a given program must graduate for the institution to earn the credential of value premium. This provides an added

incentive for colleges to invest in improving the speed and efficiency with which their students are able to complete programs of study.

Rule 13.556(d) describes the dual credit fundable outcome, as required by TEC, §130A.101(c)(3). An institution earns a dual credit fundable outcome for students who complete 15 SCH or the equivalent and transfer to a general academic teaching institution in the state. The Coordinating Board intends to adopt forthcoming rules with greater specificity on qualifying dual credit coursework.

Rule 13.556(e) describes the transfer fundable outcome, as required by TEC, §130A.101(2)(A). The Coordinating Board proposes to refine the methodology used to calculate this outcome to clarify that hours earned by a student will count towards a single fundable outcome for a single institution. As such, the section establishes rules that exclude hours counting towards the dual credit fundable outcome and require both that a single transfer funds only one institution and that one institution can receive funding for a given student's transfer only once. These provisions will direct funding to the institution that plays a more substantial role in achieving the transfer outcome and prevent an institution from receiving funding if a transfer student repeatedly re-enrolls at the institution and transfers elsewhere, which is generally counterproductive to student progress and would inappropriately reward institutions whose students fail to make sustained progress on a transfer pathway.

Rule 13.556(f) describes the structured co-enrollment fundable outcome, as required by TEC, §130A.101(2)(B).

Rule 13.556(g) describes the Opportunity High school Diploma fundable outcome, which is another category of fundable credentials authorized by TEC, §130A.101(c)(1). H.B. 8 established the Opportunity High School Diploma program under TEC, chapter 130, subchapter O. The Coordinating Board intends to adopt more detailed rules implementing this new program in a forthcoming rulemaking.

Rule 13.557, Performance Tier: Fundable Outcome Weights, establishes the weights that are applied to the fundable outcomes achieved by students in the categories of economically disadvantaged, academically disadvantaged, and adult learners, for the purposes of performance tier funding. Institutions earn an additional weight of 25% for a fundable outcome when that outcome is achieved by an economically disadvantaged or academically disadvantaged student and an additional weight of 50% when the outcome is achieved by an adult learner.

Rule 13.558, Performance Tier: High-Demand Fields, establishes that an institution will receive additional weight for awarding credentials delivered in disciplines listed as a High-Demand Field. This is described in more detail in subchapter T of this chapter (a separate rule brought forward by the Coordinating Board).

Rule 13.560, Formula Transition Funding, establishes that after calculating the base tier and performance tier funding for each community college, the Coordinating Board shall ensure that a community college district does not receive less in formula funding in FY 2025 than it received in 2023 appropriations for formula funding (contact hours, success points, core operations, and bachelor's of applied technology funding) and need-based supplements. The Coordinating Board judges this provision to be necessary to smooth the transition from the prior system of formula funding predominantly based on contact hour generation to the new system of performance-based funding. Including

this provision ensures that no institution will experience a significant detrimental impact on its operations as the new system adjusts funding and moves to outcome-driven performance. Because this provision was only intended to facilitate the transition to a new finance system, it will expire at the end of FY 2025.

Rule 13.561, Payment Schedule, sets out both the payment schedule for non-formula support items and the payment schedule (three times per year) at which the Coordinating Board will make formula funding payments to each institution as authorized by TEC, §130.0031. The Coordinating Board shall pay all non-formula support item amounts to the institution by September 25th of a fiscal year, in accordance with the requirements in the 2024-25 General Appropriations Act. The first payment is 50% of the total formula funding entitlement and 25% for the second and final payment. Institutional stakeholders suggested that the Coordinating Board should make the first payment 50% in recognition that a college district's expenses are weighted towards the start of the fiscal year and to smooth the transition from the prior payment schedule, which had historically provided 48% of funding to a community college district by October 25th.

Rule 13.562, Limitations on Spending, describes the restrictions on how community college districts may expend state-appropriated funds, in alignment with state statute (TEC, §130.003(c); General Appropriations Act, 88th Leg. R.S., H.B. 1, art. III-231, ch. 1170, Rider 14). The Coordinating Board proposes this provision in response to requests from stakeholders for greater clarification of permissible expenditures.

Rule 13.563, Shared Services Report, stipulates that smaller community college districts receiving a Base Tier scale adjustment must submit a report on their participation in shared services, and describes the content of this shared report. This provision carries out a statutory requirement for small schools to submit this report, codified in TEC, §130A.054(e).

Rule 13.564, Effective Date of Rules, states that the proposed rules will take effect on September 1, 2024, which is the start of the 2025 fiscal year. The Coordinating Board intends to supplant current rules contained in subchapter P of this chapter with proposed rules in subchapter S, phasing the former out by the end of FY 2024 and the latter in by the start of FY 2025.

Emily Cormier, Assistant Commissioner for Funding, 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, as required to continue administration of the public junior college finance system established by H.B. 8, 88th Leg., R.S. (2023). Such ancillary fiscal implications may include the need to collect and report additional data in order to obtain additional outcome-based funding.

Fiscal implications of increased funding to institutions of higher education are funded as part of the new public junior college finance system in statute and the General Appropriations Act. The rules do not impose additional costs of compliance beyond those provided for 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.

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 continued refinement of implementing H.B. 8, which established a modern and dynamic finance system that ensures each public junior college has access to adequate state appropriations and local resources to support the education and training of the workforce. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will create or a government program, as required by House Bill 8;
- (2) implementation of the rules will require the creation or elimination of employee positions, as required by House Bill 8;
- (3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency, as provided in House Bill 8;
- (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 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 CCFinance@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 130A.005, which provides the Coordinating Board with the authority to adopt rules and take other actions consistent with Texas Education Code, Chapter 61, Chapter 130, and Chapter 130A to implement Tex. H.B. 8, 88th Leg., R.S. (2023). In addition, Texas Education Code, Section 130.355, permits the Coordinating Board to establish rules for funding workforce continuing education.

The new sections affect Texas Education Code, Sections 28.0295, 61.003, 61.059, 130.003, 130.0031, 130.0034, 130.008, 130.085, 130.310, 130.352 and Chapter 130A.

§13.550. Purpose.

The purpose of this subchapter is to implement the Community College Finance Program authorized by Texas Education Code, Chapters 61, 130, and 130A.

§13.551. Authority.

The Coordinating Board adopts this subchapter pursuant to Texas Education Code, §130A.005, requiring the Coordinating Board to adopt rules to implement the Community College Finance Program created in Texas Education Code, Chapters 61, 130, and 130A.

§13.552. Applicability.

Unless otherwise provided, the Coordinating Board shall apply the rules in effect for the fiscal year in which the funding was delivered.

§13.553. Definitions.

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

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

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

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

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

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

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

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

(8) Basic Allotment--A calculation of the dollar value per Weighted FTSE, based on appropriations made in that biennium's General Appropriations Act.

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

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

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

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

(13) Credentialing examination--A licensure, certification, or registration exam provided by a state or national agency or by an authorized professional organization.

(14) Dual Credit or Dual Enrollment Fundable Outcome--An outcome achieved when a student earns at least 15 SCH or the equivalent of 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) apply toward an academic or career and technical education program requirement at the postsecondary level; or

(ii) 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. 1.6 continuing education units of instruction equals one semester credit hour 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) For purposes of determining the rate to be used for the Basic Allotment and the rate to be used for calculating districts' Contact Hour Funding, the Commissioner shall calculate the rates necessary to maintain an equal split between Contact Hour Funding and Basic Allotment Funding for 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 this subchapter. 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.

§13.556. Performance Tier: Fundable Outcomes.

(a) This section contains definitions of Fundable Outcomes eligible for receiving funding through the Performance Tier. An institution's Performance Tier funding will consist of the count of Fundable Outcomes, multiplied by weights identified in §13.557 of this subchapter (relating to Performance Tier: Fundable Outcome Weights) as applicable, multiplied by the monetary rates identified in this subchapter. Fundable Outcomes consist of the following categories:

(1) Fundable Credentials;

(2) Credential of Value Premium;

(3) Dual Credit Fundable Outcomes;

(4) Transfer Fundable Outcomes;

(5) Structured Co-Enrollment Fundable Outcomes; and

(6) Opportunity High School Diploma Fundable Outcomes.

(b) Fundable Credentials.

(1) A fundable credential is defined as any of the following, except that, for a credential under subparagraphs (B), (C), or (D) of this paragraph, if more than one credential that the institution awarded to a student includes the same contact hours, the institution may only submit one credential for funding under subparagraphs (B), (C), or (D) of this paragraph. Fundable credential excludes a degree or certificate awarded to a non-resident student enrolled in a distance education program as defined in §2.202(4) of this title (relating to Definitions) for a student who is located out-of-state.

(A) Any of the following credentials awarded by an institution that meets the criteria of a credential of value as defined in paragraph (2) of this subsection using the data for the year in which the credential is reported that is otherwise eligible for funding, and the institution reported and certified to the Coordinating Board:

- (i) An associate degree;
- (ii) A baccalaureate degree;
- (iii) A Level 1 or Level 2 Certificate;
- (iv) An Advanced Technical Certificate; and
- (v) A Continuing Education Certificate.

(B) An Occupational Skills Award awarded by an institution that the institution reported and certified to the Coordinating Board;

(C) An Institutional Credential Leading to Licensure or Certification (ICLC) not included in subparagraph (B) of this paragraph and that the institution reported and certified to the Coordinating Board, that meets one of the following criteria:

- (i) The credential includes no fewer than 144 contact hours or nine (9) semester credit hours; or
- (ii) The credential is awarded in a high demand field, as defined in Coordinating Board rule, and includes no fewer than 80 contact hours or five (5) semester credit hours; or

(D) A Third-Party Credential that meets the following requirements:

- (i) The third-party credential is listed in the American Council on Education's ACE National Guide with recommended semester credit hours;
 - (ii) The third-party credential program content is either embedded in a course, embedded in a program, or is a stand-alone program;
 - (iii) The third-party credential is conferred for successful completion of the third-party instructional program in which a student is enrolled;
 - (iv) The third-party credential is included on the workforce education, continuing education, or academic transcript from the college; and
- (I) The third-party credential includes no fewer than the equivalent of nine (9) semester credit hours or 144 contact hours; or
- (II) The third-party credential is awarded in a high-demand field, as defined in Coordinating Board rule, and includes no fewer than the equivalent of five (5) semester credit hours or 80 contact hours; and

(v) The student earned the third-party credential on or after September 1, 2024.

(2) Credential of Value Baseline. Credentials identified in subparagraph (b)(1)(A) of this subsection must meet the Credential of Value Baseline criteria for eligibility as a Fundable Outcome. This baseline is met when a credential earned by a student would be expected to provide a positive return on investment within a period of ten years.

(A) A program demonstrates a positive return on investment when the majority of students completing the credential are expected to accrue earnings greater than the cumulative median earnings of Texas high school graduates who do not hold additional credentials, plus recouping the net cost of attendance within ten years after earning the credential.

(B) This calculation of return on investment shall include students' opportunity cost, calculated as the difference between median earnings for Texas high school graduates and estimated median earnings for students while enrolled:

- (i) Four years for baccalaureate degree holders;
- (ii) Two years for associate degree holders; or
- (iii) One year for holders of a Level 1 certificate, Level 2 certificate, Advanced Technical Certificate, or Continuing Education Certificate.

(C) The Coordinating Board shall calculate the expected return on investment for each program based on the most current data available to the agency for the funding year for each program or a comparable program.

(D) In applying the methodology under this section to a program offering a credential in an emerging or essential high-demand field pursuant to §13.595(a) and (b) of this chapter (relating to Emerging and Essential Fields), the Commissioner of Higher Education shall utilize recent, relevant data, including:

- (i) employer certifications provided under §13.595(b);
- (ii) information on program design, including at minimum the cost and length of the program; and
- (iii) any other information necessary for the Coordinating Board to apply the methodology under this section to the program proposed in an emerging or essential high-demand field.

(c) Credential of Value Premium. An institution earns a Credential of Value Premium for each student who completes a Fundable Credential under subsection (b) of this section as follows:

- (1) The student completes the credential of value on or before the target year for completion that, for the majority of students who complete comparable programs, would enable the student to achieve a positive return on investment within the timeframe specified for the program as described in paragraph (2) of this subsection.
- (2) For each program, the Coordinating Board shall calculate the year in which the majority of comparable programs would be projected to have the majority of their students achieve a positive return on investment.

(3) Each year, the Coordinating Board shall publish a list of the target years for completion for each program.

(d) Dual Credit Fundable Outcome. An institution achieves a Dual Credit Fundable Outcome when a student has earned a minimum number of eligible dual credit semester credit hours, as defined in §13.553(14) of this subchapter (relating to Definitions).

(e) Transfer Fundable Outcome.

(1) An institution earns a transfer fundable outcome when a student enrolls in a general academic teaching institution (GAI), as defined in Texas Education Code, §61.003(3), after earning at least 15 semester credit hours (SCH) from a single public junior college district, subject to the following:

(A) The student is enrolled at the GAI for the first time in the fiscal year for which the public junior college is eligible for a performance tier allocation, as established in this subchapter;

(B) The student earned a minimum of 15 SCHs from the public junior community college district seeking the transfer fundable outcome during the period including the fiscal year in which they enroll at the GAI and the four fiscal years prior; and

(C) The attainment of the 15 SCHs satisfies the following restrictions:

(i) The transfer fundable outcome shall exclude the 15 SCHs that previously counted toward attainment of a dual credit fundable outcome for the student under subsection (d) of this section.

(ii) The transfer fundable outcome may include any SCHs earned by the student not previously counted toward a dual credit fundable outcome under subsection (d) of this section.

(2) Only one institution may earn a transfer fundable outcome for any individual student. An institution may earn the transfer fundable outcome only once per student. The Coordinating Board shall award the transfer fundable outcome in accordance with this subsection.

(A) If a student has earned 15 SCH at more than one institution prior to transfer to any GAI, the Coordinating Board shall award the transfer fundable outcome to the last public junior college at which the student earned the 15 SCH eligible for funding under this section.

(B) If the student earned the 15 SCH at more than one institution during the same academic term, the Coordinating Board shall award the transfer fundable outcome to the public junior college:

(i) from which the student earned the greater number of the SCH that count toward the transfer fundable outcome during the academic term in which they earned the 15 SCH; or

(ii) if the student earned an equal number of SCH that count toward the transfer fundable outcome in the academic term in which the student earned the 15 SCH, to the institution from which the student earned a greater number of SCH that count toward the transfer fundable outcome in total.

(f) Structured Co-Enrollment Fundable Outcome. An institution achieves a Structured Co-Enrollment Fundable Outcome when a student has earned a minimum number of eligible semester credit hours in a structured co-enrollment program, as defined in §13.553(30) of this subchapter.

(g) Opportunity High School Diploma Fundable Outcome. An institution achieves an Opportunity High School Diploma Fundable Outcome when a student has completed the program and attained the credential, as defined in §13.553(28) of this subchapter. A student must earn the Opportunity High School Diploma on or after September 1, 2024 to qualify as a Fundable Outcome.

§13.557. Performance Tier: Fundable Outcome Weights.

(a) This section contains definitions of Fundable Outcome Weights that are applied to the Fundable Outcomes specified in §13.556 of this subchapter (relating to Performance Tier: Fundable

Outcomes) to generate a Weighted Outcome Completion. A Fundable Outcome that does not qualify for one of the following Fundable Outcome Weight categories receives a weight of 1. The Coordinating Board will apply the following weights to Fundable Outcomes to the extent permitted by data availability. Fundable Outcome Weights consist of the following categories:

(1) Outcomes achieved by economically disadvantaged students;

(2) Outcomes achieved by academically disadvantaged students; and

(3) Outcomes achieved by adult learners.

(b) Economically Disadvantaged Students.

(1) An institution will receive an additional weight of 25% for fundable credentials, transfer fundable outcomes, and structured co-enrollment fundable outcomes as referenced in §13.556 of this subchapter achieved by an economically disadvantaged student, as defined in §13.553(15) of this subchapter (relating to Definitions).

(2) For purposes of calculating economically disadvantaged for the Transfer Fundable Outcome and Fundable Credentials, the student must be classified as economically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(3) For purposes of calculating economically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as economically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at either the community college or general academic institution.

(c) Academically Disadvantaged Students.

(1) An institution will receive an additional weight of 25% for any fundable credentials, transfer fundable outcomes, and structured co-enrollment fundable outcomes in §13.556 of this subchapter achieved by an academically disadvantaged student, as defined in §13.553(1) of this subchapter.

(2) For purposes of calculating academically disadvantaged for Transfer Fundable Outcome and Fundable Credentials, the student must be classified as academically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(3) For purposes of calculating academically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as academically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(d) Adult Learners.

(1) An institution will receive an additional weight of 50% for a fundable credentials, transfer fundable outcomes, and structured co-enrollment fundable outcomes in §13.556 of this subchapter achieved by an adult learner, as defined in §13.553(2) of this subchapter.

(2) For purposes of calculating an Adult Learner for a transfer fundable outcome, the student must be 25 years of age or older in the earliest fiscal year in which they were enrolled at the public junior college during the two fiscal years prior to first enrollment in a general academic institution.

(3) For purposes of calculating an Adult Learner for a fundable credential, the student's eligibility will be determined as follows:

(A) For a student who completes an Occupational Skills Award, Institutional Credential leading to Licensure or Certification, Third Party Credential, Level I Certificate, Level II Certificate, Continuing Education Certificate, or Advanced Technical Certificate, as defined in §13.556(b) of this subchapter, 25 years of age or older on September 1 of the fiscal year in which the credential was earned;

(B) For a student who completes an associate degree as defined in §13.556(b) of this subchapter, 25 years of age or older on September 1 of the earliest fiscal year in which the student was enrolled during the period including the year in which the credential was earned and the prior fiscal year; and

(C) For a student who completes a bachelor's degree as defined in §13.556(b) of this subchapter, 25 years of age or older on September 1 of the earliest fiscal year in which the student was enrolled during the period including the year in which the credential was earned and the three fiscal years prior.

(4) For purposes of calculating an Adult Learner for Structured Co-Enrollment Fundable Outcome, the student must be classified as an Adult Learner in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(e) Applicability of Weights. For purposes of transitioning to the new formula model, an institution will receive fundable outcome weights for Occupational Skills Awards, Institutional Credentials Leading to Licensure or Certification, and Third-Party Credentials achieved by economically disadvantaged students, academically disadvantaged students, or adult learners beginning with these awards reported in Fiscal Year 2025. This subsection expires on August 31, 2026.

§13.558. Performance Tier: High-Demand Fields.

An institution will receive an additional weight, as calculated by an increased funding rate for awarding a Fundable Credential described in §13.556 of this subchapter (relating to Performance Tier: Fundable Outcomes) for credentials delivered in disciplines designated as a High-Demand Field, as described in subchapter T of this chapter (relating to Community College Finance Program: High-Demand Fields).

§13.560. Formula Transition Funding.

In FY 2025, for purposes of transitioning to the new formula model, if the sum of a public junior college district's Base and Performance Tier funding as calculated in §13.554 and §13.555 of this subchapter (relating to Base Tier Allotment and Performance Tier Funding, respectively) would result in the district receiving less in General Revenue formula funding than the district received through the sum of appropriations made in the core operations strategy, student success strategy, contact hour funding strategy, and, if applicable, the need-based supplement and bachelor of applied technology strategies, as provided for FY 2023 in the 2022-23 General Appropriations Act, then the Coordinating Board will add transitional funding in the amount of the difference to the district's formula funding for FY 2025. This rule expires on August 31, 2025.

§13.561. Payment Schedule.

(a) Non-Formula Support Items. For the purpose of distributing state appropriations to a public junior college district in a fiscal year, the Coordinating Board shall distribute the full amounts of all fiscal year non-formula support items to the district to which they are appropriated in accordance with the provisions of the General Appropriations Act in effect for the biennium by September 25th of the fiscal year. The Coordinating Board shall recover any overallocation or adjust any installment required to comply with state law or chapter 13 of this title (relating to Financial Planning).

(b) Formula Funding Amounts: Fall. For the purpose of distributing state appropriations to a public junior college district in a fiscal year, the Coordinating Board shall distribute to each district by October 15th one-half of the formula funding amount it determines the district may be entitled to receive in a fiscal year based on the total forecasted by the Coordinating Board.

(c) Formula Funding Amounts: Spring. For the purpose of distributing state appropriations to a public junior college district in a fiscal year, the Coordinating Board shall distribute to each district by February 15th one-quarter of the formula funding amount it determines the district may be entitled to receive in a fiscal year based on the total forecasted by the Coordinating Board, pursuant to the provisions of the General Appropriations Act, Texas Education Code, and all other pertinent statutes and rules.

(d) Formula Funding Amounts: Summer. For the purpose of distributing state appropriations to a public junior college district in a fiscal year, the Coordinating Board shall distribute to each district by June 15th, one-quarter of the formula funding amount it determines the college may be entitled to receive in a fiscal year based on the total forecasted by the Coordinating Board, pursuant to the provisions of the General Appropriations Act, Texas Education Code, and all other pertinent statutes and rules, and in odd-numbered years shall distribute the formula funding amount likewise determined as soon as is practicable after June 15 in accordance with the appropriations process.

(e) The Coordinating Board may modify any installment under this schedule as necessary to provide an institution with the amounts to which the institution is entitled under Texas Education Code, chapters 130 and 130A, the General Appropriations Act, or chapter 13 of this title.

§13.562. Limitations on Spending.

(a) Texas Education Code Section 130.003(c) establishes that state funds provided under Texas Education Code Chapter 130 and 130A may be used exclusively for the purpose of paying salaries of the instructional and administrative forces, purchase of supplies and materials for instructional purposes, and paying the cost of audits.

(b) The General Appropriations Act limits funding for instructional and administrative forces as follows:

(1) Formula funding, including base tier, performance tier, and formula transition funds, may be used for the following elements of cost: instruction, academic support, student services, institutional support, organized activities, and staff benefits associated with salaries paid from general revenue.

(2) Non-formula support item funds may be expended for salaries, wages, travel, capital outlay and other necessary operating expenses, in addition to the elements of cost listed under paragraph (b)(1) of this section.

(3) Formula and non-formula support item funding may not be used for the operation of intercollegiate athletics.

(c) The elements of cost in subsection (b) of this section are defined in the Coordinating Board's Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, also known as the AFR Manual, as published under §13.524 of this chapter (relating to Required Reporting).

(d) Institutions may expend funds as otherwise permitted by statute.

§13.563. Shared Services Report.

(a) This rule applies to each public junior college district of fewer than 5,000 full-time equivalent students which receives a scale

adjustment under §13.554(b)(1)(C) of this subchapter (relating to Base Tier Allotment).

(b) Public junior colleges subject to this rule must submit a report on their participation in shared services to the Coordinating Board by November 1st of each even numbered year.

(c) The report will include information for each fiscal year in the previous two fiscal years in which a college received a scale adjustment.

§13.564. Effective Date of Rules.

This subchapter takes effect September 1, 2024.

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

Filed with the Office of the Secretary of State on January 12, 2024.

TRD-202400123

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General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 427-6548



SUBCHAPTER T. COMMUNITY COLLEGE FINANCE PROGRAM: HIGH-DEMAND FIELDS

19 TAC §§13.590 - 13.597

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter T, §§13.590 - 13.597, concerning the designation of academic fields as High-Demand Fields in which credentials awarded by public junior colleges are eligible for additional funding under the community college finance system established by H.B. 8 (88R). Specifically, this new section will establish a transparent methodology and process for creating and updating the list of academic fields in which credentials are eligible for additional funding.

Rule 13.590, Authority and Purpose, establishes the authority for the subchapter as Texas Education Code §130A.101(c)(1) and describes its purpose.

Rule 13.591, Definitions, defines key terms used in the subchapter.

Rule 13.592, Regions, assigns public junior colleges to regions. Regional assignments allow the list of High-Demand Fields for each college to reflect economic conditions specific to its region. The assignments align with the regional configuration developed by the Texas Comptroller of Public Accounts, which creates regions by grouping the Workforce Development Areas established by the Texas Workforce Commission into areas that maintain economic continuity and whose size and standardization in data resources facilitates meaningful, reproducible analysis.

Rule 13.593, Regional High-Demand Fields Lists, establishes that the Coordinating Board will create separate lists of High-Demand Fields for each region consisting of statewide, region-specific, and Emerging and Essential Fields. This combination reflects the need for education and training to align with the broad

economic trends of the state while also taking regional variation into account. The inclusion of Emerging and Essential Fields addresses the potential for the unmet demand in certain fields to be emerging too quickly to yet appear in economic projections or, in the case of Essential Fields, to be especially detrimental to the safety or sustainability of communities (see Rule 13.595 relating to Emerging and Essential Fields).

Rule 13.594, Methodology, describes the methodology that the Coordinating Board will apply to calculate the statewide and region-specific High-Demand Fields in order to create each region's high-demand fields list. It relies on ten-year employment projections derived from the United States Bureau of Labor Statistics and published by the Texas Workforce Commission, ensuring that the process uses thoroughly vetted, publicly available data based on enduring trends. It excludes from the analysis occupations that do not typically match the types of credentials that community colleges confer while allowing such occupations to be added again given appropriate evidence, ensuring that the occupations under consideration match the purpose of incentivizing market-aligned programs at community colleges. It groups both occupations and academic fields into sub-divisions to capture a broader variety of occupations and avoid the possibility that substantively equivalent occupations or academic fields may be inappropriately excluded by slight differences at the most specific level of coding. It creates regional lists of High-Demand Fields based on ten statewide high-demand occupations and five regional high-demand occupations to reflect the broad similarity of workforce needs throughout the state while incorporating regional variation. It identifies a crosswalk jointly developed by the Bureau of Labor Statistics and National Center for Education Statistics as the means of linking occupations to academic fields, since this source is publicly available, thoroughly vetted, stable over time, and periodically updated.

Rule 13.595, Emerging and Essential Fields, creates a process for adding fields not identified as High-Demand Fields based on the methodology. It creates a petition process under which community colleges, or a consortium of community colleges, may request the addition of fields, such that colleges have a clear process to address any discrepancies between the results produced by the methodology and other understandings of regional labor force trends. The approval process consists of a review by the Commissioner of Higher Education in consultation with the Texas Workforce Commission, ensuring a broad review by agencies with different data resources and tools. If the Commissioner approves the petition, the Commissioner will recommend the addition to the Office of the Governor and Legislative Budget Board, who must jointly approve it for the Coordinating Board to add it as a High-Demand Field. The Office of the Governor and Legislative Budget Board may also jointly originate a request to add High-Demand Fields. Creating a method of approval of Emerging and Essential Fields by the Office of the Governor and Legislative Budget Board ensures a broad perspective on the needs and priorities of the state.

Rule 13.596, Emerging and Essential Fields: Criteria, establishes the criteria a field must meet for inclusion as an Emerging and Essential Field, which creates the necessary basis for evaluating the strength of institutions' petitions. One means of meeting the criteria is for the field to prepare students for an occupation already identified by the board of at least one Workforce Development Area (WDA) in the college's region as a Targeted Occupation. WDA boards identify Target Occupations using a thorough review process that incorporates rigorous data analysis and local sources of information, like employer input,

not available to the Coordinating Board at scale. This provision also creates valuable policy alignment; WDA boards confirm that qualified training providers exist locally for all Target Occupations, and programs that prepare individuals for Target Occupations may qualify for workforce development funding. If a field does not correspond to a Target Occupation, it may qualify as an Emerging and Essential Fields if it corresponds with a chronically understaffed occupation essential to an industry that is growing or poised to grow in the region or one that provides critical services, like healthcare, education, law enforcement, or infrastructure. This provides an alternative means of identifying occupations whose imminent high demand is not yet reflected in data or for which labor shortages threaten the safety and sustainability of communities and thereby includes a broader range of reasons a community might have demand for an occupation.

Rule 13.597, Effective Dates: High-Demand Fields, establishes that the Coordinating Board will adopt High-Demand Fields on a biennial basis, which aligns with both the state appropriations cycle and the frequency with which the Bureau of Labor Statistics and Texas Workforce Commission generally update the employment projections data used in the methodology. It includes a further provision that a field identified for removal from a regional High-Demand Fields list will be funded as a high-demand field for the following biennium. This provides community colleges with added stability and predictability, empowering them to more confidently align their program offerings and investments with the high-demand fields.

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 or 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 establishing a flexible and transparent methodology for determining High-Demand Fields, incentivizing institutions to produce credentials responsive to the workforce needs of the state. 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 CCFinance@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 130A.005, which provides the Coordinating Board with the authority to adopt rules to implement the community college finance system established under Texas Education Code, Chapter 130A.

The proposed new section affects Texas Education Code, Section 130A.101.

§13.590. Authority and Purpose.

(a) Texas Education Code, §130A.101(c)(1), provides for public junior colleges to earn an additional funding weight for a credential conferred in a high-demand occupation as part of performance tier funding.

(b) The purpose of this subchapter is to identify a credential eligible for an additional funding weight. To be eligible for an additional funding weight a credential must be eligible for performance tier funding under §13.555 of this subchapter (relating to Performance Tier Funding), and a public junior college must confer the credential in a field specified in this subchapter, as defined by the discipline's federal Classification of Instructional Program (CIP) Code.

§13.591. Definitions.

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

(1) High-Demand Field--Academic discipline in which an institution awards a credential that provides a graduate with specific skills and knowledge required for the graduate to be successful in a high-demand occupation, based on the list of high-demand occupations as defined in this subchapter. Fields shall be derived from the CIP SOC Crosswalk most recently published by the Bureau of Labor Statistics and the National Center for Education Statistics, or, at the Commissioner of Higher Education's discretion, the crosswalk most recently published with a reasonable allowance of time for analysis and review.

(2) High-Demand Occupation--An occupation identified as such by the Commissioner of Higher Education in consultation with the Texas Workforce Commission based on exceptionally high projected growth or status as an Emerging or Essential Field and other eligibility criteria under this subchapter. A credential awarded in a high-demand field included in the list approved for an additional funding weight under this subchapter correspond to one or more high-demand occupations.

(3) Region--An economic region of this state as defined by the Texas Comptroller of Public Accounts.

§13.592. Regions.

The Coordinating Board shall use the following regional list for the purpose of generating the list of high-demand fields for each institution under this subchapter.

(1) Alamo Region:

(A) Alamo Colleges District

(B) Victoria College

(2) Capital Region: Austin Community College

(3) Central Texas Region:

- (A) Blinn College District
- (B) Central Texas College
- (C) Hill College
- (D) McLennan Community College
- (E) Temple College

(4) Gulf Coast Region:

- (A) Alvin Community College
- (B) Brazosport College
- (C) College of the Mainland
- (D) Galveston College
- (E) Houston Community College
- (F) Lee College
- (G) Lone Star College System
- (H) San Jacinto College District
- (I) Wharton County Junior College

(5) High Plains Region:

- (A) Amarillo College
- (B) Clarendon College
- (C) Frank Phillips College
- (D) South Plains College

(6) Metroplex Region:

- (A) Collin County Community College District
- (B) Dallas College
- (C) Grayson College
- (D) Navarro College
- (E) North Central Texas College
- (F) Tarrant County College District
- (G) Weatherford College

(7) Northwest Region:

- (A) Cisco College
- (B) Ranger College
- (C) Vernon College
- (D) Western Texas College

(8) Southeast Region: Angelina College

(9) South Texas Region:

- (A) Coastal Bend College
- (B) Del Mar College
- (C) Laredo College
- (D) South Texas College
- (E) Southwest Texas Junior College

(F) Texas Southmost College

(10) Upper East Region:

- (A) Kilgore College
- (B) Northeast Texas Community College
- (C) Panola College
- (D) Paris Junior College
- (E) Texarkana College
- (F) Trinity Valley Community College
- (G) Tyler Junior College

(11) Upper Rio Grande Region: El Paso Community College

(12) West Texas Region:

- (A) Howard College District
- (B) Midland College
- (C) Odessa College

§13.593. Regional High-Demand Fields Lists.

(a) For each region, the Commissioner of Higher Education shall approve a list of high-demand fields eligible for an additional funding weight in the performance tier.

(b) Each Regional High-Demand Fields List shall include a list of statewide high-demand fields and a list of region-specific high-demand fields approved by the Commissioner of Higher Education and may include a further list of Emerging and Essential Fields added pursuant to §13.595 of this subchapter (relating to Emerging and Essential Fields).

(c) Each regional high-demand fields list shall be limited to the fields associated with the high-demand occupations identified pursuant to §13.594 of this subchapter (relating to Methodology) and five occupations added pursuant to §13.595.

(d) Each public junior college shall earn the additional funding weight when it confers a fundable credential in a field that appears on the list of high-demand fields for its assigned region.

§13.594 Methodology.

The Coordinating Board shall apply the following methodology to generate region-specific lists of Regional High-Demand Fields to be approved by the Commissioner of Higher Education:

(1) In consultation with the Texas Workforce Commission, the Coordinating Board shall examine projections of the number of persons expected to be employed in the state of Texas and in each region for each occupation.

(A) These projections shall consider the ten-year employment projections most recently published by the Texas Workforce Commission; data from the United States Bureau of Labor Statistics (BLS); and other relevant data regarding projected regional and state workforce needs.

(B) In its examination of workforce projections, the Coordinating Board shall exclude from the analysis all occupations identified by the BLS as typically requiring, at the entry level, no high school diploma or equivalent, a high school diploma or equivalent, a bachelor's degree, or any level of graduate education, except as provided in subsection (b).

(2) The Coordinating Board may include an occupation identified by the BLS as typically requiring a high school diploma or equivalent or a bachelor's degree if it meets the following criteria:

(A) The BLS identifies the occupation as typically requiring a high school diploma or equivalent, the Texas Department of Licensing and Regulation requires an individual to possess a license, certification, or other credential, or to have successfully completed an apprenticeship, to perform the occupation, and more than one public junior college operates a program intended to prepare individuals to obtain such a credential or completed apprenticeship; or

(B) The Coordinating Board identifies relevant data demonstrating that the occupation typically requires a license, certification, credential other than a bachelor's degree, or a completed apprenticeship, and more than one public junior college operates a program intended to prepare individuals to obtain such a credential or completed apprenticeship.

(3) The Coordinating Board shall calculate each region's list of high-demand occupations as follows:

(A) Within each region, group each occupation according to the first four digits of its code under the most recent Standard Occupational Classification (SOC) system as promulgated by the BLS.

(B) Sum the projected change in employment for each grouping of occupations according to the first four digits of SOC codes across all regions to generate a set of projections for each group of occupations across the state and rank this set from highest projected change to lowest.

(4) Each region's list of high-demand occupations shall consist of the ten four-digit SOC groupings with the highest projected change across the state and the five four-digit SOC groupings with the highest projected change within that region that do not appear among the ten with the highest projected change statewide.

(5) Each region's list of high-demand fields shall consist of all academic fields, defined as its four-digit CIP Code, that correspond to its list of high-demand occupations according to the SOC-to-CIP crosswalk most recently published by the BLS and National Center for Education Statistics, or, at the Commissioner of Higher Education's discretion, the crosswalk most recently published with a reasonable allowance of time for analysis and review.

§13.595. Emerging and Essential Fields.

(a) To respond to the rapidly evolving economic needs of the state and any regional labor shortages in critical occupations, this section provides an alternative pathway for the Coordinating Board to include fields not otherwise generated by the methodology described in §13.594 of this subchapter (relating to Methodology) to the list of High-Demand Fields.

(b) Approval Process. For inclusion on the high-demand fields list, the Coordinating Board shall utilize the following process:

(1) A public junior college or consortium of public junior colleges must submit a petition to the Coordinating Board to add an Emerging and Essential Field(s) using a form approved by the Commissioner of Higher Education.

(2) A petition under this section shall specify the regional list or lists to which the petitioner requests that the field be added, which must at a minimum include the region to which the petitioning public junior college is assigned or, if a consortium of public junior colleges submits the petition, every region to which at least one public junior college of the consortium is assigned.

(3) A petition under this section shall specify whether the petitioner requests that the field be added based on:

(A) the adequate preparation of graduates in that field for an occupation currently listed as a high-demand occupation under §13.594; or

(B) the adequate preparation of graduates in that field for an occupation not currently listed as a high-demand occupation under §13.594 which would add the occupation to the list of high-demand occupations for the region or regions.

(4) If a petition under this section seeks to add a field under subparagraph (3)(B) in a region for which the list of high-demand occupations already contains five occupations added under this section, the petition shall specify the occupation to be removed from the list of high-demand occupations contingent on approval of the petition.

(5) In addition to otherwise meeting the requirements of this subchapter, the petition shall include data that allows the Coordinating Board to determine whether a program offering a credential in an emerging or essential high-demand field meets the credential of value methodology in §13.556 of this chapter (relating to Performance Tier: Fundable Outcomes). The petition shall provide, on a form prescribed by the Commissioner of Higher Education, a certification from one or more employers of the wages the employer has or will pay to an employee who obtains the credential in the proposed emerging or essential high-demand field.

(6) In consultation with the Texas Workforce Commission, the Commissioner of Higher Education will review the request and determine whether to submit a recommendation to the Office of the Governor and the Legislative Budget Board to add the proposed Emerging and Essential Field(s) to one or more Regional High-Demand Fields Lists. In reviewing the request, the Commissioner of Higher Education shall consider relevant data about regional and state workforce projections and input from employers.

(7) The Commissioner of Higher Education may submit the request to the Office of the Governor and the Legislative Budget Board to add the proposed Emerging and Essential Field. Upon approval by both the Office of the Governor and the Legislative Budget Board, the Coordinating Board shall add the proposed Emerging and Essential Field to the relevant Regional High-Demand Fields Lists. The Coordinating Board will add the proposed Emerging and Essential Field to the Regional High-Demand Fields List if the request is not disapproved by the Office of the Governor and the Legislative Budget Board within 30 business days of the date on which the Legislative Budget Board receives the request.

(c) In addition to the process outlined in §13.595(b)(1)-(4), the Office of the Governor and the Legislative Budget Board may jointly originate a request for the addition of a new Emerging and Essential Field to the list of approved High-Demand Fields. In consultation with the Texas Workforce Commission, the Commissioner of Higher Education shall add a proposed Emerging and Essential Field requested by both the Office of the Governor and the Legislative Budget Board to the list of approved High-Demand Fields.

§13.596. Emerging and Essential Fields: Criteria.

An Emerging and Essential Field approved under §13.595(b) of this subchapter (relating to Emerging and Essential Fields), shall meet the criteria in this section for a field that does not appear on the high-demand fields list for a specific region.

(1) The field corresponds, based on the most current crosswalk under §13.594(e) of this subchapter (relating to Methodology) or on other evidence that a credential in the field provides adequate preparation to enter the occupation(s), to one or more occupations that one

or more boards of the Workforce Development Areas within the region have identified as a Target Occupation; or

(2) The field corresponds, based on the most current cross-walk under §13.594(e) or on evidence that a credential in the field provides adequate preparation to enter the occupation(s), to one or more occupations for which there is relevant data demonstrating a persistent inability to locate qualified candidates in sufficient numbers, including data demonstrating that the field corresponds to:

(A) An essential labor input of an industry that has made demonstrable, substantial investments in growing within the region; or

(B) An essential labor input of an industry that provides critical services to the residents of the region, including but not limited to healthcare, education, infrastructure, child or elder care, law enforcement, transportation, or emergency response.

§13.597. Effective Dates: High-Demand Fields.

This section establishes the schedule upon which the Coordinating Board will create updated lists of high-demand fields and the amount of time that a field identified as high-demand will remain on a high-demand fields list.

(1) The Board shall adopt the Regional High-Demand Fields lists for each biennium not later than its January board meeting of each odd numbered year.

(2) The new Regional High-Demand Fields lists shall be effective for each biennium beginning September 1 of each odd numbered year.

(3) A field that the Board removes from a Regional High-Demand Fields list shall continue to be funded as a high-demand field for the following biennium.

(4) For FY25, the Board shall adopt the High-Demand Fields list at its July 2024 Board 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.

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.4

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter A, §21.4, concerning Collection of Tuition. Specifically, this amendment provides greater clarity regarding deadlines for tuition and mandatory fee collection and measures to extend the time available for a student to make tuition and mandatory fee payments at public institutions of higher education, while still being included in the institution's stu-

dent count for formula funding. Institutions of higher education establish their own procedures for collecting discretionary (optional) fees, which do not impact the institution's student count for formula funding.

The title of §21.4 is amended to reference mandatory fees. The proposed amendment to the rule's title clarifies that discretionary (optional) fees are not covered by this section. Texas Education Code (TEC), §§54.007 and 54.0071, reference tuition and mandatory fees. They do not reference discretionary (optional) fees.

Subsection 21.4(a) clarifies the deadline for collecting tuition and mandatory fees. The proposed amendment indicates that the date referenced in TEC, §54.007(b-1), is the census date, as defined in §13.1 of Title 19. References to payment options, other than paying in full, are moved to subsection (b).

Subsection 21.4(b) clarifies exceptions to subsection (a). The proposed amendment outlines three exceptions that allow a student to be included in the student count for formula funding, even if subsection 21.4(a) has not been met. These include TEC, §54.007, Option to Pay Tuition by Installment, and §54.0071, Authority of Institution to Provide Payment Options for Student with Delayed Financial Aid, as well as circumstances where the student has no tuition or mandatory fee liability, such as the Financial Aid for Swift Transfer Program. The current language in subsection (b) has been removed, as it provides no additional interpretation of TEC, §54.0071, and is thus unnecessary.

Subsection 21.4(c) requires institutional transparency of the options in subsection (b). The proposed amendment requires an institution to reference its policy regarding TEC, §54.0071, when providing tuition and mandatory fee billing statements to students. This fulfills the requirement in TEC, §54.0071(d), that requires the Coordinating Board to prescribe procedures for the administration of the authority of institutions to provide payment options for student with delayed financial aid. The current language in subsection (c) has been removed, as it provides no additional interpretation of TEC, §§54.007 or 54.0071, and is thus unnecessary.

Subsections (a)(3), (a)(4), (a)(5), and (a)(6) are redesignated to subsections (d), (e), (f), and (g), respectively.

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

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

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the greater clarity regarding deadlines for tuition and mandatory fee collection and measures to extend the time available for a student to make tuition and mandatory fee payments at public institutions of higher education, while still being included in the institution's student count for formula funding. There are no an-

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

The amendment is proposed under Texas Education Code, Sections 54.007 and 54.0071, which provide the Coordinating Board with the authority to adopt rules stating requirements related to collecting tuition and mandatory fees.

The proposed amendment affects Texas Education Code, Sections 54.007 and 54.0071.

§21.4. Collection of Tuition and Mandatory Fees.

~~[(a) Unless a student's payment due date has been postponed due to pending disbursements of financial aid as described in subsection (b) of this section the following conditions shall apply in the collection of tuition and/or tuition and fees at institutions of higher education and in the conducting of enrollment audits.]~~

~~(a) [(+) On or before the respective census date for the semester or term, as defined in §13.1 of this title (relating to Definitions), [dates for reporting official enrollments to the Texas Higher Education Coordinating Board each enrollment period], each institution of higher education, as defined by Texas Education Code, §61.003(8), [community college] shall collect in full from each student who [that] is to be counted for formula funding purposes the amounts set as tuition and mandatory fees established by state law or the respective governing boards.~~

~~[(2) On or before the 20th class day for each regular semester and the 15th class day for each summer session, institutions other than community colleges shall collect from each student who is to be counted for state formula funding appropriations, tuition and fees (mandatory and optional) established by state law or by the respective governing boards.]~~

~~(b) Notwithstanding subsection (a) of this section, a student may be counted for formula funding purposes if:~~

~~(1) the student's payment due date has been postponed due to pending disbursements of financial aid as described in Texas Education Code, §54.0071;~~

(2) the student's payment due date has been postponed based on the option to pay tuition and mandatory fees by installment as described in Texas Education Code, §54.007; or

(3) the institution has determined that the student meets the eligibility requirements that allow the student to incur no cost for the coursework, such as occurs in chapter 13, subchapter Q of this title (relating to Financial Aid for Swift Transfer (FAST) Program).

(c) Each institution shall adopt a policy regarding the postponement of a student's payment due date due to pending disbursements of financial aid as described in Texas Education Code, §54.0071 and §54.007(f). Billing statements provided to students regarding the collection of tuition and mandatory fees must reference this policy.

(d) [(3)] Valid contracts with the United States government for instruction of eligible military personnel, approved financial assistance, and valid contracts with private business and public-service type organizations or institutions such as hospitals, may be considered as collected tuition and mandatory fees; the amount of collected tuition and mandatory fees may be adjusted pursuant to terms of the contract once actual collections are made.

(e) [(4)] Returned checks must be covered by a transfer from a self-supporting auxiliary enterprise fund or other non-state fund source (e.g., food service, bookstore) within ten days of the date the institution receives the returned check in order for contact hours to be presented to the state for funding.

(f) [(5)] Auxiliary enterprise or other non-state fund sources may not be reimbursed with state-provided funds.

(g) [(6)] Institutions must retain records of individual student tuition or tuition and fee payment and returned checks for verification by the State Auditor.

[(b) Payment Options for Students with Delayed Financial Aid.]

[(1) If an institution's financial aid office has awarded aid to a student but the institution has not received the relevant disbursements by the date that tuition and fees must be paid, the student's aid is delayed. If the student agrees to assign to the institution a portion of the awards equal to the amount of tuition and fees to be met with financial aid payments, the governing board may postpone the due date for the portion of the tuition and or tuition and fee payment that will be met through financial aid funds and the hours to be paid for with the financial aid may be counted for formula funding purposes.]

[(2) If, after the student's due date is postponed, the student becomes ineligible to receive one or more of the pending financial aid awards or the award amount is less than the amount of tuition and fees due, the governing board is to grant the student a repayment period for the unpaid amount that:]

[(A) does not exceed 30 days,]

[(B) allows for multiple payments, if necessary, and]

[(C) entails a processing fee not to exceed 5 percent of the total amount to be collected.]

[(3) An institution may deny academic credits for hours completed in the semester or term if the student fails to pay the full tuition and fee amount by the end of the 30-day repayment period.]

[(e) A student paying tuition and fees by installments shall be granted the options of delayed payment outlined in subsection (b) of this section if he or she is awaiting the disbursement of financial aid.]

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

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Nichole Bunker-Henderson
General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 427-6365



CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER D. TEXAS PUBLIC EDUCATIONAL GRANT AND EMERGENCY TUITION, FEES, AND TEXTBOOK LOAN PROGRAMS

19 TAC §22.64

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter D, §22.64 concerning the Texas Public Educational Grant and Emergency Tuition, Fees, and Textbook Loan Program. Specifically, this amendment will remove the requirement for the Coordinating Board to collect and maintain copies of guidelines submitted by public institutions for the administration of the TPEG program on their campuses.

Section 22.64 is amended to remove the reporting requirement for respective governing boards to file adopted copies of rules and regulations to the Coordinating Board and Comptroller prior to disbursement of any funds. This update is a result of Article III, Special Provisions, Section 11(2) being removed from the General Appropriations Act under HB 1 during the 88th legislative session. Removing this requirement in the Administrative Code will align the program requirements and responsibilities of both the institutions and the Coordinating Board with the changes made to the Special Provisions rider.

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

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

Charles Contéro-Puls 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 greater clarity of the administrative code through the elimination of unnecessary rules. 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 Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Charles.Contero-Puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed for the sole purpose of conforming to changes made in the General Appropriations Act under HB1 which removed Article III, Special Provisions, Section 11(2) during the 88th legislative session.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22.

§22.64. *Coordinating Board Responsibilities.*

The [Texas Higher Education] Coordinating Board shall perform the following services with regard to the Program:

~~[(1) Collect and maintain copies of guidelines submitted by institutions for the administration of the Program on their campuses.]~~

(1) [(2)] Accept funds transferred to the Coordinating Board by institutions for use in matching federal or state grant funds, assure such matching funds are used to assist institutions and students with the greatest financial need, and return any funds on deposit from institutions if matching funds are not available.

(2) [(3)] Monitor institutional use of program funds and accept funds transferred to the Coordinating Board by institutions which fail to fully utilize the grant funds set aside in accordance with Program requirements. If an institution's year-end Program balance, including funds on deposit with the Coordinating Board, exceeds 150 percent of the amount set aside from tuition, the excess funds shall be sent to the Coordinating Board which shall use the funds for the Toward Excellence, Access and Success Grant Program.

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

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SUBCHAPTER I. TEXAS ARMED SERVICES SCHOLARSHIP PROGRAM

19 TAC §§22.165 - 22.168, 22.170 - 22.173

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter I, §§22.165 - 22.168 and 22.170 - 22.173, concerning the Texas Armed Services Scholarship Program (TASSP). Specifically, this amendment will redefine Coordinating Board terminology used throughout the subchapter, update promissory note obligations based on legislative changes, and provide greater clarity of operational procedures.

Rule 22.165 is amended to update scholarship time limitations in which a recipient can receive an award to remove unnecessary language. The Coordinating Board is given authority to establish rules necessary to administer the Texas Armed Services Scholarship Program under Texas Education Code, §61.9771 and §61.9774.

Rules 22.166, 22.167 and 22.170 - 22.173 are amended to update the definition of "Coordinating Board" to clarify references throughout the subchapter are for the agency and its staff members and not the governing body of the agency. This update will align terminology throughout subchapter I with the overarching definitions found in General Provisions under subchapter A, §22.1. The Coordinating Board is given authority to establish rules necessary to administer the Texas Armed Services Scholarship Program under Texas Education Code, §61.9771 and §61.9774.

Rule 22.168 is amended to update the promissory note requirements a recipient must agree to when applying for a scholarship and removes duplicative language in the section. This rule change will align with Senate Bill 371, 88th Legislative Session, that amended Texas Education Code, chapter 61, subchapter FF, which updated the requirement for a recipient to complete 1 year of ROTC training for each year that the student receives a scholarship instead of 4 years. The Coordinating Board is given authority to establish rules necessary to administer the Texas Armed Services Scholarship Program under Texas Education Code, §61.9771 and §61.9774.

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

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

Charles Contéro-Puls has also determined that for each year of the first five years the section is in effect, the public benefit antici-

pated as a result of administering the section will be an increase in the potential number of eligible student participants through the elimination of the four-year ROTC completion requirement which limited options for students entering the program with less than four years to graduate. 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 Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Charles.Contero-Puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Sections 61.9771 and 61.9774, which provide the Coordinating Board with the authority to adopt rules necessary to administer the program under Texas Education Code, chapter 61, subchapter FF.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22.

§22.165. Award Amount and Limitations.

- (a) The amount of a scholarship in an academic year shall not exceed \$15,000.
- (b) A scholarship awarded to a student under this subchapter shall be reduced for an academic year by the amount by which the full amount of the scholarship plus the total amount to be paid to the student for being under contract with one of the branches of the armed services of the United States exceeds the student's total cost of attendance for that academic year at the institution of higher education in which the student is enrolled.
- (c) A student may receive a scholarship for four [~~of the six~~] years [~~allowed for graduation~~], if the student is enrolled in a degree program of four years or less, or for five [~~of the six~~] years [~~allowed for graduation~~], if enrolled in a degree program of more than four years.

(d) A student may not receive a scholarship after having earned a baccalaureate degree or a cumulative total of 150 credit hours, including transferred hours, as verified by the student's institution of higher education.

§22.166. Requirements for Appointment by Elected Officials.

- (a) Each year the governor and the lieutenant governor may each appoint two students and two alternates, and each state senator and each state representative may appoint one student and one alternate to receive an initial scholarship.

(b) Appointments must be reported to the Coordinating Board by the deadline established by the Commissioner.

(c) A selected student must meet two of the following four academic criteria at the time of application:

(1) Is on track to graduate high school or graduated with the Distinguished Achievement Program (DAP), the distinguished level of achievement under the Foundation High School program, or the International Baccalaureate Program (IB);

(2) Has a current high school GPA of 3.0 or higher or graduated with a high school GPA of 3.0 or higher;

(3) Achieved a college readiness score on the SAT or ACT;

(4) Is currently ranked in the top one-third of the prospective high school graduating class or graduated in the top one-third of the high school graduating class.

(d) If a student appointed to receive a scholarship fails to initially meet eligibility or fails to meet the requirements to initially receive the scholarship, the Coordinating Board must notify the alternate on file of his or her nomination.

(e) If a recipient's scholarship converts to a loan prior to graduation, beginning with the academic year following the determination, the appointing official may appoint another eligible student to receive any available funds designated for the recipient who no longer meets the requirements for the scholarship.

§22.167. Award Eligibility.

To receive a scholarship, a selected student must:

(1) Be enrolled in an institution of higher education, as certified by that institution;

(2) Enroll in and be a member in good standing of a Reserve Officers' Training Corps (ROTC) program or another undergraduate officer commissioning program while enrolled in the institution of higher education, as certified by that institution;

(3) Enter into a written agreement with the Coordinating Board, set forth in §22.168 of this subchapter (relating to Promissory Note);

(4) Be appointed to receive a scholarship by the governor, lieutenant governor, a state senator, or a state representative; and

(5) Maintain the satisfactory academic progress requirements as indicated by the financial aid office at the recipient's institution of higher education.

§22.168. Promissory Note.

(a) The Coordinating Board shall require a recipient to sign a promissory note acknowledging the conditional nature of the scholarship and promising to repay the amount of the scholarship plus applicable interest, late charges, and any collection costs, including attorneys' fees, if the recipient fails to meet certain conditions of the scholarship, set forth in §22.170 of this subchapter (Conversion of the Scholarship to a Loan).

(b) Recipients agree to:

(1) Complete one year [four years] of ROTC training for each year that the student receives a scholarship, or the equivalent of one year [four years] of ROTC training if the institution of higher education awards ROTC credit for prior service in any branch of the U.S. Armed Services or the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine, or another undergraduate officer commissioning program;

(2) Graduate no later than six years after the date the student first enrolls in an institution of higher education after having received a high school diploma or a General Educational Diploma or its equivalent;

(3) After graduation, enter into and provide the Coordinating Board with verification of:

(A) A four-year commitment to be a member of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine; or

(B) A contract to serve as a commissioned officer in any branch of the armed services of the United States;

(4) Meet the physical examination requirements and all other prescreening requirements of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine, or the branch of the armed services with which the student enters into a contract. [; and]

~~{(5) Repay the scholarship according to the terms of the promissory note if the student fails to meet the requirements described in §22.170 of this subchapter (relating to Conversion of the Scholarship to a Loan).}~~

§22.170. Conversion of the Scholarship to a Loan.

(a) A scholarship will become a loan if the recipient:

(1) Fails to maintain satisfactory academic progress as described in §22.167 of this subchapter (relating to Award Eligibility);

(2) Withdraws from the scholarship program, as indicated through withdrawal or removal from the institution of higher education or that institution's ROTC program or other undergraduate officer commissioning program, without subsequent enrollment in another institution of higher education and that subsequent institution's ROTC program or other undergraduate officer commissioning program; or

(3) Fails to fulfill one of the following:

(A) a four-year commitment to be a member of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine; or

(B) the minimum active service requirement included in a contract to serve as a commissioned officer in any branch of the armed services of the United States; honorable discharge is considered demonstration of fulfilling the minimum active service requirement.

(b) A scholarship converts to a loan if documentation of the contract or commitment outlined in subsection (a)(3) of this section is not submitted to the Coordinating Board within twelve months of graduation with a baccalaureate degree. Subsequent filing of this documentation will revert the loan back to a scholarship.

(c) If a recipient's scholarship converts to a loan, the recipient:

(1) cannot regain award eligibility in a subsequent academic year; and

(2) loses eligibility to receive any future awards.

(d) If a recipient requires a temporary leave of absence from the institution of higher education and/or the ROTC program or another undergraduate officer commissioning program for personal reasons or to provide service for the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine for fewer than twelve months, the

Coordinating Board may agree to not convert the scholarship to a loan during that time.

(e) If a recipient is required to provide more than twelve months of service in the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine as a result of a national emergency, the Coordinating Board shall grant that recipient additional time to meet the graduation and service requirements specified in the scholarship agreement.

§22.171. *Repayment of Loans.*

(a) A scholarship is considered a loan on the date the recipient fails to meet the conditions of the scholarship as described in §22.170 of this subchapter (relating to Conversion of the Scholarship to a Loan); the loan amount must be repaid, plus interest accrued.

(b) Loan interest. The interest rate charged on the loans shall be the same rate charged for a College Access Loan at the time the funds were disbursed. Interest shall begin to accrue on the date the scholarship is converted to a loan.

(c) Period of loan repayment. The total amount of principal, interest, late charges, and any costs of collection that accrue over the life of the loans are to be repaid in installments over a period of not more than 15 years after the date the scholarship becomes a loan.

(d) Grace period. A recipient shall begin making payments six months after the date the scholarship becomes a loan.

(e) Minimum repayment amount. The minimum monthly payment amount required by any repayment plan is \$100, or an amount required to repay the loan within 15 years, whichever is greater.

(f) Late charges. A charge of 5 percent of the scheduled monthly payment amount or five dollars (\$5), whichever is less, shall be assessed if the past due amount is not received within 20 days of the scheduled due date. These charges shall be collected for late payment of all sums due and payable and shall be taken out of the next payment received by the Coordinating Board.

(g) Collection charges. In the case of delinquent accounts, the Commissioner may authorize the assessment of charges to cover costs necessary to collect the loan.

(h) Deferments. An education deferment is available to any recipient whose loan is not in a default status and who provides the Coordinating Board documentation of enrollment as at least a half-time student.

(i) Forbearance. The Coordinating Board [staff] may grant periods of forbearance in the form of postponed or reduced payments for unusual financial hardship if the Coordinating Board receives a written or verbal request stating the circumstances that merit such consideration.

(j) Prepayment. Any loans made through the program may be prepaid without penalty.

(k) Application of payments. In accordance with the terms of the promissory note, the Coordinating Board [staff] shall determine the priority order in which payments shall be applied to interest, late charges, principal, collections costs and any other charges.

§22.172. *Enforcement of Collection.*

(a) When a scholarship recipient fails to make as many as five monthly payments due in accordance with the established repayment schedule for a scholarship which has become a loan, the entire unpaid balance shall become due and payable immediately.

(b) When as many as six payments have been missed, the loan(s) will be considered to be in default, and the Office of the Attorney General, at the request of the Commissioner, may file suit for the unpaid balance plus court costs and attorneys' fees.

(c) The Coordinating Board [staff] shall notify the Comptroller of Public Accounts when a recipient's loan has become 90 days or more past due, resulting in the non-issuance of certain state warrants.

§22.173. *Exemption and Cancellation.*

(a) The recipient shall be exempt from the requirement to repay the scholarship if the person is unable to meet the obligations of the agreement solely as a result of physical inability and provides a physician's certification and/or other appropriate documentation to the satisfaction of the Coordinating Board.

(b) The Coordinating Board [staff] shall cancel a recipient's loan upon the death of the recipient unless the debt was reduced to judgment before the death occurred.

(c) The Coordinating Board [staff] may cancel a recipient's service and/or repayment obligation if funding for the Texas Armed Services Scholarship Program is discontinued while the recipient continues to meet eligibility requirements.

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



SUBCHAPTER O. TEXAS LEADERSHIP RESEARCH SCHOLARS PROGRAM

19 TAC §§22.300 - 22.313

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter O, §§22.300 - 22.313, concerning the establishment of the Texas Leadership Research Scholars Program, a research scholarship and leadership opportunity program for high-achieving graduate students with financial need. Specifically, this new subchapter provides information necessary for the implementation and administration of the Program.

Texas Education Code (TEC), chapter 61, subchapter T-3, requires the Coordinating Board to adopt rules for the administration of the program, including rules providing for the amount and permissible uses of a scholarship awarded under the program. The legislation only specified student eligibility, conditions for continued participation, and authorization for institutional agreements. The new rules provide clarity and guidance to students, participating institutions, and Coordinating Board staff for the program's implementation.

Specifically, these new sections will outline the authority and purpose, definitions, institutional eligibility requirements, stu-

dent eligibility requirements, satisfactory academic progress, scholarship selection criteria, academic achievement support, leadership development opportunities, hardship provisions, scholarship amounts, and allocation and disbursement of funds, which are necessary to administer the Texas Leadership Research Scholars Program.

Rule 22.300 indicates the specific sections of the Texas Education Code (TEC) that provide the Coordinating Board with authority to issue these rules, as well as the purpose of the Texas Leadership Research Scholars Program.

Rule 22.301 provides definitions for words and terms within Texas Leadership Research Scholars rules. The definitions are proposed to provide clarity for words and terms that are integral to the understanding and administration of the Texas Leadership Research Scholars rules.

Rule 22.302 outlines the requirements that institutions must fulfill to participate in the Texas Leadership Research Scholars program. The requirements are proposed to: (a) clarify the type of institution eligible to participate, and (b) provide rules specific to requirements the Coordinating Board is proposing to ensure effective administration of the Texas Leadership Research Scholars Program, such as the requirement that each participating institution enter into an agreement with the Coordinating Board. This section is proposed based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

Rule 22.303 outlines the eligibility requirements that students must meet to allow an institution to select a student as a scholar under the Texas Leadership Research Scholars Program. The requirements are proposed to gather in one place the statutory requirements for the Texas Leadership Research Scholars Program, including requirements: (a) related to a student's financial need; (b) that a student has graduated either from a Texas public high school or Texas public, private, independent institution of higher education; and (c) related to a student's eligibility as economically disadvantaged, such as being a Pell Grant recipient as an undergraduate. This section is proposed based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

Rule 22.304 outlines the satisfactory academic progress requirements related to a student's eligibility to continue in the program. This section is proposed based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

Rule 22.305 outlines the process and the criteria in which institutions will select students to receive the Texas Leadership Scholars scholarship. The requirements are proposed to clarify that the Coordinating Board or Administrator will receive nominations from institutions. This section is proposed based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

Rules 22.306 and 22.307 outline the requirements that institutions must fulfill to provide evidence-based programmatic experiences and support for scholars in the program. The requirements are proposed to: (a) clarify the types of academic achievement and leadership development programmatic elements institutions must provide for scholars; and (b) clarify that the Coordinating Board may enter into agreements with participating in-

stitutions to best support scholars in the statutorily required programmatic elements.

Rule 22.308 outlines the requirements that institutions must follow to determine when scholars are no longer eligible to participate in the Texas Leadership Research Scholars Program. The requirements are proposed to gather in one place the statutory requirements for the Texas Leadership Research Scholars Program, including the requirements related to a student's enrollment, the transfer policy, and the number of years a scholar may receive the scholarship.

Rule 22.309 outlines the criteria for an institution to allow an eligible scholar a hardship provision under the Texas Leadership Research Scholars Program. This section provides institutions with the provisions for hardship consideration and defines the conditions the hardship may include such as severe illness. This section outlines the process in which the institution must document the circumstances of the hardship.

Rule 22.310 outlines the scholarship amounts and how the Coordinating Board will allocate the funds to institutions. The proposed rule provides clarification of the statutory requirements related to the minimum amount of the award and how the amount will be calculated to provide clarity for the annual allocation formula for each institution. The allocation of initial awards will be split between research institutions and emerging research institutions. Within those two categories, the share of initial awards available will be reviewed and determined annually based on the number of research doctorates awarded the previous academic year. This calculation ensures that initial scholarship awards are being allocated to institutions successfully graduating research doctorates.

Rule 22.311 establishes the funding for the Texas Leadership Research Scholars Program. Funding under this subchapter is subject to legislative appropriation.

Rule 22.312 establishes the mechanisms by which the Coordinating Board will disburse the funds to each participating institutions to support their participation in the Texas Leadership Research Scholars Program, as well as the institutions' participation in the process. The proposed rule provides the frequency of disbursements to each institution and the way the institutions will have the opportunity to review the calculation for accuracy. This section is proposed based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

Rule 22.313 outlines the expectations for participating institutions related to reporting, audits, and return of funds. The proposed rule provides clarity related to the institution's compliance and fiduciary responsibilities. This section is proposed based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

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 section will be the increase in number of high-achieving, economically disadvantaged students who pursue higher education opportunities they may not have been able to afford or access otherwise. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Participation in the Texas Leadership Research Scholars program is voluntary.

Government Growth Impact Statement

- (1) the rules will create a government program required;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules may 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 Dr. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at CRI@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

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

The proposed new sections affect Texas Education Code, Sections 61.891 - 61.897.

§22.300. Authority and Purpose.

(a) Authority for this subchapter is provided in Texas Education Code, chapter 61, subchapter T-3, §§61.891 - 61.897, Texas Leadership Scholars Program.

(b) The purpose of this program is to provide research scholarships coupled with academic achievement support and leadership development to assist eligible graduate students to enroll in and graduate from public institutions of higher education in this state.

§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 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.

§22.302. Eligible Institutions.

(a) Responsibilities. A participating eligible institution is required to:

(1) Abide by the General Provisions outlined in subchapter A of this chapter (relating to General Provisions);

(2) Have and comply with policies that prohibit discrimination against or deny participation in or the benefits of the Program described in this subchapter on the basis of race, color, national origin, gender, religion, age, or disability;

(3) Comply with the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions or employment; and

(4) Provide all reports regarding the program to the Coordinating Board or Administrator.

(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, prior to receiving a disbursement of funds through the Program.

(2) Approval Deadline.

(A) Each eligible institution must indicate an intent to participate in the Program by emailing the Administrator by June 15 and enter into an agreement with the Coordinating Board by August 31 for qualified students enrolled in that institution to be eligible to receive scholarships in the following fiscal year.

(B) Notwithstanding paragraph (2)(A) of this subsection, for the 2024-25 academic year, an eligible institution may indicate intent to participate in the program by the administrative deadline established by the Commissioner.

§22.303. Eligible Students.

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

(1) Be enrolled in a research doctoral degree program at a participating institution;

(2) Demonstrate that the student has either:

(A) Graduated from a Texas public high school, including an open-enrollment charter school, during the ten years preceding the date of the student's application to the program; or

(B) Graduated from a Texas public, private or independent institution of higher education as defined by sections 61.003(8) or (15) of the Texas Education Code.

(3) Be enrolled full-time in a doctorate degree program at a participating institution;

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

(5) Be economically disadvantaged by either:

(A) having received a Pell Grant while enrolled as an undergraduate student; or

(B) having received a TEXAS grant or Tuition Equalization Grant (TEG) as an undergraduate student; or

(C) having received a Leadership Scholarship as an undergraduate student.

(6) Be nominated by the institution of higher education where the student is enrolled on the basis of merit and leadership potential.

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

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

(2) Be enrolled in a research doctoral degree program where the Research Scholar received initial award;

(3) Make satisfactory academic progress toward the research doctoral degree at the eligible institution, as defined in §22.304 of this subchapter (relating to Satisfactory Academic Progress) unless the Research Scholar is granted a hardship extension in accordance with §22.309 of this subchapter (relating to Hardship Provision); and

(4) Have completed or is on target to complete programmatic requirements set forth in §22.306 and §22.307 of this subchapter (relating to Academic Achievement Support and Leadership Development, respectively) as reported by participating institution.

§22.304. Satisfactory Academic Progress.

To qualify for a Scholarship, each recipient of the Scholarship shall meet the satisfactory academic progress requirements as utilized by the financial aid office of the Eligible Institution to determine eligibility for federal financial aid programs.

§22.305. Scholarship Selection Criteria.

The Coordinating Board or Administrator will receive nominations from Eligible Institutions and will approve the nominations based on eligibility criteria set forth in §22.303 of this subchapter (relating to Eligible Students) and on the availability of funds set forth in §22.310(c) of this subchapter (relating to Scholarship Amounts and Allocation of Funds).

§22.306. Academic Achievement Support.

(a) Each participating Eligible Institution shall ensure that each Research Scholar's experience includes, at a minimum, the following academic programmatic elements:

(1) Program cohort learning communities;

(2) Mentoring, research, and internship opportunities;

(3) Networking with state government, business, and civic leaders; and

(4) Statewide cohort learning institutes or seminars.

(b) The Coordinating Board may enter into agreements with participating eligible institutions to provide research-based support for scholars to make satisfactory academic progress and graduate on time at participating institutions.

§22.307. Leadership Development.

(a) Each participating Eligible Institution must ensure that a Research Scholar's experience includes, at a minimum, the following leadership development elements:

(1) Leadership development programming; and

(2) Scholar summer programming which may be met through participating in a leadership conference, study abroad, or internship opportunities.

(b) The Coordinating Board may enter into agreements with participating eligible institutions to provide leadership development opportunities for scholars.

§22.308. Discontinuation of Eligibility or Non-Eligibility.

(a) A student who has already earned a research doctoral degree at any public or private post-secondary institution is ineligible to participate in the Program.

(b) Unless granted a hardship postponement in accordance with §22.309 of this subchapter (relating to Hardship Provisions), a student's eligibility for a grant ends:

(1) Four years from the start of the semester in which the student enrolls in the research doctoral degree program at the eligible institution; or

(2) If a Research Scholar transfers to another institution.

§22.309. Hardship Provisions.

(a) In the event of a hardship or for other good cause as determined by the Eligible Institution, the Program Officer at the institution may allow an otherwise eligible Research Scholar to receive a Scholarship:

(1) while enrolled in fewer semester credit hours than required in §22.303 of this subchapter (related to Eligible Students);

(2) If the Scholar fails to meet the satisfactory academic progress requirements of §22.303 of this subchapter; or

(3) If the Scholar requires an extension of the limits found in §22.308(b) of this subchapter (relating to Discontinuation of Eligibility or Non-Eligibility) to complete his or her degree, provided that the total number of years the Scholar receives a scholarship under the program does not exceed four years.

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

(1) Documentation of a serious health condition that makes the Research Scholar unable to attend school or complete academic study;

(2) Documentation that the Research Scholar is responsible for the care of a child, spouse, or parent who has a serious health

condition, sick, injured, or and that the scholar's provision of care may affect his or her academic performance; or

(3) The birth of a child or placement of a child with the student for adoption or foster care.

(c) A hardship under this section may extend for a period of no longer than one year.

(d) An institution must keep documentation of the hardship circumstances approved for a Research Scholar in the Research Scholar's files. An Eligible Institution must report each hardship extension it grants to a Research Scholar to the Coordinating Board, so the board may appropriately monitor each Research Scholar's period of eligibility.

(e) Eligible institutions shall adopt a hardship policy under this section, share such policy with Research Scholars and have the policy available in the financial aid office for public review upon request.

§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) 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.

§22.311. Availability of Funds.

Funding under this subchapter is subject to legislative appropriation. The Coordinating Board may reduce or modify the amount of funds available under this Program subject to the availability of General Revenue appropriated to the Program.

§22.312. Disbursement of Funds.

(a) Each Eligible Institution shall certify compliance with statute and this subchapter and enter into a biennial Participation Agreement in order to receive funds under this Program.

(b) Upon request by an Eligible Institution throughout the academic year, the Coordinating Board shall forward to each participating eligible institution a portion of its allocation of funds for timely disbursement to Research Scholars. Each participating eligible institution shall 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, an institution may lose any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to Scholars. Funds released in this manner are deemed returned to the Coordinating Board.

§22.313. Reporting, Audit, and Recoupment.

(a) The Coordinating Board may require an institution to submit reports documenting compliance with the provisions of statute, this subchapter, and the Program Participation Agreement.

(b) An institution shall be subject to compliance monitoring as a condition of receiving funds under this subchapter.

(c) An institution shall be subject to recoupment of funds allocated under the Program in the event of over-allocation or misappropriation.

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) 427-6537



CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS SUBCHAPTER J. MATH AND SCIENCE SCHOLARS LOAN REPAYMENT PROGRAM 19 TAC §§23.286 - 23.293

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter J, §§23.286 - 23.293 concerning the Math and Science Scholars Loan Repayment

Program. Specifically, this amendment will redefine Coordinating Board terminology used throughout the subchapter, expand program eligibility to math and science teachers working in any Texas public school, remove award amount limitations based on service location, and clarify which loans can be considered when determining repayment eligibility.

Rule 23.286, Authority and Purpose, is amended to remove language from the Program's purpose statement that requires a teacher to work at a Title I school during the first four years of participation in the Program. Senate Bill 532, 88th Legislative Session amended Texas Education Code (TEC), chapter 61, subchapter KK, to remove the requirement for a teacher to work at a Title I school during the first four years of service beginning with applicants on or after September 1, 2023. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

Rule 23.287, Definitions, is amended to update the definition of "Coordinating Board" to clarify references throughout the subchapter are for the agency and its staff members and not the governing body of the agency. It would also revise the term "Commissioner" from Chief Executive Officer of the board to the Commissioner of Higher Education. These amendments also impact §§23.288 - 23.290 and 23.292. These non-substantive changes are being implemented to align terminology across all subchapters in chapter 23. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

Rule 23.288, Eligibility for Enrollment in the Program, is amended to delineate program eligibility requirements between applicants who first establish eligibility for the program before September 1, 2023, and applicants who first establish eligibility for the program on or after September 1, 2023, as required by Section 6 of House Bill 532, 88th Legislative Session. Revisions to TEC, chapter 61, subchapter KK, no longer require applicants to work at a Title I school to be eligible for participation on or after September 1, 2023. An update to the rule also clarifies which loans can be considered when determining repayment eligibility. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

Rule 23.289, Application Ranking Priorities, is amended to make a non-substantive change that aligns with a similar change in §23.287 (relating to Definitions).

Rule 23.290, Exceptions to Consecutive Years of Employment Requirement, is amended to delineate exceptions for the consecutive years of employment requirement between applicants who first establish eligibility for the program before September 1, 2023, and applicants who first establish eligibility for the program on or after September 1, 2023, as required by Section 6 of House Bill 532, 88th Legislative Session. Revisions to TEC, chapter 61, subchapter KK, no longer require applicants to work at a Title I school on or after September 1, 2023. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

Rule 23.291, Eligibility for Disbursement of Award, is amended to delineate disbursement criteria to an eligible teacher between applicants who first establish eligibility for the program before September 1, 2023, and applicants who first establish eligibility for the program on or after September 1, 2023, as required by

Section 6 of House Bill 532, 88th Legislative Session. Revisions to TEC, chapter 61, subchapter KK, no longer require applicants to work at a Title I school on or after September 1, 2023. The rules for applicants on or after September 1, 2023, will no longer require a teacher to provide verification of working at a Title I school during the first four years to align with statutory updates. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

Rule 23.292, Eligible Lender and Eligible Education Loan, is amended to make a non-substantive change that aligns with a similar change in §23.287 (relating to Definitions).

Rule 22.293, Disbursement of Repayment Assistance and Award Amount, is amended to clarify that a math or science teacher that applies for the Program on or after September 1, 2023, may continue to receive the same amount of loan repayment assistance received during the first four consecutive years of teaching service required. This rule change will align with Senate Bill 532, 88th Legislative Session that amended TEC, chapter 61, subchapter KK. Teachers participating in the Program prior to September 1, 2023, are subject to the law and rules in effect at the time. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

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

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

Charles Contéro-Puls 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 an increase in the amount of math and science teachers that may participate in the program by eliminating the requirement that employment during the first four years be contingent on the teacher working Texas public school that receive federal funding under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 6301 et seq.) There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;

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

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

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

The amendment is proposed under Texas Education Code, Section 61.9831, which provides the Coordinating Board with the authority to provide rules to assist with the repayment of eligible student loans for eligible persons.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 23.

§23.286. *Authority and Purpose.*

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, subchapter [Subchapter] KK, Math and Science Scholars Loan Repayment Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.9831 - 61.9841.

(b) Purpose. The purpose of the Math and Science Scholars Loan Repayment Program is to encourage teachers, who demonstrated high academic achievement as math or science majors, to teach math or science in Texas public schools for eight years, the first four of which are required [~~at Title I schools~~].

§23.287. *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 Texas Higher Education Coordinating Board.]~~

(1) ~~[(2) Commissioner--[The] Commissioner of Higher Education[, the chief executive officer of the Board].~~

(2) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board and its staff.

(3) Employment Service Period--A period of at least 9 months of a 12-month academic year.

(4) Program--The Math and Science Scholars Loan Repayment Program.

(5) Title I school--Texas public schools that receive federal funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. §6301 et seq.)

§23.288. *Eligibility for Enrollment in the Program.*

(a) To be eligible for the Coordinating Board to conditionally approve an application and encumber loan repayment funds, a teacher who first applies for the Program prior to September 1, 2023, must:

(1) ensure that the Coordinating Board has received the completed enrollment application and transcripts of the applicant's postsecondary coursework, and any other requested documents by the established deadline posted on the Program web page;

(2) be a U.S. citizen;

(3) have completed an undergraduate or graduate program in mathematics or science;

(4) have earned a cumulative GPA of at least 3.0 on a four-point scale, or the equivalent, at the institution from which the teacher graduated;

(5) be certified under the Texas Education Code, Subchapter B, Chapter 21, or under a probationary teaching certificate, to teach mathematics or science in a Texas public school;

(6) have secured an employment contract as a full-time classroom teacher to teach mathematics or science in a Title I school at the time of application for enrollment in the Program;

(7) not receive any other state or federal loan repayment assistance, including a Teacher Education Assistance for College and Higher Education (TEACH) Grant or teacher loan forgiveness for the loan(s) that the applicant is seeking to be repaid;

(8) not be in default on any education loan; and

(9) enter into an agreement with the Coordinating Board that includes the provisions stated in subsection (b) of this section.

(b) The agreement with the Coordinating Board made prior to September 1, 2023, must include the following provisions:

(1) the applicant will accept an offer of continued employment to teach mathematics or science, as applicable based on the teacher's certification, for an average of at least four hours each school day in a Title I school, for four consecutive years, beginning with the school year that has recently begun or the upcoming school year at the time of the application for enrollment in the Program;

(2) the applicant may complete up to four additional consecutive school years teaching mathematics or science, as applicable based on the teacher's certification, for an average of at least four hours each school day in any Texas public school, beginning with the school year immediately following the last of the four consecutive school years described by paragraph (1) of this subsection; and

(3) the applicant understands that loan repayment awards are contingent on available funding received, the Coordinating Board may make a financial commitment only based on funds that have been appropriated for each two-year state budget period, and the teacher will be released from the teaching obligation for any year of employment for which funds are not available.

(c) To be eligible for the Coordinating Board to conditionally approve an application and encumber loan repayment funds, a teacher who first applies for the Program on or after September 1, 2023, must:

(1) ensure that the Coordinating Board has received the completed enrollment application and transcripts of the applicant's postsecondary coursework, and any other requested documents by the established deadline posted on the Program web page;

(2) be a U.S. citizen;

(3) have completed an undergraduate or graduate program in mathematics or science;

(4) have earned a cumulative GPA of at least 3.0 on a four-point scale, or the equivalent, at the institution from which the teacher graduated;

(5) be certified under the Texas Education Code, chapter 21, subchapter B, or under a probationary teaching certificate, to teach mathematics or science in a Texas public school;

(6) have secured an employment contract as a full-time classroom teacher to teach mathematics or science in a public school at the time of application for enrollment in the Program;

(7) not receive any other state or federal loan repayment assistance, including a Teacher Education Assistance for College and Higher Education (TEACH) Grant or teacher loan forgiveness for the loan(s) that the applicant is seeking to be repaid;

(8) not be in default on any education loan; and

(9) enter into an agreement with the Coordinating Board that includes the provisions stated in subsection (d) of this section.

(d) The agreement with the Coordinating Board made on or after September 1, 2023, must include the following provisions:

(1) the applicant will accept an offer of continued employment to teach mathematics or science, as applicable based on the teacher's certification, for an average of at least four hours each school day in a any public school, for four consecutive years, beginning with the school year that has recently begun or the upcoming school year at the time of the application for enrollment in the Program;

(2) the applicant may complete up to four additional consecutive school years teaching mathematics or science, as applicable based on the teacher's certification, for an average of at least four hours each school day in any Texas public school, beginning with the school year immediately following the last of the four consecutive school years described by paragraph (1) of this subsection; and

(3) the applicant understands that loan repayment awards are contingent on available funding received, the Coordinating Board may make a financial commitment only based on funds that have been appropriated for each two-year state budget period, and the teacher will be released from the teaching obligation for any year of employment for which funds are not available.

§23.289. Application Ranking Priorities.

(a) Renewal applicants shall be given priority over first-time applicants unless a break in Employment Service Periods has occurred as a result of the circumstances described in §21.2025 of this title (relating to Exceptions to Consecutive Years of Employment Requirement).

(b) If there are not sufficient funds to encumber awards for all eligible applicants for enrollment in the Program, applications shall be ranked according to a cumulative ranking system developed by the Coordinating Board based on:

(1) the number of mathematics and science courses completed by the applicants;

(2) the grade received by each applicant for each of those courses; and

(3) employment at schools having the highest percentages of students who are eligible for free or reduced cost lunches.

§23.290. Exceptions to Consecutive Years of Employment Requirement.

(a) Although funding limitations may require the Coordinating Board to exercise the ranking priorities established in §23.289 of this title (relating to Application Ranking Priorities) a teacher who has enrolled in the Program prior to September 1, 2023, shall not lose Program eligibility due to failure to meet the consecutive years of qualifying employment requirement if the break in employment service is a result of the person's:

(1) full-time enrollment in a course of study related to the field of teaching that is approved by the State Board for Educator Certification and provided by a Texas institution of higher education, as defined in Texas Education Code §61.003;

(2) service on active duty as a member of the armed forces of the United States, including as a member of a reserve or National Guard unit called for active duty;

(3) temporary total disability for a period of not more than 36 months as established by the affidavit of a qualified physician;

(4) inability to secure employment as required in a Title I school for a period not to exceed 12 months, because of care required by a disabled spouse or child; or

(5) inability, despite reasonable efforts, to secure, for a single period not to exceed 12 months, employment in a Title I school.

(b) A teacher who has enrolled in the Program on or after September 1, 2023, shall not lose Program eligibility due to failure to meet the consecutive years of qualifying employment requirement if the break in employment service is a result of the person's:

(1) full-time enrollment in a course of study related to the field of teaching that is approved by the State Board for Educator Certification and provided by a Texas institution of higher education, as defined in Texas Education Code §61.003;

(2) service on active duty as a member of the armed forces of the United States, including as a member of a reserve or National Guard unit called for active duty;

(3) temporary total disability for a period of not more than 36 months as established by the affidavit of a qualified physician;

(4) inability to secure employment for a period not to exceed 12 months, because of care required by a disabled spouse or child; or

(5) inability, despite reasonable efforts, to secure, for a single period not to exceed 12 months, employment in a public school.

§23.291. Eligibility for Disbursement of Award.

(a) To be eligible for disbursement of a loan repayment award, a teacher who applies for the Program prior to September 1, 2023, must:

(1) for teachers having a probationary teaching certificate during the initial year in the Program, have received a standard teaching certificate by the beginning of the second year of employment, to qualify for a second-year award;

(2) for the first four years of employment, submit all required end-of-year forms verifying completion of one, two, three, or four consecutive years of employment as a full-time classroom teacher in a Title I school; and

(3) following the first four years of employment, submit all required end-of-service period forms verifying completion of five, six, seven, or eight consecutive years of employment as a full-time classroom teacher in any Texas public school.

(b) To be eligible for disbursement of a loan repayment award, a teacher who applies for the Program on or after September 1, 2023, must:

(1) for teachers having a probationary teaching certificate during the initial year in the Program, have received a standard teaching certificate by the beginning of the second year of employment, to qualify for a second-year award;

(2) for the first four years of employment, submit all required end-of-year forms verifying completion of one, two, three, or four consecutive years of employment as a full-time classroom teacher in a public school; and

(3) following the first four years of employment, submit all required end-of-service period forms verifying completion of any

subsequent year of employment, not to exceed eight consecutive years, as a full-time classroom teacher in any public school.

§23.292. Eligible Lender and Eligible Education Loan.

(a) The Coordinating Board shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate, medical and graduate medical education and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, student loans secondary market, governmental agency, or private foundation.

(b) To be eligible for repayment, an education loan must:

- (1) be evidenced by a promissory note for loans to pay for the cost of attendance for undergraduate or graduate education;
- (2) not be in default at the time of the teacher's application;
- (3) not have an existing obligation to provide service for loan forgiveness through another program;
- (4) not be subject to repayment through another student loan repayment or loan forgiveness program;
- (5) if the loan was consolidated with other loans, the teacher must provide documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for the teacher's undergraduate or graduate education; and
- (6) not be an education loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative.

§23.293. Disbursement of Repayment Assistance and Award Amount.

(a) The annual repayment(s) shall be in one disbursement made payable to the servicer(s) or holder(s) of the loan upon the teacher's completion of each year of qualifying employment.

(b) The Commissioner or his or her designee shall determine the maximum annual repayment amount in each state fiscal year, taking into consideration the amount of available funding and the number of eligible applicants.

(c) A teacher who transfers to a Texas public school that is not a Title I school after completing four consecutive years of employment at a Title I school may qualify for no more than 75% of the annual award amount established for the fiscal year. This award limitation is applicable only to a teacher who applies for the Program prior to September 1, 2023.

(d) A teacher who applies for the Program on or after September 1, 2023, may continue to receive the same amount of loan repayment assistance provided during the first four years of teaching service in subsequent years, not to exceed eight years in the Program.

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

Filed with the Office of the Secretary of State on January 11, 2024.

TRD-202400115

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 427-6365

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION
SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 5. NONATTAINMENT REVIEW PERMITS

30 TAC §116.150

The Texas Commission on Environmental Quality (TCEQ) proposes an amendment to 30 Texas Administrative Code (TAC) §116.150. If adopted, this amended rule would be submitted to the U.S. Environmental Protection Agency (EPA) as a state implementation plan (SIP) revision.

Background and Summary of the Factual Basis for the Proposed Rules

Federal Clean Air Act (FCAA), §§172(c)(5), 173, 182(a)(2)(C), 182(f) requires areas designated nonattainment for the ozone national ambient air quality standard (NAAQS) to include nonattainment new source review (NNSR) permitting requirements that require preconstruction permits for the construction and operation of new or modified major stationary sources (with respect to ozone) located in the nonattainment area. Emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x) are precursor pollutants that, in the presence of sunlight, combine to form ozone. FCAA, §182(f) requires states to apply the same requirements to major stationary sources of NO_x as are applied for VOC; but further specifies that if the EPA administrator determines that "net air quality benefits are greater in the absence of reductions of oxides of nitrogen" the requirement for nonattainment plans to address NO_x emission reductions does not apply (a NO_x waiver).

A NO_x waiver was conditionally approved for the El Paso 1979 one-hour ozone nonattainment area, effective November 21, 1994 (59 *FedReg* 60714), conditioned on EPA approving the FCAA, §179B, demonstration that the El Paso one-hour ozone nonattainment area would attain the ozone NAAQS, but for international emissions from Mexico. Under Section 179B of the Act, EPA approved the 1979 one-hour ozone standard attainment demonstration SIP for El Paso County on June 10, 2004 (69 *FedReg* 32450). The NO_x waiver was codified in 30 TAC §116.150(e), which specifies NNSR requirements applicable in El Paso County.

The El Paso County area was originally designated as attainment for the 2015 ozone NAAQS effective August 3, 2018, published June 4, 2018, 83 *FedReg* 25776. On November 30, 2021,

86 *FedReg* 67864, effective December 30, 2021, the El Paso County area was redesignated by EPA to nonattainment through a boundary change combining El Paso County with Dona Ana County, New Mexico and applying a retroactive attainment date of August 3, 2021 to the El Paso County area. In response to the nonattainment designation, TCEQ began SIP planning efforts to meet the FCAA obligations applicable for the El Paso County 2015 eight-hour ozone nonattainment area.

In response to the request for comment on the proposed El Paso County Emissions Inventory (EI) SIP Revision for the 2015 Eight-Hour Ozone NAAQS, EPA noted that the NNSR requirement that is currently approved for the El Paso ozone nonattainment area did not include NNSR requirements for nitrogen oxides (NO_x) based on a NO_x waiver that was approved for the area under the revoked 1979 one-hour ozone standard. EPA also recommended that TCEQ revise the NNSR rule to include the requirements for NO_x.

In response, on November 28, 2022, TCEQ committed to initiate rulemaking for a proposal to amend 30 TAC §116.150(e) to clarify that the NO_x waiver for sources located in the El Paso ozone nonattainment area applies exclusively to the 1979 one-hour ozone standard and, therefore, does not apply to NNSR requirements for the 2015 eight-hour ozone standard. While in the process of SIP planning to comply with the nonattainment designation, TCEQ challenged the redesignation and the application of a retroactive attainment date. The D.C. Circuit Court of Appeals reversed EPA's redesignation in its opinion issued on June 30, 2023, in *Board of County Comm'n of Weld County v. EPA*, 72 F.4th 284 (D.C. Cir. 2023). The 2015 eight-hour ozone nonattainment designation is no longer effective in the El Paso County area; thus, NNSR is no longer required for the 2015 eight-hour ozone standard. Although the 1979 one-hour ozone NAAQS has been revoked, states must continue to implement applicable requirements unless their removal is approved by EPA. Clarification of the applicability of the NO_x waiver will assure appropriate and effective implementation of the requirement.

Section by Section Discussion

This proposed rulemaking will amend the language in 30 TAC §116.150(e) to clarify that the currently effective NO_x exemption for the El Paso nonattainment area applies only for the 1979 one-hour ozone standard, in accordance with EPA's approval of the NO_x waiver.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be improved clarity regarding the applicability of a state and federal regulation. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

TCEQ reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy

in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

TCEQ reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

TCEQ reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

TCEQ prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

TCEQ reviewed the proposed rulemaking considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute and, in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., §2001.0225(a). Tex. Gov't Code Ann., § 2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal pro-

gram; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rulemaking's purpose is to amend 30 TAC §116.150(e) to clarify that the NO_x waiver for sources located in the El Paso ozone nonattainment area applies exclusively to the 1979 one-hour ozone standard and, therefore, does not apply to NNSR requirements for the 2015 eight-hour ozone standard. As discussed elsewhere in this preamble, the currently effective rule provision that allows major sources of NO_x to avoid NNSR permitting is not specific regarding its applicability for a particular ozone NAAQS. This proposed rule will appropriately clarify the applicability of the NO_x waiver to the 1979 one-hour ozone NAAQS only. Although the 1979 one-hour ozone NAAQS has been revoked by EPA, states must continue to implement applicable requirements unless their removal is approved by EPA. Clarification of the applicability of the NO_x waiver will assure appropriate and effective implementation of the requirement. New Source Review (NSR) preconstruction permitting programs are mandated by 42 United States Code (USC), 7410, FCAA, §110. States are required to either accept delegation of the federal NSR program or create, submit, and implement a program as part of their EPA-approved SIP, required by the FCAA, §110 to attain and maintain the NAAQS. All NSR permits must also be included in operating permits by 42 USC, §7661a, FCAA, §502, as specified elsewhere in this preamble. Texas has an EPA-approved NSR preconstruction program, so the proposed revisions to 30 TAC Chapter 116 will be submitted to EPA as revisions to the Texas SIP, as discussed elsewhere in this preamble.

The proposed rulemaking implements requirements of the FCAA, 42 USC §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The FCAA does specifically require NSR preconstruction permitting programs for both major and minor stationary sources. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS; and for required programs, states must create and implement programs that meet both the statutory and regulatory requirements for those programs. In developing the required or necessary programs, states, affected industry, and the public collaborate on the best methods for meeting the requirements of the FCAA and attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC §7410.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179 as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are also required to have federal operating permit programs that provide authority to issue permits and assure compliance with

each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, TCEQ provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." TCEQ also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, TCEQ routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by TCEQ to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by TCEQ in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, then the intent of SB 633 is presumed to only require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and creates no additional impacts since the proposed rules do not impose burdens greater than required to comply with the FCAA requirement for states to create and implement NSR preconstruction permitting programs, as discussed elsewhere in this preamble.

For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. TCEQ has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is

in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). Cf. *Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).) TCEQ's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as subject to this standard.

As discussed in this analysis and elsewhere in this preamble, TCEQ has substantially complied with the requirements of Texas Government Code, §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The proposed rules were determined to be necessary to fulfill the state's obligation to create and implement an NSR preconstruction permitting program, and all NSR permits are required to be included in federal operating permits under 42 USC, §7661a, FCAA, §502, and will not exceed any standard set by state or federal law. These proposed rules are not an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the proposed rules, if adopted by TCEQ and approved by EPA, will become federal law as part of the approved SIP required by 42 USC §7410, FCAA, §110. The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

TCEQ invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

TCEQ completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, Chapter 2007. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend 30 TAC §116.150(e) to clarify that the NO_x waiver for sources located in the El Paso ozone nonattainment area applies exclusively to the 1979 one-hour ozone standard and, therefore, does not apply to NNSR requirements for the 2015 eight-hour ozone standard. As discussed elsewhere in this preamble, the currently effective rule provision that allows major sources of NO_x to avoid NNSR permitting is not specific regarding its applicability for a particular ozone NAAQS. This proposed rule would appropriately clarify the applicability of the NO_x waiver to the 1979 one-hour ozone NAAQS only. Although the 1979 one-hour ozone NAAQS has been revoked by EPA, states must continue to implement applicable requirements unless their removal is approved by EPA. Clarification of the applicability of the NO_x waiver will assure appropriate and effective implementation of the requirement. NSR preconstruction permitting programs are mandated by 42 USC, 7410, FCAA, §110. States are required to either accept delegation of the federal NSR program or create, submit, and implement a program as part of their EPA-approved SIP, required by the FCAA, §110 to attain and maintain the NAAQS. The proposed rule changes will continue to fulfill this requirement. Also, since NSR preconstruction permitting is an applicable requirement of the FCAA, all NSR permits are required to be included in operating permits by 42 USC, §7661a, FCAA, §502. Texas has an EPA-approved NSR preconstruction program, so the proposed revisions to 30 TAC Chapter 116 will be submitted to EPA as revisions to the Texas SIP, as discussed elsewhere in this preamble.

Therefore, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law, as provided by Texas Government Code, §2007.003(b)(4).

As discussed elsewhere in this preamble, the proposed rulemaking implements requirements of the FCAA, 42 USC §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state, as well as requires certain specific programs, such as NSR preconstruction permitting. While 42 USC §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The FCAA does specifically require NSR preconstruction permitting programs for both major and minor stationary sources. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS, and for required programs, states must create and implement programs that meet both the statutory and regulatory requirements for those programs. In developing the required or necessary programs, states, affected industry, and the public

collaborate on the best methods for meeting the requirements of the FCAA and attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC §7410.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179 as well as the imposition of a FIP under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the NAAQS, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The proposed rules will not create any additional burden on private real property beyond what is required under federal law, as the proposed rules, if adopted by TCEQ and approved by EPA, will become federal law as part of the approved SIP required by 42 USC §7410, FCAA, §110. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Consistency with the Coastal Management Program

TCEQ reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 116 is an applicable requirement under the 30 TAC Chapter 122, Federal Operating Permits Program. Although the proposed rulemaking would amend the language in 30 TAC §116.150(e), the amended language will clarify the waiver applicability to the NO_x standards for the El Paso nonattainment area for the 1979 one-hour ozone standard; therefore, it is not

anticipated to have an adverse effect on sites subject to NNSR requirements.

Announcement of Hearing

TCEQ will hold a hybrid virtual and in-person public hearing on this proposal in Austin on February 27, 2024, at 10:00 a.m. in Building F, Room 2210, at TCEQ's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Friday, February 23, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Monday, February 26, 2024, to those who register for the hearing.

Persons who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YT-kzNmNkYtGtZmViYS00ZDRjLWl4ZWUtMzNMDA2OTA2YTk4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22Is-BroadcastMeeting%22%3atru%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-121-116-AI. The comment period closes at midnight Tuesday, February 27, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from TCEQ's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Suzanne Alexander, Operational Support Section, Air Permits Division, (512) 239-2134.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides authority to perform any acts necessary and convenient to exercising its jurisdiction; TWC §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its power and duties; TWC, §5.105, concerning General Policy, which requires the commission to adopt all general policy by rule; TWC, §7.002,

concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.015, concerning the Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; THSC, §382.022, concerning Investigations, which authorizes the executive director authority to make or require investigations; THSC, §382.051, concerning Permitting Authority of the Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act; THSC, §382.0512 concerning Modification of Existing Facility; authorizing the commission to consider certain effects on modifications of permits; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with the Texas Clean Air Act; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling, monitoring, and certification requirements as permit conditions; THSC, §382.0515, Application for Permit, which authorizes the commission to require certain information in a permit application; and THSC, §382.0518, Preconstruction Permit, allowing the commission to require a permit prior to construction of a facility.

The proposed amendments implement TWC, §5.102, §5.103, §5.105, and §7.002; and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017, 382.022, 382.051, 382.0512, 382.0513, 382.0514, 382.0515, and 382.0518.

§116.150. New Major Source or Major Modification in Ozone Nonattainment Areas.

(a) This section applies to all new source review authorizations for new construction or modification of facilities or emissions units that will be located in any area designated as nonattainment for ozone under 42 United States Code (USC), §7407 et seq. as of the date of issuance of the permit, unless the following apply on the date of issuance of the permit:

- (1) the United States Environmental Protection Agency (EPA) has made a finding of attainment;
- (2) the EPA has approved the removal of nonattainment New Source Review (NSR) requirements from the area;
- (3) the EPA has determined that Prevention of Significant Deterioration requirements apply in the area; or

(4) the EPA determines that nonattainment NSR is no longer required for purposes of anti-backsliding.

(b) The owner or operator of a proposed new major stationary source, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) of volatile organic compound (VOC) emissions or nitrogen oxides (NO_x) emissions, or the owner or operator of an existing stationary source of VOC or NO_x emissions that will undergo a major modification, as defined in §116.12 of this title with respect to VOC or NO_x, shall meet the requirements of subsection (d)(1) - (4) of this section, except as provided in subsection (e) of this section. Table I, located in the definition of major modification in §116.12 of this title, specifies the various classifications of nonattainment along with the associated emission levels that designate a major stationary source and significant level for those classifications.

(c) Except as noted in subsection (e) of this section regarding NO_x, the de minimis threshold test (netting) is required for all modifications to existing major sources of VOC or NO_x unless at least one of the following conditions are met:

(1) the proposed project emissions increases are less than five tons per year (tpy) of the individual nonattainment pollutant in areas classified under Federal Clean Air Act (FCAA), Title I, Part D, Subpart 2 (42 USC, §7511) classified as Serious or Severe;

(2) the proposed project emissions increases are less than 40 tpy of the individual nonattainment pollutant in areas classified under FCAA, Title I, Part D, Subpart 1 (42 USC, §7502) and for those under FCAA, Title I, Part D, Subpart 2 (42 USC, §7511) classified as Marginal or Moderate; or

(3) the project emissions increases are less than the significant level stated in Table I located in the definition of major modification in §116.12 of this title and when coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tpy.

(d) In applying the de minimis threshold test, if the net emissions increases are greater than the significant levels stated in Table I located in the definition of major modification in §116.12 of this title, the following requirements apply.

(1) The proposed facility or emissions unit shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility or emissions unit is a new major source or major modification except as provided in paragraph (3)(B) of this subsection and except for existing major stationary sources that have a potential to emit (PTE) of less than 100 tpy of the applicable nonattainment pollutant. For these sources, best available control technology (BACT) can be substituted for LAER. LAER shall otherwise be applied to each new facility or emissions unit and to each existing facility or emissions unit at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state must be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility or emissions unit or facilities or emissions units commence operation, the emissions increases from the new or modified facility or emissions unit or facilities or emissions units must be offset. The proposed facility or emissions unit shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I

located in the definition of major modification in §116.12 of this title. Internal offsets that are generated at the source and that otherwise meet all creditability criteria can be applied as follows.

(A) Major stationary sources located in a serious or severe ozone nonattainment area with a PTE of less than 100 tpy of an applicable nonattainment pollutant are not required to undergo nonattainment new source review under this section, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1.

(B) Major stationary sources located in a serious or severe ozone nonattainment area with a PTE of greater than or equal to 100 tpy of an applicable nonattainment pollutant can substitute federal BACT (as identified in §116.160(c)(1)(A) of this title (relating to Prevention of Significant Deterioration Requirements) for LAER, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1. Internal offsets used in this manner can also be applied to satisfy the offset requirement.

(4) In accordance with the FCAA, the permit application must contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis must demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(e) For sources located in the El Paso ozone nonattainment area under the 1979 one-hour ozone National Ambient Air Quality Standard as defined in 40 Code of Federal Regulations, Part 81, the requirements of this section do not apply to NO_x emissions.

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 January 12, 2024.

TRD-202400118

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 239-2678



CHAPTER 311. WATERSHED PROTECTION SUBCHAPTER H. REGULATION OF QUARRIES IN THE JOHN GRAVES SCENIC RIVERWAY

30 TAC §§311.71 - 311.75, 311.77, 311.79 - 311.82

The Texas Commission on Environmental Quality (TCEQ) proposes to amend §§311.71 - 311.75, 311.77, and 311.79 - 311.82.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 1688, 88th Texas Regular Legislative Session, amended Texas Water Code (TWC), Chapter 26 by revising Subchapter M (Water Quality Protection Areas); specifically, §§26.551 - 26.562, by expanding the pilot program originally established for quarries in the John Graves Scenic Riverway (Brazos River Basin) to include the "Coke Stevenson Scenic Riverway" (Colorado River Basin). The statute addresses

permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation regarding quarry operations. The Coke Stevenson Scenic Riverway is defined as the South Llano River and its contributing watershed in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction.

TCEQ is proposing to amend 30 Texas Administrative Code (TAC) Chapter 311 (Watershed Protection Rules), Subchapter H (Regulation of Quarries in the John Graves Scenic Riverway), which implements TWC, §§26.551 - 26.554 and 26.562. The proposed amendment to Subchapter H expands the permitting and financial assurance requirements for quarries to the new Coke Stevenson Scenic Riverway water quality protection area, continues the requirements in the John Graves Scenic Riverway water quality protection area, and extends the expiration date of the pilot program to September 1, 2027.

Section by Section Discussion

Proposed amended Chapter 311, Subchapter H, would remove reference to "the John Graves Scenic Riverway" from the subchapter title and replace it with "Certain Water Quality Protection Areas"; the amended title would be "Regulation of Quarries in Certain Water Quality Protection Areas." This change is required to provide clarity that the applicability extends to all water quality protection areas identified in the subchapter.

Proposed amended Chapter 311, Subchapter H would remove references to "the John Graves Scenic Riverway" and replace them with reference to "a water quality protection area" throughout the subchapter to encompass both the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway water quality protection areas.

Proposed amended §311.71 (Definitions) would define one new term and revise one term used within the subchapter to be consistent with the definitions found in HB 1688. The new term "Coke Stevenson Scenic Riverway" means the South Llano River and its contributing watershed in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction. The revised term "Water quality protection areas" means the Brazos River and its contributing watershed within Palo Pinto and Parker Counties, Texas, downstream from the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, and extending to the county line between Parker and Hood Counties, Texas; and the South Llano River and its contributing watershed in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction. The terms "responsible party" and "water body" were revised for clarity and to remove unnecessary language.

Proposed amended §311.72 (Applicability) would identify activities regulated by this subchapter and activities specifically excluded from regulation. Activities regulated by this subchapter include quarrying within a water quality protection area in the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway, as identified in subsection (a). In addition, proposed amended §311.72 specifies September 1, 2027, as the new expiration date for Chapter 311, Subchapter H, consistent with HB 1688.

Proposed amended §311.73 (Prohibitions) would identify areas within the newly defined water quality protection area where quarrying is prohibited, consistent with HB 1688. The proposed amendment to §311.73(a), consistent with existing regulations for the John Graves Scenic Riverway, would prohibit the construction or operation of any new quarry, or the expansion of

an existing quarry, located within 200 feet of any water body within the Coke Stevenson Scenic Riverway. Consistent with similar regulations for the John Graves Scenic Riverway, the construction or operation of any new quarry, or the expansion of an existing quarry, located between 200 feet and 1,500 feet of any water body in the Coke Stevenson Scenic Riverway would be prohibited except where the requirements in §§311.75(2), 311.77, and 311.78(b) are met. For the purposes of this subchapter, a new quarry is any quarry that commenced operations after September 1, 2005. An existing quarry is any quarry that was in operation prior to September 1, 2005. Expansion of an existing quarry refers to any change to an existing quarry that results in additional disturbance, including the construction of additional processing areas.

Just as with the John Graves Scenic Riverway regulations, throughout this subchapter, prohibitions, application requirements, and performance criteria are established for quarries located in the Coke Stevenson Scenic Riverway based upon the quarry's location relative to a navigable water body (as defined in §311.71). Where location is established as the distance from a water body, the distance is measured from the gradient boundary. Federal Emergency Management Agency flood hazard maps identify the 100-year floodplain relative to a water body.

Proposed amended §311.82, Existing Quarries, would require existing quarries that are subject to the proposed rule to seek and obtain an authorization in accordance with §311.74(b), if they have not done so before the effective date of this rule. The existing quarries in the John Graves Scenic Riverway that already obtained an authorization in accordance with §311.74(b) will not need to reapply for coverage under this proposed rulemaking. However, any new or expanding quarries within the John Graves Scenic Riverway or the Coke Stevenson Scenic Riverway must apply for permit coverage. Paragraph (c) was modified to clarify that existing quarries located within 200 to 1,500 feet of a water body in the Coke Stevenson Scenic Riverway must submit an application for permit coverage within 180 days of the effective date of the subchapter.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for each year the proposed rules are in effect, no costs are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year the proposed rules are in effect, the public benefit will be compliance with state law, specifically HB 1688 from the 88th Regular Legislative Session. As a result of this rulemaking, the public in the watersheds of the Coke Stevenson Scenic Riverway and John Graves Scenic Riverway may see improved water quality, reduced environmental impact during heavy rain events, and more aesthetically pleasing waters thereby increasing desirability for recreational opportunities.

The proposed rulemaking would result in fiscal implications for quarry operations in the Coke Stevenson Scenic Riverway for each year the proposed rules are in effect and for the years by which the pilot program in the John Graves Scenic Riverway is being extended (§311.72). No fiscal implications are anticipated for businesses in the Coke Stevenson Scenic Riverway because there are no quarries in this area.

Eight existing permittees in the John Graves Scenic Riverway would be fiscally impacted by the proposed rulemaking. Four of these entities are billed an annual water quality fee of \$800 per year, so the total fees for these entities over the two years by which the pilot program is being extended would be \$1,600, or \$6,400 in total annual water quality fees over the two-year period for these four entities. One entity is within 200 to 1,500 feet of a water body in the water quality protection area and would be responsible for continuing to provide financial assurance for reclamation and restoration, and the other seven entities would be required to provide financial assurance for restoration only (§311.81). Unless these operations can meet the financial requirements through a corporate financial test, the total cost for the entity within 200 to 1,500 feet of a water body is estimated at \$22,600 per year in premiums, or \$45,200 in total for the two years in which the applicability of this rule is being extended. The total cost for premiums for the other seven entities is estimated at \$4,500 per year for each entity, which translates to \$63,000 in total for two years for these seven entities.

In the event an entity wants to initiate quarry operations within the Coke Stevenson Scenic Riverway or John Graves Scenic Riverway within the amended period of the applicability of the rulemaking or amend, modify, or renew a permit, additional costs would apply. This rulemaking would require entities greater than one mile from a water body in the water quality protection area for either waterway to be responsible for development of a restoration plan, maintenance of financial assurance for restoration, and complying with performance criteria (§311.74(b)(1)). Entities within one mile of a water body in a water quality protection area would be responsible for these costs in addition to a fee for an individual permit (§311.74(b)(2)). Entities within 200 to 1,500 feet of a water body would additionally be responsible for costs associated with developing a technical demonstration, developing a reclamation plan, maintaining financial assurance for restoration, and complying with additional performance criteria (§311.74(b)(3)).

Individual permit application fees are \$1,250 which is \$1,150 greater than the Multi-Sector General Permit application fee, which would otherwise be required. Additionally, entities with individual permits may be responsible for attorney fees if contested case hearings are held, and these costs could range from \$5,000 to \$150,000 depending on the length of hearing and other circumstances. Professional fees are estimated between \$5,000 to \$50,000 for the development of restoration plan, reclamation plan when applicable, and technical demonstration when applicable. Costs associated with controls as necessary to be compliant could be as little as \$2,100 or cost more than \$100,000 depending on the size of the operation, topography, vegetative cover, and other factors. As noted above, costs associated with premiums for maintaining financial assurance for restoration is estimated at \$4,500 annually, and premiums for restoration and reclamation together would be \$22,600 annually.

Local Employment Impact Statement

TCEQ reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

This rulemaking applies to specific water quality protection in Palo Pinto, Parker, and Kimble counties, and these counties include rural communities. TCEQ reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect. Four micro-businesses in the John Graves Scenic Riverway are already operating under the existing rule; therefore, no new implications are anticipated due to this rulemaking. No other businesses have been identified which would be affected.

Small Business Regulatory Flexibility Analysis

TCEQ reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

TCEQ prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, extending the John Graves Scenic Riverway program by two years, and it establishes an identical program for the Coke Stevenson Scenic Riverway. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

TCEQ reviewed the proposed rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC), §2001.0225 and determined that the rulemaking is not subject to §2001.0225(a) because it does not meet the definition of a "Major environmental rule" as defined in §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a "Major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The 88th Texas Legislature enacted HB 1688, amending TWC, Chapter 26, Subchapter M (Water Quality Protection Areas) to include the Coke Stevenson Scenic Riverway, defined by HB

1688 as the South Llano River in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction, in TCEQ's Pilot Program for water quality protection areas that the 79th Texas Legislature enacted through Senate Bill (SB) 1354 for a certain designated portion of the Brazos River. That designated portion of the Brazos River, defined by SB 1354 as the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas, is designated as the John Graves Scenic Riverway and is subject to specific permitting and enforcement regulations that SB 1354 established. The Pilot Program created specific regulations for individual or general permits for quarries, depending on their proximity to any water body in the area designated as the John Graves Scenic Riverway. HB 1688 postpones the Pilot Program's end, and the expiration of provisions governing the Pilot Program, from September 1, 2025, to September 1, 2027, and reenacts provisions relating to the reclamation and restoration fund account.

As the Bill Analysis from the Natural Resources Committee of the Texas House of Representatives makes clear, the 88th Texas Legislature enacted HB 1688 with the aim of protecting the beds, bottoms, and banks of a stretch of the South Llano River from mining and quarrying activities. HB 1688 seeks to address this issue by amending the TWC to include the Coke Stevenson Scenic Riverway in the same Pilot Program as the John Graves Scenic Riverway. Specifically, HB 1688 amends Chapter 26 of the TWC by revising Subchapter M to make the Pilot Program requirements for the John Graves Scenic Riverway, related to permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation regarding quarry operations, applicable to the stretch of the South Llano River defined by HB 1688 as the Coke Stevenson Scenic Riverway.

Therefore, the specific intent of the proposed rulemaking is related to extending existing protections for certain designated portions of Texas rivers to additional designated portions of Texas rivers in accordance with HB 1688.

HB 1688 amends Chapter 26 of the TWC by revising Subchapter M (specifically §§26.551 - 26.562) and the proposed rulemaking amends TCEQ Watershed Protection Rules, found at 30 TAC Chapter 311, Subchapter H, which implements TWC, §§26.551 - 26.554 and §26.562. The proposed amendment to Subchapter H would expand the permitting and financial assurance requirements for quarries to the new Coke Stevenson Scenic Riverway, continues the requirements in the John Graves Scenic Riverway, and extends the expiration date of the Pilot Program to September 1, 2027.

Certain aspects of TCEQ's Watershed Protection Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the TGC, §2001.0225 definition of "major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this

rulemaking is not governed by federal law. Second, it does not exceed state law but rather extends state law and TCEQ rules to adopted and effective state laws. Third, it does not come under a delegation agreement or contract with a federal program and, finally, is not being proposed under TCEQ's general rule-making authority. This rulemaking is being proposed under a specific state statute enacted in HB 1688 of the Texas 2023 legislative session and implements existing state law found at TWC, §26.0135 that states that TCEQ must establish strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, TCEQ does not adopt the rule solely under TCEQ's general powers. TCEQ invites public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

TCEQ evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the proposed rulemaking is to implement the legislative amendments to the TWC in HB 1688 by amending TCEQ's Watershed Protection Rules to extend existing protections for certain designated portions of Texas rivers to additional designated portions of Texas rivers. TCEQ's Watershed Protection Rules do not regulate property but instead regulate water quality in the specific watersheds. The proposed rulemaking will substantially advance this stated purpose by adopting new rule language that includes the Coke Stevenson Scenic Riverway in TCEQ's Watershed Protection Rules.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property because, as TCEQ's analysis indicates, TGC, Chapter 2007 does not apply to these proposed rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The primary purpose of the proposed rules is to implement HB

1688 by including the Coke Stevenson Scenic Riverway in the same TCEQ Pilot Program as the John Graves Scenic Riverway. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

TCEQ reviewed the proposed amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

This rulemaking has no effect on sites subject to the Federal Operating Permits Program.

Announcement of Hearing

TCEQ will hold a hybrid virtual and in-person public hearing on this proposal in Austin on February 26, 2024, at 9:30 a.m. in Building F, Room 2210 at TCEQ's central office located at 12100 Park 35 Circle, Austin, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, TCEQ staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, February 22, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, February 23, 2024, to those who register for the hearing.

Persons who do not wish to provide oral comments but would like to view the hearing may do so at no cost at: https://teams.microsoft.com/join/19%3ameeting_NzU0MTIxMzQtNDc0Zi00YmZiLTg1NDEtZjdZmZkODdjZWm5%40thread.v-2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&bttype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be sub-

mitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-138-311-OW. The comment period closes on February 26, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from TCEQ's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact the Stormwater Team, Water Quality Division, (512) 239-4671.

Statutory Authority

The Texas Commission on Environmental Quality (the commission or TCEQ) proposes these amendments to TCEQ rules under the authority of Texas Water Code (TWC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. Lastly, TWC, §26.0135 requires the commission to establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

The amendments implement House Bill 1688, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.0135.

§311.71. Definitions.

The following words and terms, when used in the subchapter, have the following meanings.

(1) 25-year, 24-hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours, as defined by the National Weather Service and Technical Paper Number 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments; or equivalent regional or state rainfall information.

(2) Aggregates--Any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, granite, gravel, gypsum, marble, sand, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance. The term does not include clay or shale mined for use in manufacturing structural clay products.

(3) Aquifer--A saturated permeable geologic unit that can transmit, store, and yield to a well, the quality and quantities of groundwater sufficient to provide for a beneficial use. An aquifer can be composed of unconsolidated sands and gravels; permeable sedimentary rocks, such as sandstones and limestones; and/or heavily fractured volcanic and crystalline rocks. Groundwater within an aquifer can be confined, unconfined, or perched.

(4) Best management practices--Any prohibition, management practice, maintenance procedure, or schedule of activity designed to prevent or reduce the pollution of water in the state. Best management practices include treatment, specified operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

(5) Coke Stevenson Scenic Riverway--The South Llano River and its contributing watershed in Kimble County, located

upstream of the river's confluence with the North Llano River at the City of Junction.

(6) ~~[(5)]~~ John Graves Scenic Riverway--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, Texas, and extending to the county line between Parker and Hood Counties, Texas.

(7) ~~[(6)]~~ Natural hazard lands--Geographic areas in which natural conditions exist that pose or, as a result of quarry operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

(8) ~~[(7)]~~ Navigable--Designated by the United States Geological Survey (USGS) as perennial on the most recent topographic map(s) published by the USGS, at a scale of 1:24,000.

(9) ~~[(8)]~~ Operator--Any person engaged in or responsible for the physical operation and control of a quarry.

(10) ~~[(9)]~~ Overburden--All materials displaced in an aggregate extraction operation that are not, or reasonably would not be expected to be, removed from the affected area.

(11) ~~[(10)]~~ Owner--Any person having title, wholly or partly, to the land on which a quarry exists or has existed.

(12) ~~[(11)]~~ Pit--An open excavation from which aggregates have been, or are being, extracted with a depth of five feet or more below the adjacent and natural ground level.

(13) ~~[(12)]~~ Quarry--The site from which aggregates for commercial sale are being, or have been, removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, and the immediately adjacent land on which the plant processing the raw materials is located. The term does not include any land owned or leased by the responsible party not being currently used in the production of aggregates for commercial sale or an excavation to mine clay or shale for use in manufacturing structural clay products.

(14) ~~[(13)]~~ Quarrying--The current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates for commercial sale from natural deposits occurring in the earth.

(15) ~~[(14)]~~ Reclamation--The land treatment processes designed to minimize degradation of water quality, damage to fish or wildlife habitat, erosion, and other adverse effects from quarries. Reclamation includes backfilling, soil stabilization and compacting, grading, erosion control measures, appropriate revegetation, or other measures, as appropriate.

(16) ~~[(15)]~~ Responsible party--Any owner, operator, lessor, or lessee who is primarily responsible for overall function and operation of a quarry located in a [the] water quality protection area [as defined in this section].

(17) ~~[(16)]~~ Restoration--Those actions necessary to change the physical, chemical, and/or biological qualities of a receiving water body in order to return the water body to its background condition. Restoration includes on- and off-site stabilization to reduce or eliminate an unauthorized discharge, or substantial threat of an unauthorized discharge from the permitted site.

(18) ~~[(17)]~~ Structural controls--Physical, constructed features that prevent or reduce the discharge of pollutants. Structural controls include, but are not limited to, sedimentation/detention ponds; ve-

locity dissipation devices such as rock berms, vegetated berms, and buffers; and silt fencing.

(19) ~~[(18)]~~ Tertiary containment--A containment method by which an additional wall or barrier is installed outside of the secondary storage vessel or other secondary barrier in a manner designed to prevent a release from migrating beyond the tertiary wall or barrier before the release can be detected.

(20) ~~[(19)]~~ Water body--Any navigable watercourse, river, stream, or lake within a ~~the~~ water quality protection area.

(21) ~~[(20)]~~ Water quality protection areas ~~[area]~~--

(A) The portion of the Brazos River and its contributing watershed ~~[within Palo Pinto and Parker Counties, Texas], located downstream of [from] the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, and extending to the county line between Parker and Hood Counties, Texas; and~~

(B) the South Llano River and its contributing watershed in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction.

§311.72. *Applicability.*

(a) This subchapter applies to a pilot program regulating quarrying ~~[within the water quality protection area designated by this subchapter,] in the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway. This subchapter expires on September 1, 2027 [2025].~~

(b) This subchapter does not apply to:

(1) the construction or operation of a municipal solid waste facility regardless of whether the facility includes a pit or quarry that is associated with past quarrying;

(2) a quarry, or associated processing plant, ~~located in the John Graves Scenic Riverway~~ that since on or before January 1, 1994, has been in regular operation without cessation of operation for more than 30 consecutive days and under the same ownership;

(3) the construction or modification of associated equipment located on a quarry site or associated processing plant site ~~in the John Graves Scenic Riverway~~ described in paragraph (2) of this subsection;

(4) an activity, facility, or operation regulated under Natural Resources Code, Texas Surface Coal Mining and Reclamation Act, Chapter 134; or

(5) quarries mining clay and shale for use in manufacturing structural clay products.

(c) Operations or facilities to which this subchapter does not apply under subsection (b) of this section, must maintain adequate documentation on site sufficient to demonstrate their exclusions.

(1) Documentation demonstrating ownership includes, but is not limited to: deeds, property tax receipts, leases, or insurance records.

(2) Documentation demonstrating continuous operation without cessation of operation for more than 30 consecutive days beginning on or before January 1, 1994, includes, but is not limited to: production records, sales receipts, payroll records, sales tax records, income tax records, or financial statements/reports.

(3) Documentation demonstrating the construction or operation of a municipal solid waste facility, an activity, facility, or operation regulated under Natural Resources Code, Texas Surface Coal Mining and Reclamation Act, Chapter 134; or quarries mining clay and

shale for use in manufacturing structural clay products includes, but is not limited to: any permit issued by the commission, Railroad Commission of Texas, or United States Environmental Protection Agency.

§311.73. *Prohibitions.*

(a) The construction or operation of any new quarry, or the expansion of any existing quarry, within 200 feet of any water body located within a water quality protection area ~~[in the John Graves Scenic Riverway]~~ is prohibited.

(b) Unless authorized under this subchapter, the construction or operation of any new quarry, or the expansion of an existing quarry, located between 200 feet and 1,500 feet of any water body located within a water quality protection area ~~[in the John Graves Scenic Riverway]~~ is prohibited.

§311.74. *Authorization.*

(a) Any responsible party shall seek and obtain a permit subject to the requirements of Chapters 205 and 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits).

(b) ~~Based on the location of a given quarry, those quarries located within a water quality protection area, must comply with additional requirements imposed by this subchapter on its discharges. [The following additional requirements imposed through this subchapter for discharges from quarries located within water quality protection area in the John Graves Scenic Riverway are based on the location of the quarry.]~~

(1) In addition to the requirements of Chapters 205 and 305 of this title, a quarry located within a water quality protection area ~~[in the John Graves Scenic Riverway]~~ must meet the following requirements:

(A) §311.75(1) of this title (relating to Permit Application Requirements);

(B) §311.79 of this title (relating to Performance Criteria ~~[for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]~~); and

(C) §311.81(a) of this title (relating to Financial Responsibility ~~[for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]~~).

(2) In addition to the requirements of Chapters 205 and 305 of this title and paragraph (1) of this subsection, any quarry located within the 100-year floodplain or within one mile of a water body within a water quality protection area ~~[in the John Graves Scenic Riverway]~~ must obtain an individual permit.

(3) In addition to the requirements of Chapters 205 and 305 of this title and paragraphs (1) and (2) of this subsection, all quarries located within 200 feet to 1,500 feet of a water body within a water quality protection area ~~[in the John Graves Scenic Riverway]~~, and subject to the prohibition under §311.73(b) of this title (relating to Prohibitions), must meet the following requirements:

(A) §311.75(2) of this title;

(B) §311.80 of this title (relating to Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body ~~[Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]~~); and

(C) §311.81(b) of this title.

(4) For any quarry subject to the provisions of paragraph (2) of this subsection, a part of which is also located outside of the 100-year floodplain of, or beyond one mile from, a water body, the

requirements of paragraph (2) of this subsection are applicable to the entire quarry. The executive director may waive, modify, or otherwise adjust these requirements for that portion of the quarry located outside of the 100-year floodplain of, or beyond one mile from, a water body.

(5) For any quarry subject to the provisions of paragraph (3) of this subsection, a part of which is also located more than 1,500 feet from a water body, the requirements of paragraph (3) of this subsection will be applicable to the entire quarry. The executive director may waive, modify, or otherwise adjust these requirements for that portion of the quarry located more than 1,500 feet from a water body.

§311.75. Permit Application Requirements.

Any responsible party who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions in Chapters 205 and 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits). Quarries located in a water quality protection area [~~the John Graves Seenie Riverway~~] must submit additional information based on the location of the quarry.

(1) All quarries [A quarry] located within a water quality protection area [~~in the John Graves Seenie Riverway~~] must submit the following:

(A) a Restoration Plan as outlined in §311.76 of this title (relating to Restoration Plan); and

(B) evidence of sufficiently funded bonding or proof of financial resources to mitigate, remediate, and correct any potential future effects on a water body by an unauthorized discharge to a water body in an amount no less than that specified in §311.81(a) of this title (relating to Financial Responsibility [~~for Quarries Located Within a Water Quality Protection Area in the John Graves Seenie Riverway~~]).

(2) In addition to the permit application requirements specified in paragraph (1) of this section, all applications for quarries located within 200 feet to 1,500 feet of any water body within a water quality protection area [~~the John Graves Seenie Riverway~~] must include:

(A) a Technical Demonstration as outlined in §311.77 of this title (relating to Technical Demonstration); and

(B) a Reclamation Plan as outlined in §311.78 of this title (relating to Reclamation Plan).

(3) In addition to the permit application requirements in paragraphs (1) and (2) of this section, the executive director may require any additional information deemed appropriate and necessary to demonstrate compliance with the provisions of Texas Water Code, Chapter 26, Subchapter M or this subchapter.

§311.77. Technical Demonstration.

(a) The Technical Demonstration must include, at a minimum:

(1) a time schedule for the proposed quarry from initiation to termination of operations, including reclamation;

(2) a detailed description of the type of quarrying to be conducted, including the processes/methods employed (e.g., pit mining where blasting is employed);

(3) a geological description of the quarry area, including a detailed description of the material deposit: type, geographical extent, depth, and volume; and a description of the general area geology;

(4) identification and a detailed description of any other operations on site, including raw-material processing and/or secondary products (e.g., cement) processing;

(5) identification and a detailed description of type, character, and volume of wastewater and storm water generated on site;

(6) a topographic map, at a scale appropriate to represent the quarry operation and all of the following within the boundaries of the quarry:

(A) waterbodies;

(B) existing and proposed roads including quarry access roads;

(C) existing and proposed railroads;

(D) the 100-year floodplain boundaries, if applicable;

(E) structures (e.g., office buildings);

(F) the location of all known wells including, but not limited to, water wells, oil wells, and unplugged and abandoned wells;

(G) active, post, and reclaimed quarrying areas;

(H) buffer areas;

(I) raw material, intermediate material, final product, waste product, byproduct, and/or ancillary material storage and processing areas;

(J) chemical and fuel storage areas;

(K) vehicle/equipment maintenance, cleaning, and fueling areas;

(L) vehicle/equipment loading and unloading areas;

(M) baghouses and other air treatment units exposed to precipitation; and

(N) waste disposal areas;

(7) a Surface Water Drainage and Water Accumulation Plan. The Surface Water Drainage and Water Accumulation Plan must be designed to prevent damage to fish, wildlife, and fish/wildlife habitat from erosion, siltation, and runoff from quarry operations. The Surface Water Drainage and Water Accumulation Plan must, at a minimum:

(A) describe the use and monitoring of structural controls and best management practices as identified in paragraph (8) of this subsection designed to control erosion, siltation, and runoff; and

(B) provide a topographic map, at a scale appropriate to represent the quarry operation and all of the following within the boundaries of the quarry:

(i) the location of each process wastewater and/or storm water outfall;

(ii) an outline of the drainage area that contributes storm water to each outfall;

(iii) treatment, detention, and water storage tanks and ponds;

(iv) structural controls for managing storm water and/or process wastewater; and

(v) physical features of the site that would influence storm water runoff or contribute a dry weather flow; and

(8) a Best Available Technology Evaluation. The Best Available Technology Evaluation assists staff in reviewing and determining the best available technology designed to control erosion, siltation, and runoff from the quarry to minimize disturbance and adverse effects to fish, wildlife, and related environmental resources.

Where practical, the Best Available Technology Evaluation must assist staff in reviewing and determining best available technology designed to enhance fish, wildlife, and related environmental resources.

(A) The Best Available Technology Evaluation must assess the use of structural controls and best management practices.

(B) The Best Available Technology Evaluation must evaluate performance criteria outlined in §311.79 and §311.80 of this title (relating to Performance Criteria [~~for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway~~] and Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body [~~Located Within a Water Quality Protection Area in the John Graves Scenic Riverway~~]).

(C) Structural control design and construction must be certified by a licensed Texas professional engineer. Design and construction plans/specifications must be maintained on site and made available at the request of the executive director; and

(9) a procedure and schedule for reviewing the Technical Demonstration for consistency with quarry operations and site conditions and effectiveness in controlling erosion, siltation, and runoff.

(b) Certification of the Technical Demonstration must be provided, within the appropriate area or discipline, by a licensed Texas professional engineer or a licensed Texas professional geoscientist. Components of the Technical Demonstration may be independently certified, as appropriate.

§311.79. Performance Criteria [~~for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway~~].

The following performance criteria are applicable to all quarries located within a water quality protection area [~~in the John Graves Scenic Riverway~~].

(1) Discharges from quarries shall meet the following effluent limitations.

Figure: 30 TAC §311.79(1) (No change.)

(2) Discharges from quarries resulting from a rainfall event greater than the 25-year, 24-hour rainfall event are not subject to effluent limitations in paragraph (1) of this section.

(3) Discharges from quarries shall be monitored as follows.

Figure: 30 TAC §311.79(3) (No change.)

(4) Results of analysis for monitoring conducted as specified in §311.75(3) of this title (relating to Permit Application Requirements) shall be submitted monthly on approved self-report forms. Monitoring and reporting records, including strip charts and records of calibration and maintenance, shall be retained on site, or shall be readily available for review by a commission representative for a period of three years from the date of the record or sample, measurement, or report.

(5) The permittee shall install a permanent rain gauge at the plant site and keep daily records of rainfall and the resulting flow. Monitoring records shall be retained on site, or shall be readily available for review by a commission representative for a period of three years from the date of the record.

§311.80. Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body [~~Located Within a Water Quality Protection Area in the John Graves Scenic Riverway~~].

Authorizations to discharge from quarries located between 200 feet and 1,500 feet of a water body within a water quality protection area [~~in the John Graves Scenic Riverway~~] require the permittee to satisfy the following performance criteria. An evaluation of these performance criteria

must be incorporated into the Technical Demonstration, as required in §311.77 of this title (relating to Technical Demonstration).

(1) The down-gradient perimeter of the quarry must include a final control structure to manage the discharge of wastewater and/or storm water. The final control structure must be designed and constructed as follows.

(A) Certification of the final control structure design and construction must be provided by a licensed Texas professional engineer. Design and construction plans and specifications must be maintained on site and made available at the request of the executive director.

(B) The final control structure side slopes must not exceed a gradient of 1:3 (33%).

(C) The final control structure must be designed to impound, at minimum, the volume of water resulting from a 25-year, 24-hour rainfall event for the final control structure drainage area.

(D) The final control structures must be properly stabilized (via use of vegetation, riprap, and/or other acceptable technique) to prevent the final control structure from being a source of pollution and/or to prevent structural failure.

(E) The final control structure must be inspected once every 14 calendar days and within 24 hours of any rainfall event totaling 0.5 inches or greater. Where an inspection identifies failure and/or problems with the final control structure, corrections must be made within seven calendar days of the inspection. Records of these inspections and any site stabilizations must be maintained on site for a period of three years and made available to the executive director, upon request.

(F) A minimum 200-foot vegetative buffer must be maintained between the final control structure and any water body.

(2) All treatment, detention, and water storage tanks and ponds must be operated to maintain a minimum freeboard of two feet.

(3) A permanent depth marker shall be installed and maintained on all treatment, detention, and water storage tanks and ponds. The depth marker shall identify the volume required for the design rainfall event, as specified in paragraph (1)(C) of this section, and freeboard.

(4) The quarry operation must demonstrate compliance with all the requirements of 36 Code of Federal Regulations Part 800 (Protection of Historic Properties) and 9 Texas Natural Resources Code, Chapter 191 (Antiquities Code).

(5) The quarry operation must not have a detrimental effect on any federal endangered/threatened, aquatic/aquatic-dependent species/proposed species; or their critical habitat.

(6) Waste management units must be located a minimum horizontal distance from water wells, in accordance with 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), or where those regulations do not apply, the minimum distance to a water well must be 500 feet.

(7) Secondary containment of chemical and fuel storage is required. Where quarry operations overlay aquifer and/or aquifer recharge areas and sufficient confining layers do not exist to preclude contamination of groundwater, tertiary containment is required for all chemical and fuel storage.

(8) Quarry operations must not be located on natural hazard land, areas subject to frequent flooding, or in areas of unstable geology.

§311.81. Financial Responsibility [for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway].

(a) An owner or operator of a quarry located within a water quality protection area [~~in the John Graves Scenic Riverway~~] shall establish and maintain financial assurance for restoration in accordance with Chapter 37, Subchapter W of this title (relating to Financial Assurance for Quarries). The amount of financial assurance must be no less than the amount determined by the executive director as sufficient to meet the requirements of the Restoration Plan in §311.76(a)(8) of this title (relating to Restoration Plan).

(b) An owner or operator of a quarry located between 200 feet and 1,500 feet of a water body within a water quality protection area [~~in the John Graves Scenic Riverway~~] shall establish and maintain financial assurance for reclamation in accordance with Chapter 37, Subchapter W of this title. The amount of financial assurance must be no less than the amount determined by the executive director as sufficient to meet the requirements of the Reclamation Plan in §311.78(a)(2) of this title (relating to Reclamation Plan).

§311.82. Existing Quarries.

(a) Existing quarries required to seek and obtain authorization in accordance with §311.74(b)(1) of this title (relating to Authorization), must submit a Notice of Intent as required by a commission-issued general permit. Subject to the provisions of this subsection and maintaining compliance, existing quarries subject to the requirements of §311.74(b)(1) of this title that have authorization under a Texas Pollutant Discharge Elimination System Permit or Texas Land Application Permit issued under Chapters 205 or [~~and~~] 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits), may continue to operate under the terms of that permit until the commission issues or denies authorization under this subchapter.

(b) Existing quarries located in the Coke Stevenson Scenic Riverway required to seek and obtain authorization in accordance with

§311.74(b)(2) of this title must submit an individual Texas Pollutant Discharge Elimination System or Texas Land Application Permit application not later than 180 days following the effective date of this subchapter. Subject to the provisions of this subsection and maintaining compliance, existing quarries subject to the requirements of §311.74(b)(2) of this title that have authorization under a Texas Pollutant Discharge Elimination System Permit or Texas Land Application Permit issued under Chapters 205 or [~~and~~] 305 of this title, may continue to operate under the terms of that permit until the commission issues or denies authorization under this subchapter.

(c) Existing quarries located in the Coke Stevenson Scenic Riverway required to seek and obtain authorization in accordance with §311.74(b)(3) of this title must submit an individual Texas Pollutant Discharge Elimination System or Texas Land Application Permit application not later than 180 days following the effective date of this subchapter. An existing quarry may not operate until the commission issues authorization under 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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