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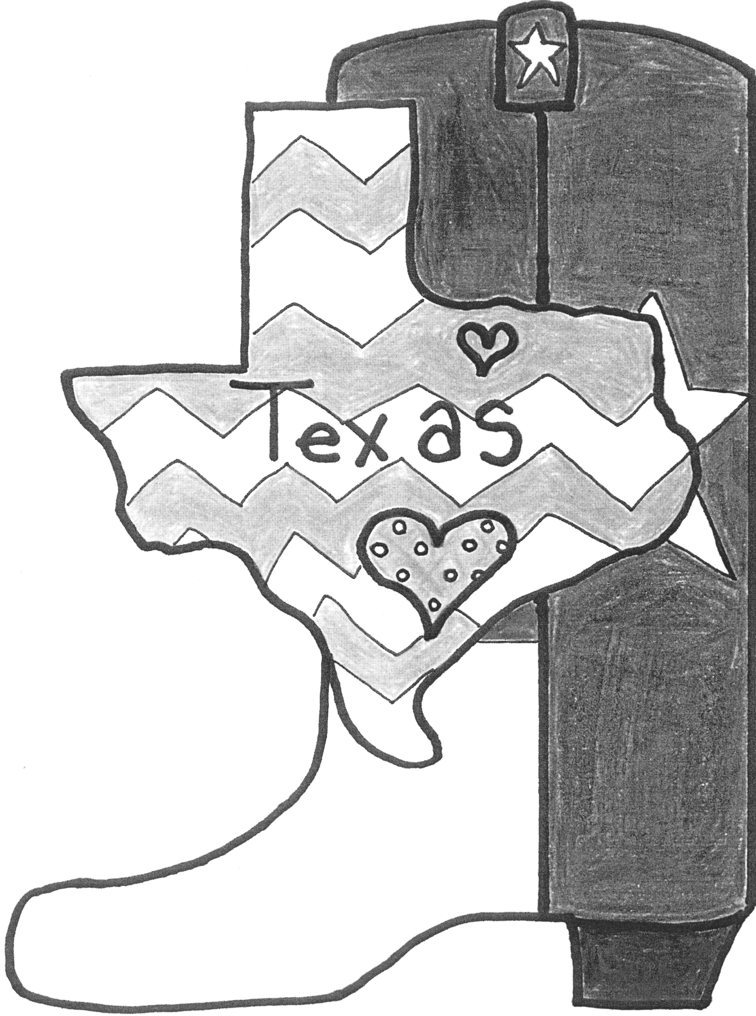

Texas

THE GOVERNOR

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

Appointments

Appointments for October 16, 2023

Appointed to the Texas 1836 Project Advisory Committee for a term to expire September 1, 2025, Gregory W. "Greg" Sindelar of Austin, Texas (replacing Kevin D. Roberts, Ph.D. of Liberty Hill, whose term expired).

Appointments for October 17, 2023

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2027, Lori Brown-Duncan of Hutto, Texas (replacing Jennifer L. "Jen" Stratton of Austin, whose term expired).

Appointed to the Texas Early Learning Council for a term to expire at the pleasure of the Governor, Beatris M. Mata of Odessa, Texas (replacing Travis D. Armstrong, E.D. of Graham).

Appointed to the Texas Early Learning Council for a term to expire at the pleasure of the Governor, Jennifer A. Stockemer of Prosper, Texas (replacing Jerletha S. McDonald of Arlington).

Appointed to the Texas Early Learning Council for a term to expire at the pleasure of the Governor, Meghan E. Young of Austin, Texas (replacing Dana L. McGrath of Austin).

Appointments for October 18, 2023

Appointed to the Southwestern States Water Commission for a term to expire February 1, 2027, Charles Perry of Lubbock, Texas (Senator Perry is being reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2025, Michelle L. Harper of San Marcos, Texas (replacing Mark A. Dunn of Lufkin, who resigned).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2029, Jesse C. Gatewood of Corpus Christi, Texas (Mr. Gatewood is being reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2029, John L. Martin of San Antonio, Texas (Mr. Martin is being reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2029, Richard C. "Rick" Rhodes of Austin, Texas (Mr. Rhodes is being reappointed).

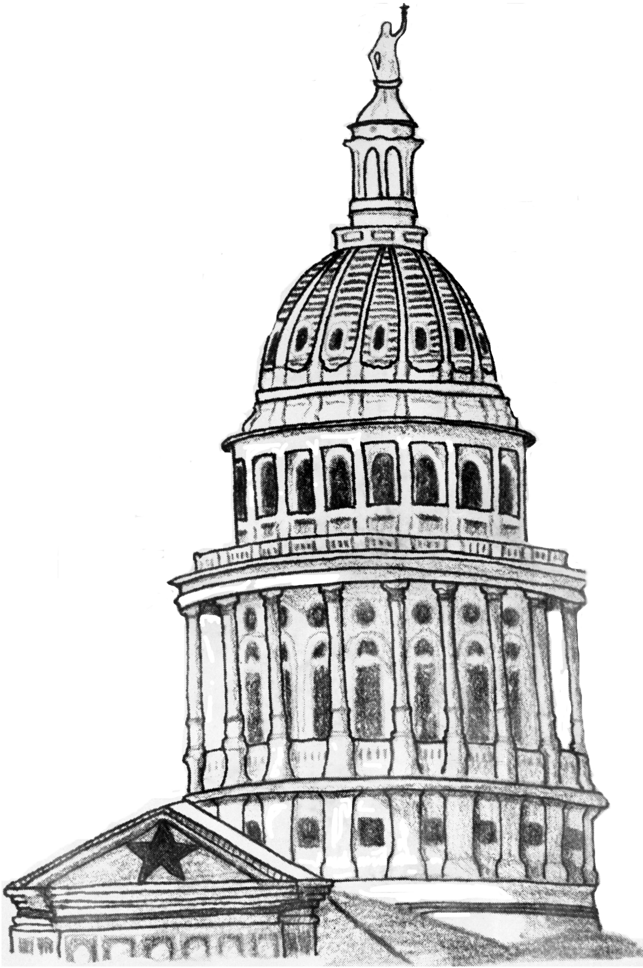
Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2029, Johnny R. Vahalik, Ed.D. of San Antonio, Texas (replacing Eliu M. "Michael" Hinojosa, Ed.D. of Dallas, whose term expired).

Appointed to the Chronic Kidney Disease Task Force for a term to expire at the pleasure of the Governor, John R. Guerra, D.O. of Mission, Texas (replacing Roberto Collazo-Maldonado, M.D. of Irving).

Appointed to the Chronic Kidney Disease Task Force for a term to expire at the pleasure of the Governor, Shweta S. Shah, M.D. of Sugar Land, Texas (replacing Bruce A. Brockway, M.D. of San Antonio).

Greg Abbott, Governor

TRD-202303862



The Attorney General

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

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

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

Requests for Opinions

RQ-0516-KP

Requestor:

The Honorable John Fleming

Nacogdoches County Attorney

101 West Main Street, Room 230

Nacogdoches, Texas 75961

Re: Calculation of the amount "not to exceed one-fourth of one percent" in Texas Special District Code section 1069.211, governing the Nacogdoches County Hospital District's allocation of its sales and use tax revenue for economic development (RQ-0516-KP)

Briefs requested by November 15, 2023

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

TRD-202303854
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: October 17, 2023

Opinions

Opinion No. KP-0445

The Honorable Phil Sorrells

Tarrant County Criminal District Attorney

401 West Belknap

Fort Worth, Texas 76196

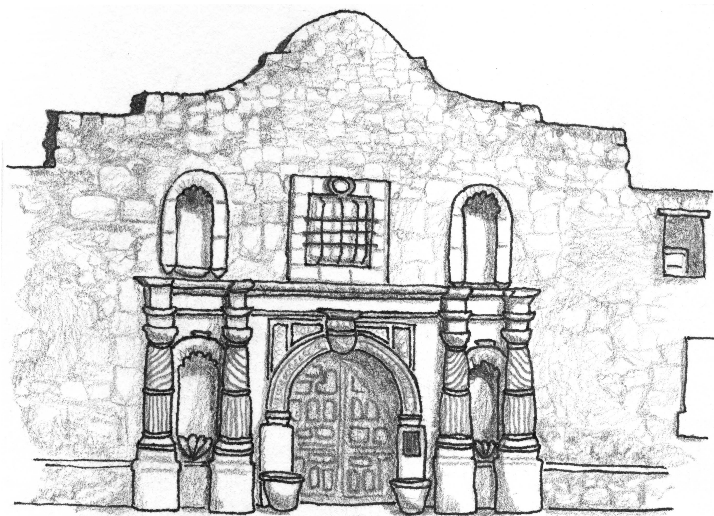
Re: Application of Local Government Code section 120.002 to a county's transfer of a deputy constable from the constable's office to other county departments (RQ-0505-KP)

S U M M A R Y

For counties of the requisite population, Local Government Code section 120.002 generally prohibits a county commissioners court from adopting a budget for a fiscal year that reduces the funding or staffing or reallocates resources of law enforcement agencies without voter approval. A constable's office is a law enforcement agency, and likely one with duties that constitute policing, criminal investigation, or answering calls for service within the scope of subsection 120.002(a)(1). A threshold question whether those duties are the constable's office's primary responsibility is a fact question we cannot address in an Attorney General opinion. That question will ultimately be resolved through the complaint procedures set out in sections 120.006 and 120.007 and judicial review.

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

TRD-202303853
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: October 17, 2023



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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 4. SCHOOL LIBRARY PROGRAMS

SUBCHAPTER A. STANDARDS AND GUIDELINES

13 TAC §4.2

The Texas State Library and Archives Commission (commission) proposes new §4.2, School Library Programs: Collection Development Standards.

BACKGROUND. House Bill 900, 88th R.S. (2023) (HB 900) amended Education Code, §33.021, to require the commission, with approval by majority vote of the State Board of Education (SBOE), to adopt standards for school library collection development that a school district shall adhere to in developing or implementing the district's library collection development policies. HB 900 specifies that the standards must be reviewed and updated at least once every five years and includes certain requirements that must be included in the standards. Section 33.021 also requires the commission to adopt voluntary standards for school library services, other than collection development standards, that a school district shall consider in developing, implementing, or expanding library services. The voluntary standards are codified in §4.1 (relating to School Library Programs: Standards and Guidelines for Texas). Proposed new §4.2 is necessary to implement HB 900.

School library programs provide vital learning opportunities and support for students and staff. Grounded in the nation's commitment to ensure an informed citizenry, school libraries foster an essential exchange of ideas and support reading skills and engagement, the basis for almost all learning activities. The work of administering school library programs and curating collections of resources for the specific K-12 environment requires the professional expertise of librarians along with consistent practices that meet both state requirements and address the specific needs of the local student population they serve. School library materials are instructional resources that broadly support curriculum but are not individually required. Students may voluntarily select reading materials. The proposed rules ensure school libraries benefit from sound collection development policies that support parental involvement.

The commission developed these standards as a baseline upon which school districts may build. These standards establish the essential elements of an effective policy for building and maintaining school library collections and allow for further specification and guidelines by local educational agencies. These standards were also developed in recognition that resources vary widely among school districts, and some districts may lack resources to fully implement every aspect of the standards. To accommodate the variations in local capacity, the rules provide several means to achieve a successful collection development policy that meets the requirements of HB 900.

ANALYSIS OF PROPOSED NEW SECTIONS. Proposed new §4.2 establishes the mandatory collection development standards. The SBOE Committee on Instruction considered these standards at its August 30, 2023, meeting and provided feedback. Staff considered this feedback and made changes to the standards based on that feedback.

Proposed §4.2(a) would require each public school district board of trustees or governing body to approve and institute a collection development policy that describes the processes and standards by which a school library acquires, maintains, and withdraws materials.

Proposed §4.2(b) provides that school library collections should include a range of materials that are age appropriate and suitable to the campus and students the school library serves, offering guidance on the overall goals of a school library's collection. Under this guidance, a collection should enrich and support the Texas Essential Knowledge and Skills (TEKS), incorporated into the rule by reference to the statute, Education Code, §28.002. By referencing the statute, future amendments to the TEKS will be automatically incorporated into the rule. Additional guidance for collections under the proposed rule includes fostering growth and an enjoyment of reading in broad areas and representation of Texas and the people who live here.

Proposed §4.2(c) sets forth multiple requirements for a school library collection development policy, including the requirements stated in HB 900.

Proposed §4.2(d) describes "evaluation of materials" as used within the proposed new rule to guide librarians in the process. Under the proposed rule, evaluation would include consideration of the factors proposed to guide library collections generally in subsection (b), which includes that the materials are age appropriate and suitable to the campus and students the library serves, local priorities and school district standards, and at least two additional factors, such as recommendations from parents, guardians, and local community members; consultation with educators and library staff; an extensive review of the text; the context of a work; or authoritative reviews. The commission recognizes the importance of authoritative reviews to aid district staff and librarians in evaluating materials for possible inclusion in a collection.

Proposed §4.2(e) describes "reconsideration process" as referenced in the proposed new rule. The rule would require that a reconsideration process ensure that any parent or legal guardian

of a student enrolled in the district or current school district employee may request the reconsideration of a specific item in their school district's library catalog. The rule would further require that a reconsideration process establish a uniform procedure an individual must follow when filing a request. The process should also include a reasonable timeframe, approved by the school board, for the review and final decision by a committee or other authority charged with conducting the review and making a decision. and establish a uniform process approved by the school district board of trustees or governing body for the treatment of any library material undergoing reconsideration. Lastly, the process should include a review and appeal process that is approved by the school district and provide that if an item has gone through the reconsideration process and remains in the collection, it may not be reconsidered again within one year of final decision.

Proposed §4.2(f) encourages a school district to ensure a State Board for Educator Certification (SBEC) certified professional librarian or other dedicated professional library staff trained on proper collection development standards is responsible for the selection and acquisition of library materials. Proposed §4.2(g) requires a school district to develop collection assessment and evaluation procedures to periodically appraise the quality of library materials in the school library to ensure the library's goals, objectives, and information needs are serving its community. Proposed §4.2(h) recommends school districts review their collection development policies at least every two years, a practice that will ensure the policy remains up-to-date and consistent with current district priorities. Proposed §4.2(i) allows school districts to add procedures to the minimum requirements to satisfy local needs so long as the added procedures do not conflict with the minimum requirements. The commission recognizes that school districts across the state have different goals, priorities, and resources and proposes these rules as a baseline of minimum requirements upon which school districts are encouraged to build. Lastly, proposed §4.2(j) provides that school districts are responsible for ensuring their school libraries implement and adhere to these collection development standards. The commission has no enforcement authority with respect to school libraries.

FISCAL IMPACT. Sarah Karnes, Director, Library Development and Networking, has determined that for each of the first five years the proposed new section is in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the rule, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Karnes has determined that for each of the first five years the proposed new section is in effect, the anticipated public benefit will be increased transparency in a public school library's collection development policies and processes and consistency across the state. There are no anticipated economic costs to persons required to comply with the proposed new section.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed new section do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Government Code, §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed new section will be in effect, the commission has determined the following:

1. The proposed new section will not create or eliminate a government program;

2. Implementation of the proposed new section will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed new section will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed new section will not require an increase or decrease in fees paid to the commission;

5. The proposal will create a new regulation as required by HB 900;

6. The proposal will not expand or repeal an existing regulation;

7. The proposed new section will not increase the number of individuals subject to the proposal's applicability; and

8. The proposed new section will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to their property that would otherwise exist in the absence of government action. Therefore, the proposed new section does not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed new section may be submitted to Sarah Karnes, Director, Library Development and Networking Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The new section is proposed under Education Code, §33.021, which requires the commission to adopt standards for school library collection development that a school district shall adhere to in developing or implementing the district's library collection development policies.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§4.2. School Library Programs: Collection Development Standards.

(a) Each Texas public school district board or governing body must approve and institute a collection development policy that describes the processes and standards by which a school library acquires, maintains, and withdraws materials.

(b) A school library collection should include materials that are age appropriate and suitable to the campus and students it serves and include a range of materials. A school library collection should:

(1) Enrich and support the Texas Essential Knowledge and Skills (TEKS) and curriculum established by Education Code, §28.002 (relating to Required Curriculum), while taking into consideration students' varied interests, abilities, and learning styles;

(2) Foster growth in factual knowledge, literary appreciation, aesthetic values, and societal standards;

(3) Encourage the enjoyment of reading to foster thinking skills, personal learning, and encourage discussion based on rational analysis; and

(4) Represent the ethnic, religious, and cultural groups of the state and their contribution to Texas, the nation, and the world.

(c) A school library collection development policy must:

(1) Describe the purpose and collection development goals;

(2) Designate the responsibility for collection development;

(3) Establish procedures for the evaluation, selection, acquisition, reconsideration, and deselection of materials;

(4) Consider the distinct age groups, grade levels, and possible access to materials by all students within a campus;

(5) Include a process to determine and administer student access to material rated by library material vendors as "sexually relevant" as defined by Education Code, §35.001 consistent with any policies adopted by the Texas Education Agency and local school board requirements;

(6) Include an access plan that, at a minimum, allows efficient parental access to the school district's library and online library catalog; and

(7) Comply with all applicable local, state, and federal laws and regulations. Specifically, a collection development policy must:

(A) Recognize that parents are the primary decision makers regarding their student's access to library material;

(B) Prohibit the possession, acquisition, and purchase of harmful material, as defined by Penal Code, §43.24, library material rated sexually explicit material by the selling library material vendor under Education Code, §35.002, or library material that is pervasively vulgar or educationally unsuitable as referenced in Pico v. Board of Education, 457 U.S. 853 (1982);

(C) Recognize that obscene content is not protected by the First Amendment to the United States Constitution;

(D) Apply to all library materials available for use or display, including material contained in school libraries, classroom libraries, and online catalogs;

(E) Ensure schools provide library catalog transparency, including, but not limited to:

(i) Online catalogs that are publicly available; and

(ii) Information about titles and how and where material can be accessed;

(F) Recommend schools communicate effectively with parents regarding collection development, including, but not limited to:

(i) Access to district/campus policies relating to school libraries;

(ii) Consistent access to library resources; and

(iii) Opportunities for students, parents, educators, and community members to provide feedback on library materials and services; and

(G) Prohibit the removal of material based solely on the ideas contained in the material or the personal background of the author of the material or characters in the material.

(d) Evaluation of materials as referenced in this section includes a consideration of the factors described in subsection (b), consideration of local priorities and school district standards, and at least two of the following:

(1) Consideration of recommendations from parents, guardians, and local community members;

(2) Consultation with the school district's educators and library staff and/or consultation with library staff of similarly situated school districts and their collections and collection development policies;

(3) An extensive review of the text of item;

(4) The context of a work, including consideration of the contextual characteristics, overall fit within existing school library collection, and potential support of the school curriculum; or

(5) Consideration of authoritative reviews of the items from sources such as professional journals in library science, recognized professional education or content journals with book reviews, national and state award recognition lists, library science field experts, and highly acclaimed author and literacy expert recommendations.

(e) A reconsideration process as referenced in this section should ensure that any parent or legal guardian of a student currently enrolled in the school district or employee of the school district may request the reconsideration of a specific item in their school district's library catalog. A reconsideration process should:

(1) Establish a uniform procedure an individual must follow when filing a request;

(2) Require a school district to include a form to request a reconsideration of an item on the school's public internet website if the school has a public internet website or ensure the form is publicly available at a school district administrative office;

(3) Require that the completed request for reconsideration form be distributed to the campus administrator, school librarian, and school district board of trustees or governing body at the time of submission;

(4) Include a reasonable timeframe, approved by the school board, for the review and final decision by a committee or authority charged with the review. A reasonable timeframe should take into account:

(A) The time necessary to convene a committee to meet and review the item;

(B) Flexibility that may be necessary depending on the number of pending reconsideration requests; and

(C) Other factors relevant to a fair and consistent process, including informing the requester on the progress of the review in a timely fashion;

(5) Establish a uniform process approved by the school district board of trustees or governing body for the treatment of any library material undergoing reconsideration;

(6) Include a review and appeal process approved by the school district board of trustees or governing body; and

(7) Provide that if an item has gone through the reconsideration process and remains in the collection, it may not be reconsidered within one year of final decision.

(f) School districts should ensure a professional librarian certified by the State Board for Educator Certification or other dedicated professional library staff trained on proper collection development standards is responsible for the selection and acquisition of library materials.

(g) A school district must develop collection assessment and evaluation procedures to periodically appraise the quality of library materials in the school library to ensure the library's goals, objectives, and information needs are serving its community and should stipulate the means to weed or update the collection.

(h) A school district's collection development policy should be reviewed at least every two years and updated as necessary.

(i) School districts may add procedures to these minimum requirements to satisfy local needs so long as the added procedures do not conflict with these minimum requirements.

(j) School districts are responsible for ensuring their school libraries implement and adhere to these collection development standards.

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

Filed with the Office of the Secretary of State on October 16, 2023.

TRD-202303843
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 463-5460

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

The Public Utility Commission of Texas (commission) proposes the repeal of §25.173 relating to Goal for Renewable Energy and proposes new §25.173 relating to Renewable Energy Credit Program. The proposed new rule will establish a temporary solar only renewable energy credit (REC) trading program, as required by the uncodified requirement in section 53 of House Bill (HB) 1500 enacted by the 88th Texas Legislature (R.S.). The proposed new rule will also provide direction to the Electric Reliability Council of Texas (ERCOT) in maintaining an accreditation and banking system to award and track voluntary RECs generated by eligible facilities as required by the Public Utility Regulatory Act (PURA) §39.9113.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed new rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program; the proposed new rule will reestablish a modified version of an existing ERCOT program as directly required by statute;

(2) implementation of the proposed rule will not require the cre `ation of new employee positions and will not require the elimination of existing employee positions;

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

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

(5) the proposed rule will not, in effect, create a new regulation, because it is replacing a similar regulation;

(6) the proposed rules will repeal an existing regulation, but it will replace that regulation with a similar regulation;

(7) the same number of individuals will be subject to the proposed rules' applicability as were subject to the applicability of the rule it is being proposed to replace; and

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

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Public Benefits

Zachary Dollar, Market Economist, Market Analysis Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Dollar has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the alignment of the REC program with the requirements of PURA. The proposed rule will also temporarily extend incentives for the generation of solar energy. The proposed rule will also enable the continued accreditation and marketing of renewable energy credits and the verification of green products. There will be no adverse economic effect on small businesses, micro-businesses or rural communities as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with these sections as proposed. Any economic costs would vary from person to person and are difficult to ascertain. However, Mr. Dollar believes the benefits accruing from implementation of the proposed sections will outweigh these costs.

Mr. Dollar has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment

impact statement is required under Administrative Procedure Act §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by November 6, 2023. Interested persons should contact David Smeltzer at david.smeltzer@puc.texas.gov prior to requesting a public hearing to discuss the purpose and scope of a public hearing on a proposed rule. If a hearing is scheduled, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by November 6, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. All comments should refer to Project Number 55323.

16 TAC §25.173

Statutory Authority

The repeal is proposed under the following provisions of PURA: §14.001, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.151, which gives the commission complete authority to oversee the independent organization's operations; and §39.9113, which requires the independent organization certified under §39.151 for the ERCOT power region to maintain an accreditation and banking system to award and track voluntary renewable energy credits generated by eligible facilities.

The repeal is proposed under the provisions of HB 1500 §53 from the 88th Texas Legislature (R. S.) which directs the commission to adopt a program, effective until September 1, 2025, to apply repealed PURA §39.904 as it existed immediately before the section's effective repeal date only to renewable energy technologies that exclusively rely on an energy source that is naturally regenerated over a short time and are derived directly from the sun.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.151, and 39.9113; and HB 1500 from the 88th Texas Legislature (R S.).

§25.173. Goal for Renewable Energy.

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

Filed with the Office of the Secretary of State on October 12, 2023.

TRD-202303800

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Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 936-7322

16 TAC §25.173

The new section is proposed under the provisions of HB 1500 §53 from the 88th Texas Legislature (R. S.) which directs the commission to adopt a program, effective until September 1, 2025, to apply repealed PURA §39.904 as it existed immediately before the section's effective repeal date only to renewable energy technologies that exclusively rely on an energy source that is naturally regenerated over a short time and are derived directly from the sun.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.151, and 39.9113; and HB 1500 from the 88th Texas Legislature (R S.).

§25.173. Renewable Energy Credit Program.

(a) Purpose. The purposes of this section are to:

(1) Establish a solar renewable portfolio standard program based on repealed PURA §39.904, and phase out this program by September 1, 2025, and

(2) Direct the independent organization certified under PURA §39.151 for the ERCOT region to administer a voluntary renewable energy credit (REC) accreditation program.

(b) Definitions.

(1) Compliance period--A 12-month compliance period beginning January 1, 2024, and ending December 31, 2024 (2024 compliance period), and a partial compliance period beginning January 1, 2025, and ending August 31, 2025 (2025 compliance period).

(2) Compliance premium--A premium awarded by the program administrator in conjunction with a renewable energy credit that is generated by a renewable energy source that meets the criteria of subsection (d) of this section. For the purpose of the renewable energy portfolio standard requirements, one compliance premium is equal to one solar renewable energy credit.

(3) Designated representative--A person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credits trading program.

(4) Existing facilities--Renewable energy generators placed in service before September 1, 1999.

(5) Generation offset technology--Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.

(6) Microgenerator--A customer who owns one or more eligible renewable energy generating units with a rated capacity of less than 1MW operating on the customer's side of the utility meter.

(7) New facilities--Renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable

facility achieved through repowering activities undertaken on or after September 1, 1999.

(8) Off-grid generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(9) Opt-out notice--Written notice submitted to the commission by a transmission-level voltage customer under PURA §39.904(m-1).

(10) Program administrator--The entity responsible for carrying out the administrative responsibilities related to the renewable energy credits accreditation and solar renewable energy credits trading programs as set forth in this section. In accordance with PURA §39.9113, the program administrator for the REC accreditation program is the independent organization certified under PURA §39.151 for the ERCOT region. The commission also appoints the independent organization certified under PURA §39.151 for the ERCOT region as the program administrator for the solar renewable energy credits trading program.

(11) REC aggregator--An entity managing the participation of two or more microgenerators in the REC trading program.

(12) REC offset (offset)--A REC offset represents one megawatt-hour (MWh) of renewable energy from an existing facility that is not eligible to earn renewable energy credits or compliance premiums.

(13) Renewable energy credit (REC)--A REC represents one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (d) of this section.

(14) Renewable energy credit account (REC account)--An account maintained by the program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs, solar RECs, or compliance premiums by a program participant.

(15) Renewable energy credits accreditation program (accreditation program)--The process of awarding, trading, tracking, and submitting RECs as a means of meeting the renewable energy requirements set out in subsection (f) of this section.

(16) Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(17) Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(18) Renewable portfolio standard (RPS)--The amount of capacity required to meet the requirements of PURA §39.904 under subsection (h) of this section.

(19) Repowered facility--An existing facility that has been modernized or upgraded to use renewable energy technology to produce electricity consistent with this rule.

(20) Retail entity--Municipally-owned utilities, generation and transmission cooperatives and distribution cooperatives that offer customer choice, retail electric providers (REPs), and investor-owned utilities that have not unbundled under PURA Chapter 39.

(21) Settlement period--The period following a compliance period in which the settlement process for that compliance period takes place as set forth in subsection (i) of this section.

(22) Small producer--A renewable resource that is less than ten megawatts (MW) in size.

(23) Solar renewable energy credit (solar REC)--A REC representing one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (d) of this section.

(24) Solar renewable energy credit trading program (trading program)--The process of awarding, trading, tracking, and submitting solar RECs or compliance premiums as a means of meeting the renewable energy requirements set out in subsection (d) of this section.

(25) Transmission-level voltage customer--A customer that receives electric service at 60 kilovolts (kV) or higher or that receives electric service directly through a utility-owned substation that is connected to the transmission network at 60 kV or higher.

(c) Certification of renewable energy facilities. The commission will certify all renewable facilities that will produce either REC offsets, RECs, solar RECs, or compliance premiums for sale in the trading and accreditation programs. To be awarded REC offsets, RECs, solar RECs, or compliance premiums, a power generator must complete the certification process described in this subsection. The program administrator must not award REC offsets, RECs, solar RECs, or compliance premiums for energy produced by a power generator before it has been certified by the commission.

(1) The designated representative of the generating facility must file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application must include the location, owner, technology, and rated capacity of the facility, and must demonstrate that the facility meets the resource eligibility criteria in subsection (d)(1)(A) of this section. Any subsequent changes to the information in the application must be filed with the commission within 30 days of such changes.

(2) No later than 30 days after the designated representative files the certification form with the commission, the commission will inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission will either certify the renewable facility as eligible to receive REC offsets, RECs, solar RECs, or compliance premiums or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended for such time as is necessary for commission action.

(3) Upon receiving notice of certification of new facilities, the program administrator will create a REC account for the designated representative of the renewable resource.

(4) The commission or program administrator may make on-site visits to any certified facility, and the commission will decertify any facility if it is not in compliance with the provisions of this subsection.

(5) A decertified renewable generator may not be awarded RECs or solar RECs. However, any RECs awarded by the program administrator and transferred to a retail entity prior to the decertification remain valid.

(d) Renewable energy credits, solar renewable energy credits, and compliance premiums.

(1) Renewable Energy Credits (RECs).

(A) Facilities eligible for producing RECs for the accreditation program. For a renewable facility to be eligible to produce RECs for the trading program it must be either a new facility, a small producer, or a repowered facility as defined in subsection (b) of this section and must also meet the requirements of this subsection.

(i) A renewable energy resource must not be ineligible under subparagraph (B) of this paragraph and must register under subsection (c) of this section.

(ii) For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 25.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis.

(iii) For a renewable energy technology that requires the use of fossil fuel that exceeds 2.0% of the total annual fuel input on a BTU or equivalent basis, RECs can only be earned on the renewable portion of the production. A renewable energy resource using a technology described by this clause must comply with the following requirements:

(I) A meter must be installed and periodic tests of the heat content of the fuel must be conducted to measure the amount of fossil fuel input on a British thermal unit (BTU) or equivalent basis that is used at the facility;

(II) The renewable energy resource must calculate the electricity generated by the unit in MWh, based on the BTUs (or equivalent) produced by the fossil fuel and the efficiency of the renewable energy resource, subtract the MWh generated with fossil fuel input from the total MWh of generation and report the renewable energy generated to the program administrator;

(III) The renewable energy resource must report the generation to the program administrator in the measurements, format, and frequency prescribed by the program administrator, which may include a description of the methodology for calculating the non-renewable energy produced by the resource; and

(IV) The renewable energy resource is subject to audit to verify the accuracy of the data submitted to the program administrator and compliance with this section, to be conducted by the program administrator or an independent third party as requested by the program administrator. If the program administrator requires a third party audit, the audit must be performed at the expense of the renewable energy resource.

(iv) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources before being metered can not be verified as delivered to Texas customers. A facility is not ineligible if the facility is a generation-offset, off-grid, or on-site distributed renewable facility and it otherwise meets the requirements of this subparagraph.

(v) For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.

(vi) For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production. Furthermore, the contribution toward statewide renewable capacity megawatt goals from such facilities must be equal to the fraction of the facility's annual MWh energy output from renewable fuel multiplied by the facility's nameplate MW capacity.

(vii) For repowered facilities, a facility is eligible to earn RECs on all renewable energy produced up to a capacity of 150 MW. A repowered facility with a capacity greater than 150 MW may earn RECs for the energy produced in proportion to 150 divided by nameplate capacity.

(B) Facilities not eligible for producing RECs for the accreditation program. A renewable facility is not eligible to produce RECs if it is:

(i) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or

(ii) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under subparagraph (A) of this paragraph.

(2) Solar Renewable Energy Credits.

(A) Facilities eligible for producing solar RECs and compliance premiums for the trading and accreditation programs. For a renewable facility to be eligible to produce solar RECs for the trading and accreditation programs it must be either a new facility, a small producer, or a repowered facility as defined in subsection (b) of this section and must also meet the requirements of this paragraph:

(i) A renewable energy resource must not be ineligible under subparagraph (B) of this paragraph and must register under subsection (c) of this section.

(ii) A facility must only use renewable energy technologies that exclusively rely on an energy source that is naturally regenerated, over a short time and derived directly from the sun.

(iii) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources before being metered can not be verified as delivered to Texas customers. A facility is not ineligible if the facility is a generation-offset, off-grid, or on-site distributed renewable facility and it otherwise meets the requirements of this subparagraph.

(iv) For repowered facilities, a facility is eligible to earn RECs on all renewable energy produced up to a capacity of 150 MW. A repowered facility with a capacity greater than 150 MW may earn RECs for the energy produced in proportion to 150 divided by nameplate capacity.

(B) Facilities not eligible for producing solar RECs and compliance premiums in the trading and accreditation programs. A renewable facility is not eligible to produce solar RECs if it is:

(i) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or

(ii) An existing facility that is not a small producer as defined in subsection (b) of this section or has not been repowered as permitted under this subsection

(3) Compliance Premiums. The trading program administrator will award compliance premiums to solar REC generators certified by the commission under subsection (c) of this section. A compliance premium is created in conjunction with a solar REC.

(A) For eligible solar technologies as set forth in paragraph (2)(A)(ii) of this subsection, one compliance premium will be awarded for each solar REC awarded for energy generated after January 1, 2024, ending December 31, 2024.

(B) Except as provided in this paragraph, the award, retirement, trade, and registration of compliance premiums must follow the requirements of paragraph (4) of this subsection, subsection (e), and (i) of this section.

(C) A compliance premium may be used by any entity toward its RPS requirement under subsection (e)(2) of this section.

(D) A compliance premium may not be used by any entity toward the RPS requirement after the 2024 compliance period.

(E) The program administrator must increase the statewide RPS requirement calculated for the 2025 compliance period under subsection (e)(2)(A) of this section by the number of compliance premiums retired during the previous compliance period.

(4) Production, transfer, and expiration of RECs and solar RECs. The production, transfer, and expiration of RECs and solar RECs must follow the requirements of this paragraph.

(A) The owner of a renewable resource will earn one REC or solar REC when a MWh is metered at that renewable resource. The program administrator will record the energy in metered MWh and credit the REC account of the renewable resource that generated the energy on a quarterly basis. Quarterly production must be rounded to the nearest whole MWh, with fractions of 0.5 MWh or greater rounded up.

(B) The transfer of RECs or solar RECs between parties is effective only when the transfer is recorded by the program administrator.

(C) The program administrator will require that RECs or solar RECs be adequately identified prior to recording a transfer and must issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information must be provided:

(i) identification of the parties;

(ii) REC or solar REC serial number, REC or solar REC issue date, and the renewable resource that produced the REC or solar REC;

(iii) the number of RECs or solar RECs to be transferred; and

(iv) the transaction date.

(D) A retail entity must surrender RECs or solar RECs to the program administrator for retirement from the market for a compliance period. The program administrator will document all REC or solar Rec retirements annually.

(E) On or after each April 1, the program administrator will retire RECs or solar RECs that have not been retired by retail entities and have reached the end of their compliance life.

(F) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of RECs or solar RECs are accurately recorded.

(G) All RECs or solar RECs will have a compliance life of three compliance periods, after which the program administrator will retire them from the accreditation program.

(H) Each REC or solar REC that is not used in the compliance period in which it was created may be banked and is valid for the next two compliance periods. For purposes of this subparagraph, calendar year 2023 counts as a single compliance period.

(e) Solar renewable energy credits trading program.

(1) Solar- RECs may be generated, transferred, and retired by renewable energy power generators certified under subsection (c) of this section, retail entities, and other market participants as set forth in subsection (d)(4) of this section.

(A) The program administrator will apportion an RPS requirement among all retail entities as a percentage of the retail sales of each retail entity as set forth in paragraph (2) of this subsection. Each retail entity is responsible for retiring sufficient RECs as set forth in paragraph (2) of this subsection and subsection (d)(4) of this section for the 2024 and 2025 compliance periods. The requirement to retire solar RECs to comply with this section becomes effective on the date a retail entity begins serving retail electric customers in Texas or, for an electric utility, as specified by law.

(B) A power generating company may participate in the trading program and may generate solar RECs and buy or sell solar RECs as set forth in subsection (d)(4) of this section.

(C) Solar RECs will be credited on an energy basis as set forth in subsection (d)(4) of this section.

(D) A municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (d)(2)(A) of this section may sell solar RECs generated by such a resource to retail entities as set forth in subsection (d)(4) of this section.

(E) Except where specifically stated, the provisions of this section apply uniformly to all participants in the trading program.

(F) The trading program ends after the end of the 2025 compliance period on September 1, 2025.

(2) Allocation of RPS requirement to retail entities. The program administrator must allocate RPS requirements among retail entities. Any renewable capacity that is retired before January 1, 2015, or any capacity shortfalls that arise due to purchases of solar RECs from out-of-state facilities must be replaced and incorporated into the allocation methodology set forth in this subsection. Any changes to the allocation methodology to reflect replacement capacity must occur two compliance periods after the facility is retired or the capacity shortfall occurs. The program administrator must use the following methodology to determine the total annual RPS requirement for a given year and the final RPS allocation for individual retail entities:

(A) The total statewide RPS requirement for each compliance period must be calculated in terms of MWh and must be equal to the applicable capacity requirement set forth in this paragraph multiplied by 8,760 hours for the 2024 compliance period and 5,840 hours for the 2025 compliance period, multiplied by the appropriate capacity conversion factor set forth in paragraph (3) of this subsection. The renewable energy capacity requirements for the compliance periods beginning January 1, 2024 are:

(i) 1,310 MW of new resources in the 2024 compliance period; and

(ii) 655 MW of new resources in the 2025 compliance period.

(B) The final RPS allocation for an individual retail entity for a compliance period must be calculated as follows:

(i) Beginning with the 2008 compliance period, prior to the preliminary RPS allocation, each retail entity's total retail energy sales are reduced to exclude the consumption of customers that opt out in accordance with paragraph (4) of this subsection. Each retail entity's preliminary RPS allocation is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all retail entities and multiplying that percentage by the total statewide RPS requirement for that compliance period.

(ii) The adjusted RPS allocation for each retail entity that is entitled to an offset is determined by reducing its preliminary RPS allocation by the offsets to which it qualifies, as determined under paragraph (5) of this subsection, with the maximum reduction equal to the retail entity's preliminary RPS allocation. The total reduction for all retail entities is equal to the total usable offsets for that compliance period.

(iii) Each retail entity's final RPS allocation for a compliance period must be increased to recapture the total usable offsets calculated under clause (ii) of this subparagraph. The additional RPS allocation must be calculated by dividing the retail entity's preliminary RPS allocation by the total preliminary RPS allocation of all retail entities. This fraction must be multiplied by the total usable offsets for that compliance period and this amount must be added to the retail entity's adjusted RPS allocation to produce the retail entity's final RPS allocation for the compliance period.

(C) Concurrent with determining final individual RPS allocations for the current compliance period in accordance with this subsection, the program administrator must recalculate the final RPS allocations for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a retail entity's corrected final RPS allocation and its original final RPS allocation for the previous compliance periods must be added to or subtracted from the retail entity's final RPS allocation for the current compliance period.

(3) Calculation of capacity conversion factor. The capacity conversion factor used by the program administrator to allocate solar RECs to retail entities must be calculated during the fourth quarter of each odd-numbered compliance year. The capacity conversion factor must:

(A) Be based on actual generator performance data for the previous two years for all renewable resources in the trading program during that period for which at least 12 months of performance data are available;

(B) Represent a weighted average of generator performance; and

(C) Use all actual generator performance data that is available for each renewable resource, excluding data for testing periods.

(4) Opt-out notice.

(A) A customer receiving electrical service at transmission-level voltage who submits an opt-out notice to the commission for the applicable compliance period must have its load excluded from the RPS calculation.

(B) An investor-owned utility that is subject to a renewable energy requirement under this section must not collect costs attributable to the trading program from an eligible customer who has submitted an opt-out notice. An investor-owned utility whose rates include the cost of solar RECs must file a tariff to implement this paragraph, not later than 30 days after the effective date of this section.

(C) A customer opt-out notice must be filed in the commission-designated project number before the beginning of a compliance period for the notice to be effective for that period. Each opt-out notice must include the name of the individual customer opting out, the customer's ESI IDs, the retail entities serving those ESI IDs, and the term for which the notice is effective, which may not exceed two years. The customer opting out must also provide the information included in the opt-out notice directly to ERCOT and may request that ERCOT protect the customer's ESI ID and consumption as confidential information. For notices submitted for the 2008 compliance period, a customer may amend a notice to include this information not later than January 15, 2009, if its initial notice did not include the information. A customer may revoke a notice under this paragraph at any time prior to the end of a compliance period by filing a letter in the designated project number and providing notice to ERCOT.

(5) Nomination and award of REC offsets.

(A) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its RPS requirement, as calculated in paragraph (2) of this subsection, only if those offsets were nominated in a filing with the commission by June 1, 2001.

(B) The program administrator must award offsets consistent with the commission's actions to verify designations of REC offsets and with this section.

(C) REC offsets must be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.

(D) REC offsets qualify for use in a compliance period under paragraph (2) of this subsection only to the extent that:

(i) The resource producing the REC offset has continuously since September 1, 1999, been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative (or successor in interest) nominating the resource under subparagraph (A) of this paragraph or, if the resource has been committed under a contract that expired after September 1, 1999, and before January 1, 2002, it was owned by or its output was committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and

(ii) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.

(E) If the production of energy from a facility that is eligible for an award of REC offsets ceases for any reason, or if the power purchase agreement with the facility's owner (or successor in interest) that is referred to in subparagraph (D)(i) of this paragraph has lapsed or is no longer in effect, the retail entity must no longer be awarded REC offsets related to the facility.

(F) REC offsets can not be traded.

(f) Renewable energy credits accreditation program. The program administrator must maintain a voluntary banking and accreditation system to monitor a voluntary renewable energy credit accreditation program.

(1) Renewable energy credits may be generated, transferred, and retired by renewable energy power generators certified under subsection (c) of this section, retail entities, and other market

participants as set forth in this section. For purposes of this subsection, there is no distinction between renewable energy credits and solar renewable energy credits.

(A) A power generating company may participate in the accreditation program and may generate RECs and buy or sell RECs as set forth in subsection (d)(4) of this section.

(B) RECs must be credited on an energy basis as set forth in subsection (d)(4) of this section.

(C) A municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (d)(1)(A) and (2)(A) of this section may sell RECs generated by such a resource to retail entities as set forth in subsection (d)(4) of this section.

(2) ERCOT may assign additional attributes to RECs, such as more precise REC-generation timestamps, to allow buyers to distinguish between RECs.

(g) Responsibilities of the program administrator. At a minimum, the program administrator must perform the following functions:

(1) Create accounts that track RECs, solar RECs, and compliance premiums for each participant in both the trading program and accreditation program;

(2) Award RECs, solar RECs, or compliance premiums to registered renewable energy facilities on a quarterly basis based on verified meter reads during the compliance period;

(3) Award offsets to retail entities on an annual basis based on a nomination submitted by the retail entity under subsection (e)(5) of this section;

(4) Annually record the retirement of RECs, solar RECs, and compliance premiums that each retail entity submits;

(5) Retire RECs, solar RECs, and compliance premiums at the end of each REC, solar REC, or compliance premiums' compliance life;

(6) Maintain public information on its website that provides trading program and accreditation program information to interested buyers and sellers of RECs, solar RECs, or compliance premiums;

(7) Create an exchange procedure where persons may purchase and sell RECs, solar RECs, or compliance premiums. The exchange must ensure the anonymity of persons purchasing or selling RECs, solar RECs, or compliance premiums. The program administrator may delegate this function to an independent third party, subject to commission approval;

(8) Make public each month the total energy sales of retail entities in Texas for the previous month;

(9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;

(10) Allocate the RPS requirement to each retail entity in accordance with subsection (e)(2) of this section; and

(11) Submit an annual report to the commission. The program administrator must submit a report to the commission on or before May 15 of each calendar year. The report must contain information pertaining to renewable energy power generators and retail entities. At a minimum, the report must contain:

(A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and

(B) a listing of all retail entities participating in the trading program, each retail entity's RPS requirement, the number of offsets used by each retail entity, the number of solar RECs retired by each retail entity, the number of compliance premiums retired by each retail entity, a listing of all retail entities that were in compliance with the RPS requirement, a listing of all retail entities that failed to comply with the RPS requirement, and the deficiency of each retail entity that failed to retire sufficient solar RECs or compliance premiums to meet its RPS requirement.

(h) Penalties and enforcement. If by April 1 of the year following a compliance period the program administrator determines that a retail entity has not retired sufficient solar RECs or compliance premiums to satisfy its allocation, the retail entity is subject to an administrative penalty, under PURA §15.023, of $50 per MWh that is deficient.

(i) Settlement process. The compliance period is the settlement period during which the following actions must occur:

(1) 30 days after the end of the compliance period, the program administrator will notify each retail entity of its total RPS requirement for the previous compliance period as determined under subsection (e)(2) of this section.

(2) 90 days after the end of the compliance period, each retail entity must submit solar RECs or compliance premiums to the program administrator from its account equivalent to its RPS requirement for the previous compliance period. If the retail entity does not submit sufficient solar RECs or compliance premiums to satisfy its obligation, the retail entity is subject to the penalty provisions in subsection (h) of this section.

(3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.

(j) Microgenerators and REC aggregators. A REC aggregator may manage the participation of multiple microgenerators in the trading and accreditation programs. The program administrator will assign to the REC aggregator all RECs or solar RECs accrued by the microgenerators who are under a REC management contract with the REC aggregator.

(1) The microgenerator's units must be installed and connected to the grid in compliance with commission Substantive Rules, applicable interconnection standards adopted under the commission Substantive Rules, and federal rules.

(2) Notwithstanding subsection (d)(1)(A)(iii) of this section, a REC aggregator may use any of the following methods for reporting generation to the program administrator, as long as the same method is used for each microgenerator in an aggregation unit, as defined by the REC aggregator. A REC aggregator may have more than one aggregation and may choose any of the methods listed below for each aggregation unit.

(A) The REC aggregator may provide the program administrator with production data that is measured and verified by an electronic meter that meets ANSI C12 standards and that will be separate from the aggregator's billing meter for the service address and for which the billing data and the renewable energy data are separate and verifiable data. Such actual data must be collected and transmitted within a reasonable time and is subject to verification by the program

administrator. REC aggregators using this method will be awarded one REC for every MWh generated.

(B) The REC aggregator may provide the program administrator with sufficient information for the program administrator to estimate with reasonable accuracy the output of each unit, based on known or observed information that correlates closely with the generation output. REC aggregators using this method will be awarded one REC for every 1.25 MWh generated. After installing the unit, the certified technician must provide the microgenerator, the REC aggregator, and the program administrator the information required by the program administrator under this paragraph.

(C) A generating unit may have a meter that transmits actual generation data to the program administrator using applicable protocols and procedures. Such protocols and procedures must require that actual data be collected and transmitted within a reasonable time. REC aggregators using this method will be awarded one REC for every MWh generated.

(3) REC aggregators must register with the commission and the program administrator and must also register to participate in the trading and accreditation programs.

(4) A microgenerator participating in the trading program individually without the assistance of a REC aggregator must comply with the requirements of this subsection.

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

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 16 TAC §§402.420, 402.706 and 402.707 are not included in the print version of the Texas Register. The figures are available in the on-line version of the October 27, 2023, issue of the Texas Register.)

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§402.200 (General Restrictions on the Conduct of Bingo), 402.203 (Unit Accounting) 402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.404 (License Classes and Fees), 402.405 (Temporary Authorization), 402.413 (Military Service Members, Military Veterans, and Military Spouses), 402.420 (Qualifications and Requirements for Conductor's License), 402.451 (Operating Capital), 402.452 (Net Proceeds), 402.503 (Bingo Gift Certificates), 402.600 (Bingo Reports and Payments), 402.706 (Schedule of Sanctions), and 402.707 (Expedited Administrative Penalty Guideline). The purpose of the proposed amendments is to implement statutory changes required by House Bill 639 (HB 639), Senate Bill 422 (SB 422), and Senate Bill 643 (SB 643) from the Regular Session of the 88th Texas Legislature.

The proposed amendments implementing HB 639 increase the maximum yearly number of temporary bingo licenses that a non-regular authorized organization may receive from 6 to 12.

The proposed amendments implementing SB 422 allow military members to engage in bingo without a license or worker registration for up to three years while they are stationed at a military base in Texas, provided they are similarly licensed or registered and in good standing in another state.

The proposed amendments implementing SB 643 amend the definition of "regular license" to mean a 2-year license to conduct bingo that is not a temporary license; require the Commission to issue to regular licensees 48 temporary licenses for each 12-month period ending on the anniversary of their licensing date; increase the maximum prize value that can be awarded during an occasion from $2,500 to $5,000 and eliminate the $750 prize limit for a single game; allow units three days to deposit bingo funds into their bank account; provide that all of the members of a unit may not be penalized for a violation that is wholly attributable to a specific member or members of the unit; change the required net proceeds period from 12 months to 24 months; and specify that prize fees retained by the organization or held in escrow for remittance to the Commission, a county, or a municipality are not included in the calculation of operating capital.

Annika Guarnero, Acting Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

LaDonna Castañuela, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amended rules will be in effect, the anticipated public benefit will be the implementation of recent legislation.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Annika Guarnero, Acting Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed rule amendments from any interested person. Comments may be submitted to Tyler Vance, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered. The Commission also will hold a public hearing to receive comments on this proposal at 10:00 a.m. on November 13, 2023, at 1700 N. Congress Ave., Austin, Texas 78701, Stephen F. Austin State Office Building, Room 170.

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.200, §402.203

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.200. General Restrictions on the Conduct of Bingo.

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

(c) Location of bingo occasion. A bingo occasion may be conducted only on premises which are:

(1) owned by a licensed authorized organization;

(2) owned by a governmental agency when there is no charge to the licensed authorized organization for use of the premises;

[~~(3) leased, or used only by the holder of a temporary license; or~~]

(3) [~~(4)~~] owned or leased by a licensed commercial lessor; or [~~lessor.~~]

(4) leased or used by the holder of a temporary license who does not hold a regular license.

(d) - (n) (No change.)

(o) The total aggregate amount of prizes awarded for regular bingo games during a single bingo occasion may not exceed $5,000. [~~$2500.~~] This subsection does not apply to:

(1) a pull-tab bingo game; or

(2) a prize of $50 or less that is actually awarded in an individual game of regular bingo.

(p) (No change.)

§402.203. Unit Accounting.

(a) - (k) (No change.)

(l) Responsibilities of Unit Members.

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

(5) If a unit demonstrates that a violation of this subchapter or commission rules is wholly attributable to a specific licensed authorized organization member or members of the unit, a penalty for the violation may not be imposed on a unit member to which the violation is not attributable and the penalty imposed on a unit member to which the violation is attributable may not be in an amount greater than the amount initially assessed against each unit member.

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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Bob Biard
General Counsel
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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.400, 402.401, 402.404, 402.405, 402.413, 402.420, 402.451, 402.452

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.400. General Licensing Provisions.

(a) - (l) (No change.)

(m) Each person required to be named in an application for license under the Bingo Enabling Act other than a temporary license will have a criminal record history inquiry at state and/or national level conducted. Such inquiry may require submission of fingerprint card(s). FBI fingerprint cards are required for an individual listed in an application for a distributor or manufacturer's license and for an individual listed on an application who is not a Texas resident. A criminal record history inquiry at the state and/or national level may be conducted on the operator and officer or director required to be named in an application for a non-regular [~~non-annual~~] temporary license under the Bingo Enabling Act.

(n) (No change.)

§402.401. Temporary License.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) (No change.)

(2) Regular license--A license to conduct bingo that is effective for a period of two years [~~one year~~] unless revoked or suspended by the Commission. [~~A regular license may be referred to as an annual license.~~]

(3) (No change.)

(b) General.

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

(3) Display. A [~~The~~] licensed authorized organization must conspicuously display an issued license during a temporary [~~bingo~~] occasion at the premises. [~~licensed bingo premises a temporary license.~~]

(4) Voluntary surrender of regular license.

(A) An authorized organization that no longer holds a regular license to conduct bingo may conduct any remaining designated temporary occasions so long as the total number of occasions does not exceed twelve (12) [~~six~~] per calendar year. If more than twelve (12) [~~over six~~] previously specified occasions remain, the licensed authorized organization must provide to the Commission written notification of no more than twelve (12) [~~six~~] of the dates of the temporary licenses that will be utilized. This notification must be provided within ten days of surrender of the regular license. The Commission will automatically revoke all temporary licenses in excess of the twelve (12) [~~six~~] per year.

(B) If the Commission denies or revokes a regular license by final and unappealable order, any temporary license held by the regular license holder [~~that stated the specific date and time of any bingo occasion~~] will likewise be denied or revoked.

(5) (No change.)

(c) (No change.)

(d) Regular license holder.

(1) Subject to the other provisions of this chapter, a [A] regular license holder [~~must apply for a temporary license at least seven calendar days prior to the bingo occasion~~] shall be issued forty-eight (48) temporary licenses for each 12-month period that ends on the anniversary of the date the license was issued or renewed. Any unused temporary licenses will expire on the anniversary of the date the temporary licenses were issued.

(2) (No change.)

[~~(3) The Commission may issue a temporary license to a regular license holder without listing the specific date or time of a bingo occasion. The temporary bingo occasion must be conducted at the same location as shown on the organization's regular license. Such a license shall be referred to as a "temporary-on-demand license".~~]

[~~(A) The regular license holder must submit an application on the prescribed form that indicates the number of temporary-on-demand licenses requested for the license period.~~]

[~~(B) Before using a temporary-on-demand license, the regular license holder must notify the Commission of the date and time the temporary license will be used by submitting a form prescribed by the Commission. The Commission will verify receipt of the notice in accordance with Bingo Enabling Act §2001.103(g). The license holder is not required to display the Commission's verification during the occasion but must maintain it in their records pursuant to §402.500(a) of this title (relating to General Records Requirements).~~]

[~~(C) Any temporary-on-demand license must be used prior to the expiration date of the regular license in effect at the time the temporary license application was filed.~~]

(3) Before using a temporary license, the regular license holder must notify the Commission of the date and time and location of the bingo occasion for which the temporary license will be used by submitting a form prescribed by the Commission. The Commission will verify receipt of the notice in accordance with Bingo Enabling Act §2001.103(g). The license holder is not required to display the Commission's verification during the occasion but must maintain it in their records pursuant to §402.500(a) of this title (relating to General Records Requirements).

(4) (No change.)

[~~(5) If the organization is issued the amendment license filed under Occupations Code, §2001.108 prior to being issued the temporary license, the temporary license application shall be discontinued.~~]

(e) Non-regular license holder. A non-regular license holder that wishes to conduct a bingo occasion must file a complete application for a temporary license on a form prescribed by the Commission at least 30 calendar days prior to the bingo occasion.

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

(3) Non-regular license holders may not receive more than twelve (12) temporary licenses in a calendar year.

§402.404. License Classes and Fees.

(a) Definitions.

(1) License period--For purposes of Texas Occupations Code §2001.158, [~~§2001.104 and §2001.158,~~] the term "license period" means the eight (8) [~~four~~] full calendar quarters immediately preceding the license end date.

(2) (No change.)

(b) - (j) (No change.)

§402.405. Temporary Authorization.

(a) - (i) (No change.)

(j) A regular license that has been issued to an applicant shall expire two years [~~one year~~] from the date of the first issuance of any temporary authorization under this section.

(k) (No change.)

§402.413. Military Service Members, Military Veterans, and Military Spouses.

(a) - (e) (No change.)

(f) A military service member or a military spouse may engage in any activity for which a license or bingo worker registration is required without obtaining the applicable license or registration if the member or spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for licensure in Texas. Before engaging in the activity, the military member or spouse must notify the Commission of their intent to conduct the activity in this state and must submit proof of their residency in this state along with a copy of their military identification card. Within thirty (30) days, [~~Upon receipt,~~] the Commission will verify that the military service member or military spouse is currently licensed in good standing in another state that has licensing requirements that are substantially equivalent to the requirements in Texas. If so, the Commission shall authorize the military service member or military spouse to engage in the activity. The authorization is

effective only for the period during which the military service member or the military service member to whom the military spouse is married is stationed at a military installation in this state, not to exceed three years. The authorization may not be renewed. The military member or spouse shall comply with all other laws and regulations applicable to the business or occupation in this state. In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization.

§402.420. Qualifications and Requirements for Conductor's License.

An applicant must provide with its application documentation demonstrating that it meets all qualifications and requirements for a license to conduct bingo based on the type of organization it is. The qualifications, requirements, and necessary documentation for different types of organizations are shown in the chart below.
Figure: 16 TAC §402.420
[Figure: 16 TAC §402.420]

§402.451. Operating Capital.

(a) (No change.)

(b) The bingo account balance of a licensed authorized organization, reconciled to include outstanding checks and deposits in transit, on the last day of each calendar quarter may not exceed the total of:

(1) (No change.)

(2) prize fees held in the bingo account to be paid to the Commission and local governments, or to be retained under Bingo Enabling Act §2001.502(b)(3); [§2001.502(b)(2);] and

(3) (No change.)

(c) (No change.)

(d) Licensed Authorized Organization's Calculations.

[(1) The retained operating capital limit for a licensed authorized organization with a one year license will be calculated based on the quarterly reports for the four (4) calendar quarters immediately preceding the license start date.]

(1) [(2)] The retained operating capital limit for a licensed authorized organization with a regular [two year] license will be calculated for each 12-month period of the license.

(2) [(3)] The retained operating capital limit for a licensed authorized organization submitting the first renewal of its license to conduct bingo will be calculated based on the quarterly reports for the three (3) calendar quarters immediately preceding the license start date.

(3) [(4)] The retained operating capital limit is effective for the four (4) calendar quarters beginning on the first day of the calendar quarter immediately following the license start date.

(e) (No change.)

(f) A licensed authorized organization's or unit's most recent quarterly report information at the time of the calculation will be used to calculate its retained operating capital limit. Prize fees are not included in calculation of operating capital if they are held in escrow for remittance to the commission or local governments or retained by a licensed organization under Bingo Enabling Act §2001.502(b)(3).

(g) - (k) (No change.)

§402.452. Net Proceeds.

(a) Net proceeds from the conduct of bingo must result in a positive amount over the organization's license period. [If the organization has a two year license, the net proceeds from the conduct of bingo must result in a positive amount over each year of the organization's license period.]

(b) Calculation of Net Proceeds for Organizations. [a License Period.]

(1) (No change.)

(2) The calculation of net proceeds for a regular [one year] license will be based on the quarterly reports for the eight (8) [four (4)] calendar quarters immediately preceding the license end date.

[(3) Net proceeds for a two-year license will be calculated for each year of the license. The calculation of net proceeds for the first year of the license will be based on the quarterly reports for the four (4) calendar quarters immediately preceding the one year anniversary of the license beginning date. The calculation of net proceeds for the second year of the license will be based on the quarterly reports for the four (4) calendar quarters immediately preceding the two-year anniversary of the license beginning date.]

(3) [(4)] The calculation of net proceeds for an organization submitting the first renewal of its license to conduct bingo will be based on the quarterly reports for the seven (7) [three (3)] calendar quarters immediately preceding the license end date. If the bingo operations of an organization fail to result in positive net proceeds for the first renewal of a license, the Commission shall recalculate the net proceeds using the quarterly reports for the seven (7) [three (3)] calendar quarters immediately preceding the license end date and the quarterly report for the one (1) calendar quarter in which the license end date falls to determine compliance.

(c) Calculation of Net Proceeds for Units.

(1) Net proceeds for units will be calculated at the end of each quarter for the prior eight (8) [four (4)] quarter period.

(2) (No change.)

(3) The calculation of net proceeds for a licensed authorized organization that withdraws from a unit will be based on the following for the eight (8) [four (4)] calendar quarters immediately preceding the license end date:

(A) - (B) (No change.)

(4) (No change.)

(d) - (e) (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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SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §402.503

The amendment is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to

enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.503. Bingo Gift Certificates.

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

(g) Reporting Requirements:

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

(3) When a gift certificate is redeemed, the sale of bingo paper, card-minding device, or pull-tab bingo shall be reported for that occasion. The gift certificate, when redeemed, shall be exchanged for cash from the gift certificate funds and deposited into the bingo account by the end of the third business day after the bingo occasion. [~~occasion for organizations as required by Occupations Code §2001.451, and by the end of the second business day after the bingo occasion for units as required by Occupations Code §2001.435.~~]

(4) (No change.)

(h) - (i) (No change.)

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SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.600

The amendment is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.600. Bingo Reports and Payments.

(a) - (c) (No change.)

(d) Quarterly Report for information relating to the conduct of bingo games.

(1) An authorized organization holding a regular [~~an annual~~] license, temporary license, or a temporary authorization to conduct bingo must file on a form prescribed by the Commission or in an electronic format prescribed by the Commission a quarterly report for financial and statistical information relating to the conduct of bingo games. The report and supplements must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter even if there were no games conducted during that quarter. Failure to file a required report or supplement by the due date may result in an administrative penalty.

(2) (No change.)

(3) The Commission may deny a renewal application of an authorized organization holding a regular [~~an annual~~] license or revoke a license of an authorized organization holding a regular [~~an annual~~] license if the licensee remits to the Commission two insufficient checks for prize fees within four quarters.

(e) - (m) (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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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §402.706, §402.707

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.706. Schedule of Sanctions.

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

(c) Unless otherwise provided by this subchapter, the terms and conditions of a settlement agreement between the Commission and a person charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules will be based on the Schedule of Sanctions incorporated into this section.

Figure: 16 TAC §402.706(c)
[~~Figure: 16 TAC §402.706(c)~~]

(d) - (l) (No change.)

§402.707. Expedited Administrative Penalty Guideline.

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

(g) If a person is charged with a repeat violation that may be expedited within 36 months (3 years) of the first violation, then the

penalty for a repeat violation will be imposed according to the Expedited Administrative Penalty Chart for repeat violations.
Figure: 16 TAC §402.707(g)
[~~Figure: 16 TAC §402.707(g)~~]

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

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER M. TOTAL RESEARCH EXPENDITURES

19 TAC §§13.300 - 13.305

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter M, §§13.300 - 13.304 and new §13.305, concerning Total Research Expenditures. Specifically, this amendment and new rule will revise the reporting of total research expenditures to the Coordinating Board for use in state research funding allocations for the Comprehensive Research Fund, National Research Support Fund, and Texas University Fund (TUF), in accordance with changes made by H.B. 1595, 88th Texas Legislature, Regular Session. This amendment and new rule presumes passage of House Joint Resolution 3, 88th Texas Legislature, Regular Session, the vote for which would take place November 7, 2023. If the constitutional amendment is approved, the provisions of H.B. 1595 go into effect on January 1, 2024. 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.

Rules 13.300 and 13.301 note the purpose and authority of the subchapter. Proposed revisions now prescribe the requirement of total research expenditures to be submitted by fund source and lay out the use of the data in the allocation of the Texas Comprehensive Research Fund, National Research Support Fund, Texas Research University Fund, Texas University Fund (TUF), and formula funding for research. The rule also establishes the portions of Texas Education Code (TEC) that authorize the Coordinating Board to adopt rules pertaining to the TUF.

Rule 13.302 lists definitions pertinent to research expenditure reporting. The revisions add paragraphs (1), (5), (8), (10), (12), and (23) to include fund sources by which institutions must report expenditures to the Coordinating Board. The fund sources align with the Higher Education Research and Development (HERD) Survey conducted by the National Center for Science and Engineering Statistics under the National Science Foundation. Paragraphs (24) and (25) provide a more granular breakout of funding sources for State and Local Government Expenditures to appropriately implement funding formulas for the health-related institutions.

Paragraph (15) establishes that private expenditures include expenditures of funds reported as Business Expenditures, Nonprofit Organization Expenditures, and All Other Expenditures. This definition matches the definition under Texas Administrative Code, chapter 15, subchapter B, Texas University Fund for use in the allocation of certain state funding.

Paragraphs (9), (11), and (13) define certain sectors of Texas public institutions of higher education.

Paragraphs (4), (6), and (7) specify three distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board; "Coordinating Board," meaning the state agency as a whole; and "Coordinating Board Staff or Board Staff," meaning the staff of the agency. Separating these terms allows the Coordinating Board to make a distinction between actions taken by the governing body, agency staff, and the agency as a whole.

Revisions to paragraph (16) and the addition of paragraph (18) align definitions of research and development (R&D) with the HERD Survey. The revision of paragraph (19) clarifies what is included on the research expenditure survey and the addition of paragraph (22) adds clarity on what is considered a sponsored project.

The revision of §13.303 removes a provision made unnecessary due to the addition of §13.305 and clarifies that pass throughs to other agencies of higher education also do not meet the narrow definition of R&D expenditures. Other revisions include clarification that total research expenditures may only include recovered indirect costs and clarification on the treatment of counting expenditures where the dollars expended are reported on an institution's annual financial report, but the actual work is conducted at a separate entity.

The revision of §13.304 clarifies that Coordinating Board staff will post the report of total research expenditures and the source of information for a legislatively required report.

The addition of §13.305 provides for the explicit direction of reporting total research expenditures to the Coordinating Board. The rule provides the breakout of fund source categories and requires a subset reporting of State of Texas Source Expenditures and State Contracts and Grants to accurately implement certain funding formulas for health-related institutions. The rule specifies that unrecovered indirect costs and pass-throughs to certain sectors of higher education do not meet the narrow definition of R&D expenditures. Pass-throughs to these sectors of higher education would result in the state including certain research expenditures in multiple funding formulas so separating these expenditures out in reporting allows the state to only include the research expenditure in funding formulas for the institution who received the pass-through funding.

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

governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as the result of adopting this rule is the refinement of reporting total research expenditures by fund source, in accordance with the provisions of H.B. 1595, 88th Texas Legislature, Regular Session, which requires the collection and use of certain federal and private research expenditures in state funding allocations and aligning data submissions with federal data survey requirements. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendment is proposed in accordance with changes made by H.B. 1595, 88th Texas Legislature, Regular Session (2023), which requires the collection of federal and private research expenditures for use in the allocation of the Comprehensive Research Fund and as part of the eligibility criteria and distribution methodology for the National Research Support Fund and Texas University Fund.

The proposed amendment affects Texas Education Code Sections 62.095, 62.132, 62.1335, 62.134, 62.145, 62.1481, 62.1482, and 62.151.

§13.300. Purpose and Scope.

The purpose of this subchapter is to establish standards and accounting methods for determining total research expenditures, by fund source, based on all research conducted at Texas institutions of higher education. These amounts are for use in the allocation of the Texas Comprehensive Research Fund, National Research Support Fund, Texas Research University Fund, Texas University Fund, and formula funding for research, as authorized in an applicable biennium's General Appropriations Act.

§13.301. Authority.

Texas Education Code, §61.0662, requires the Coordinating Board to maintain an inventory of all institutional and programmatic research activities being conducted by all institutions of higher education. Texas Education Code, §62.051, establishes the Texas Research University Fund and §62.053, authorizes the Coordinating Board to prescribe standards and accounting methods for determining the amount of total research funds expended. Texas Education Code §62.152 authorizes the Board to adopt rules as necessary to implement chapter 62, subchapter G (Texas University Fund).

§13.302. Definitions.

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

(1) All Other Expenditures--Expenditures of all other funds not reported under the expenditure categories of Business, Nonprofit Organizations, Institutional Funds, State and Local Government or Federal Expenditures, as defined in this section. All Other Expenditures includes funds from foreign universities, foreign governments, portions of gifts designated for research by the donors (including from the reporting institution's 501(c)(3)), and nonfederal and nonstate funds received from other institutions of higher education.

(2) [~~(1)~~] Annual Financial Report (AFR)--Institutional financial report for one fiscal year as required by Texas Education Code, §51.005.

(3) [~~(2)~~] Areas of Special Interest--Major research topics important to the public, or required by statute, as listed in the Research Expenditure Survey.

[~~(3) Coordinating Board or Board--The Texas Higher Education Coordinating Board.~~]

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

[~~(4) Research Expenditures or Expenditures--In a specific fiscal year, expenditure of funds paid out by an institution to support institutional Research and Development activities.~~]

(5) Business Expenditures--Expenditures of funds from domestic or foreign for-profit organizations.

(6) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(7) Coordinating Board Staff or Board Staff--Agency staff acting under the direction of the Board and the Commissioner.

(8) Federal Expenditures--Expenditures of funds received by the reporting institution from any agency of the United States government for research and development. These include reimbursements, contracts, grants, and any identifiable amounts spent on research and development from Federal programs including Federal monies passed through state agencies to the reporting institution and federal funds that were passed through to the reporting institution from another institution.

(9) General Academic Teaching Institution--Any public general academic teaching institution as defined in Texas Education Code, §61.003(3).

(10) Institutional Fund Expenditures--This includes funds expended for R&D that are controlled at the institutional level, such as Available University Fund (AUF) or other funding held locally used for R&D, excluding institution research administration and support. This category includes cost sharing from unrestricted sources (cost sharing from restricted sources should be classified according to the underlying source), unrestricted funds from the reporting institution's 501(c)(3),

and unrecovered indirect costs. Unrecovered indirect costs may not exceed the institution's federally negotiated Facilities and Administrative rate.

(11) Medical and Dental Unit--Any public health related institution as defined in Texas Education Code, §61.003(5).

(12) Nonprofit Organization Expenditures--Expenditures of funds from domestic or foreign non-profit foundations and organizations, except universities and colleges.

(13) Other Agency of Higher Education--Any public agency of higher education as defined in Texas Education Code, §61.003(6).

(14) [(5)] Pass-through to Sub-recipient--Sponsored project [External award] funds that are passed from one entity to a sub-recipient. The sub-recipient expends the [award] funds to carry out part of the sponsored project on behalf of[, or in connection with,] the pass-through entity.

(15) Private Expenditures--Expenditures of funds reported as Business Expenditures, Non-profit Organization Expenditures, and All Other Expenditures. Amounts exclude R&D expenditures that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey.

(16) [(6)] Research and Development (R&D)--R&D activity is creative and systematic work undertaken in order to increase the stock of knowledge "including knowledge of humankind, culture, and society" and to devise new applications of available knowledge. R&D covers three activities: basic research, applied research, and experimental development. R&D does not include public service or outreach programs, curriculum development (unless included as part of an overall research project), or non-research training grants. R&D does not include capital projects (i.e., construction or renovation of research facilities). [All research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions:]

[(A) Research--The systematic study directed toward fuller scientific knowledge or understanding of the subject studied.]

[(B) Development--The systematic use of knowledge or understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.]

[(C) R&D Training--R&D also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.]

(17) R&D Training--Activities involving the training of individuals in research techniques are included in R&D, where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(18) Research Expenditures or Expenditures--In a specific fiscal year, expenditures of funds paid out by an institution to support institutional Research and Development activities. Expenditures do not include in-kind donations.

(19) [(7)] Research Expenditure Survey--The mandatory survey instrument administered by the Coordinating Board pursuant to Texas Education Code, §61.0662, that establishes total R&D expenditures for each institution by research field and areas of special interest, both accounted by funding source. The survey includes a Research Expenditure Survey, specific definition of R&D, and reporting guidelines for R&D activities. The survey separately accounts for unrecovered indirect costs and pass-through expenditures to other general academic teaching institutions, medical and dental units, or other agencies of higher education, by funding source. [Instrument that establishes total R&D expenditures for each institution by research field and areas of special interest, both accounted by funding source. The survey includes a Research Expenditure Survey, specific definition of R&D, and reporting guidelines for R&D activities.]

(20) [(8)] Research fields--Subject areas for R&D, as listed in the Research Expenditure Survey.

(21) [(9)] Sources and Uses Template--An annual survey of Texas general academic and health-related institutions to detail financial information and provide specific information about revenues and expenditures.

(22) Sponsored Projects--Sponsored projects include grants, contracts, cooperative agreements and other legally binding means of transfer under which an entity provides a return benefit to, or agrees to provide a defined deliverable or complete a specified set of activities for, an external sponsor in exchange for funds. External sponsors are those that are not part of the entity.

(23) State and Local Government Expenditures--Expenditures of funds received for R&D via appropriations from the state of Texas, including non-formula support items, and funds received from any state, county, municipality, or other local government entity in the United States, including state health agencies. Expenditures include state funds that support R&D at agricultural and other experiment stations.

(24) State Contracts and Grants--A subset of State and Local Government Expenditures that includes only expenditures of interagency contracts, contracts with Texas local governments, and other such state funding sources for R&D.

(25) State of Texas Source Expenditures--A subset of State and Local Government Expenditures that includes only expenditures of funds appropriated by the state of Texas for research, including state appropriated research non-formula support items and research formula funding.

§13.303. Standards and Accounting Methods for Determining Total Research Expenditures.

[(a) Each institution reports R&D expenditures annually in the Research Expenditure Survey.]

(a) [(b)] R&D expenditures for Texas A&M University include consolidated expenses from Texas A&M University and its service agencies.

(b)[(c)] Research expenses from the AFR shall be [are] reconciled to the total R&D expenditures of the Research Expenditure Survey by a:

(1) Decrease of the AFR total by the amount of R&D expenses that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey. Pass-throughs to other general academic teaching institutions, medical or dental units, and other agencies of higher education [public academic or health related entities] do not meet the narrow definition of R&D expenditures.

(2) Increase of the AFR total by the amount of recovered indirect costs associated with expenses for R&D as reported through the Research Expenditure Survey.

(3) Increase of the AFR total by the amount of capital outlay for research equipment, not including R&D plant expenses or construction.

(4) Increase of the AFR total by the amount of expenditures for conduct of R&D made by an institution's research foundation, or 501(c) corporation on behalf of the institution, and not reported in the institution's AFR, including indirect costs.

(5) Increase of the AFR total to include expenses related to research performed by the agency or institution but recognized on the AFR of a separate agency or institution who received and expended the funding. The agency or institution who received and expended the funding but did not perform the research must make a corresponding decrease of its AFR total for this amount. This accounting event is not a pass-through to subrecipient [by the amount of pass-throughs from Texas Engineering Experiment Station, as defined for the Research Expenditure Survey].

§13.304. Reporting of Total Research Expenditures.

(a) Coordinating [The] Board staff shall annually post a report of total research expenditures of all public institutions of higher education on its website.

(b) Not later than January 1 of each year, the Board shall submit to the legislature information regarding human stem cell research reported by the institutions to [obtained by] the Coordinating Board in the Research Expenditure Survey from reports required by this subsection.

§13.305. Institutional Reporting of Total Research Expenditures by Funding Source.

(a) Institutions shall report all research expenditures on the Research Expenditure Survey using the following categories:

(1) Federal Expenditures;

(2) State and Local Government Expenditures;

(3) Business Expenditures;

(4) Nonprofit Organization Expenditures;

(5) Institutional Fund Expenditures; and

(6) All Other Expenditures.

(b) Institutions shall report State of Texas Source Expenditures and State Contracts and Grants as subsets of State and Local Government Expenditures.

(c) Institutions shall report the original source of expenditures, when possible. Institutions shall report each category and show adjustments by the amount of R&D expenses that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey. Unrecovered indirect costs and pass-throughs to other general academic teaching institutions, medical and dental units, and other agencies of higher education do not meet the narrow definition of R&D expenditures.

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

Filed with the Office of the Secretary of State on October 13, 2023.

TRD-202303817

Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 427-6548

CHAPTER 15. RESEARCH FUNDS [NATIONAL RESEARCH UNIVERSITIES]

SUBCHAPTER B. TEXAS UNIVERSITY FUND

19 TAC §§15.20 - 15.30

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 15, Subchapter B, §§15.20 - 15.30, concerning the Texas University Fund (TUF). Specifically, this will create rules to govern the eligibility, distribution methodology, and reporting for the TUF and implementation of eligibility requirements for the National Research Support Fund in accordance with changes made by H.B. 1595, 88th Texas Legislature, Regular Session. This new subchapter presumes passage of House Joint Resolution 3, 88th Texas Legislature, Regular Session, the vote for which would take place November 7, 2023. If the constitutional amendment is approved, the provisions of H.B. 1595 go into effect on January 1, 2024. 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.

Chapter 15 title is amended to revise the name from National Research Universities to Research Funds to more accurately reflect the rules in this section of administrative code.

Rule 15.20 establishes the purpose of the subchapter to govern the receipt and allocation of funds distributed from the TUF. The rule also establishes the portions of Texas Education Code (TEC) that authorize the Coordinating Board to adopt rules pertaining to the TUF and rules governing the eligibility threshold of research expenditures for the National Research Support Fund (NRSF).

Rule 15.21 lists definitions pertinent to the TUF. Paragraphs (2), (3), and (5) specify three distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board; "Coordinating Board," meaning the state agency as a whole; and "Coordinating Board Staff or Board Staff," meaning the staff of the agency. Separating these terms allows the Coordinating Board to make a distinction between actions taken by the governing body, agency staff, and the agency as a whole.

Paragraphs (6) and (10) establish the federal and private expenditures eligible for inclusion in the TUF eligibility and distribution criteria. Institutions report federal and private expenditures to the Coordinating Board under Texas Administrative Code, Chapter 13, Subchapter M, Total Research Expenditures. Federal and private expenditures exclude amounts that do not meet the Coordinating Board's narrow definition of research and development expenditures, including unrecovered indirect administration and pass-through funds to other public institutions of higher education. Pass-throughs to certain sectors of higher education would result in the state including certain research expenditures in multiple funding formulas, so separating these expenditures out in reporting allows the state to only include the research expen-

diture in funding formulas for the institution who received the pass-through funding.

Paragraphs (7), (8), and (9) define the Texas public institutions of higher education that are subject to the exclusion pertaining to pass-through funding.

Paragraph (12) defines a TUF-eligible institution as one listed in H.B. 1595 or an institution that becomes eligible by reaching the statutorily required thresholds.

Rules 15.22 and 15.23 define the institutions eligible to receive distributions from the TUF in a fiscal year in accordance with TEC §62.145, as amended by H.B. 1595. This includes listed institutions in statute as well as the eligibility requirements for a new institution to become TUF-eligible in future years. This provision provides that the Coordinating Board shall annually calculate and publish an increased threshold of research expenditures based on the increase in the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, in accordance with statutory requirements.

Rule 15.24 describes the allocation of distributions of the TUF to the Permanent Endowment for Education and Research (PEER) and the Research Performance Funding, in accordance with TEC §62.148(c), as amended by H.B. 1595.

Rule 15.25 provides for the calculation of PEER base funding for TUF-eligible institutions, in accordance with TEC §62.1481, as added by H.B. 1595, and for the Coordinating Board to confer with the Legislative Budget Board each fiscal year to determine the allocation of funding. The rule establishes two levels of Base Funding: Level 1 and Level 2. Level 1 Base Funding recipients receive the maximum allocation of PEER base funding; Level 2 Base Funding recipients receive half the amount of Level 1 Base Funding. The rule establishes the criteria an institution must meet to receive Level 1 Base Funding. The rule provides that the Coordinating Board shall annually calculate and publish an increased threshold of research expenditures as part of the entry into Level 1 Base Funding based on the increase in the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, in accordance with statutory requirements.

Rule 15.26 provides for the calculation of the Research Performance Funding, in accordance with TEC §62.1482, as added by H.B. 1595, and for the Coordinating Board to confer with the Legislative Budget Board each fiscal year to determine the allocation of funding. The rule provides that 85% of research performance funds shall be allocated in each fiscal year proportional to an institution's share of the most recent three-year average of federal and private research expenditures. The rule defines private expenditures used in the calculation of funding to include business expenditures, nonprofit expenditures, and all other expenditures. Eligible expenditures shall exclude unrecovered indirect costs and pass-through funds to other general academic teaching institutions, medical and dental units, and other agencies of higher education.

The rule provides that 15% of research performance funds shall be allocated in each fiscal year proportional to an institution's share of the most recent three-year average of research doctoral degrees awarded. The Coordinating Board shall annually publish a list of eligible research doctoral degrees that qualify for purposes of calculation; these degrees include an academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field and that requires completion of original research. This list shall be 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.

Rule 15.27 provides for the calculation of the legislative appropriations required to be appropriated for a new institution to become TUF-eligible or for a Level 2 Base Funding institution to receive Level 1 Base Funding. The calculation maintains existing TUF-eligible institutions or Level 1 Base Funding recipients' share of the Permanent Endowment for Education and Research.

Rule 15.28 defines the percentage share of the market value of the TUF that may be reported by TUF-eligible institutions for financial reporting purposes. The percentage share is based on an institution's receipt of Level 1 or Level 2 Base Funding from the PEER and the market value as of August 31st of the reported fiscal year, as determined by the Comptroller of Public Accounts.

Rule 15.29 requires the Coordinating Board to annually publish the metrics pertaining to the TUF for all general academic institutions each fiscal year.

Rule 15.30 provides that the Coordinating Board shall annually calculate and publish an increased threshold of research expenditures as part of the eligibility requirements for the NRSF based on the increase in the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, in accordance with TEC §62.132, as amended by H.B. 1595.

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 rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as the result of adopting these rules is the creation of a new subchapter of Texas Administrative Code to implement the eligibility requirements, distribution methodology, and reporting for the Texas University Fund, and implementation of eligibility requirements for the National Research Support Fund in accordance with the provisions of H.B. 1595, 88th Texas Legislature, Regular Session. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The new subchapter is proposed under Texas Education Code, Section 62.132, as added by Section 6 of H.B. 1595, 88th Texas Legislature, Regular Session, which provides for the Coordinating Board to set the eligibility threshold for the National Research Support Fund by rule, and Section 62.152, as added by Section 19 of H.B. 1595, which provides the Coordinating Board with rulemaking authority to implement the new Texas University Fund.

The proposed new subchapter affects Texas Education Code, Sections 62.132 and 62.141 - 62.152.

§15.20. Authority and Purpose.

(a) This subchapter establishes rules for eligible institutions to receive funds through the Texas University Fund and the allocation of funds distributed from the Texas University Fund each state fiscal year. The Texas University Fund is established to support general academic teaching institutions to achieve national prominence as major research universities and drive the state economy.

(b) The Board adopts subchapter B pursuant to Texas Education Code, §62.152, requiring the Board to adopt rules to implement Texas Education Code, Chapter 62, subchapter G, Texas University Fund. Texas Education Code, §62.132, provides that the Board specify the eligibility threshold of research expenditures for receipt of the National Research Support Fund.

§15.21. Definitions.

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

(1) Available University Fund (AUF)--A fund established in Article 7, §18, of the Texas Constitution to receive all interest and earnings of the Permanent University Fund (PUF) and used to pay the debt service on PUF-backed bonds.

(2) Board--The governing body of the Texas Higher Education Coordinating Board.

(3) Commissioner--The Texas Commissioner of Higher Education.

(4) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(5) Coordinating Board Staff or Board Staff--Agency staff acting under the direction of the Board and the Commissioner.

(6) Federal Expenditures--Expenditures of funds reported as Federal Expenditures, as defined in §13.302 of this title (relating to Definitions). Amounts exclude R&D expenditures that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey.

(7) General Academic Teaching Institution--Any college, university, or institution so classified in Texas Education Code, §61.003(3).

(8) Medical and Dental Unit--Any public health related institution as defined in Texas Education Code, §61.003(5).

(9) Other Agency of Higher Education--Any agency of higher education as defined in Texas Education Code, §61.003(6).

(10) Private Expenditures--Expenditures of funds reported as Business Expenditures, Non-profit Organization Expenditures, and All Other Expenditures as defined in §13.302 of this title. Amounts exclude R&D expenditures that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey.

(11) Research Expenditure Survey--Instrument administered by the Coordinating Board that establishes total R&D expenditures for each institution by research field and areas of special interest, both accounted by funding source, as defined in §13.302 of this title.

(12) Texas University Fund (TUF)-Eligible Institution--An institution listed in Texas Education Code, §62.145(a), or an institution that becomes eligible by meeting the requirements listed in Texas Education Code, §62.145(b).

§15.22. Eligible Institutions.

(a) The following general academic teaching institutions are eligible to receive distributions from the Texas University Fund in a state fiscal year:

(1) Texas State University;

(2) Texas Tech University;

(3) University of Houston; and

(4) University of North Texas.

(b) A general academic teaching institution not listed above may become a TUF-eligible institution in a state fiscal year if it meets the statutory requirements.

§15.23. Eligibility to Receive a Distribution from the Texas University Fund.

(a) General academic teaching institutions may become a TUF-eligible institution in a state fiscal year if, based on most recently available data, the institution:

(1) Is not entitled to participate in funding through the Available University Fund;

(2) Expends an average of $20.0 million in combined Federal Expenditures and Private Expenditures during the prior three fiscal years, adjusted in accordance with subsection (b);

(3) Awards an average of at least 45 research doctoral degrees, as determined by §15.26 of this subchapter (relating to Research Performance Funding), per academic year during the prior three fiscal years; and

(4) The legislature provides an appropriation to the Texas University Fund, as defined in §15.27 of this subchapter (relating to Percentage Share for Legislative Appropriation).

(b) For the purpose of calculating the combined Federal Expenditures and Private Expenditures threshold amount in subsection (a)(2), beginning in state fiscal year 2025, and in each subsequent fiscal year, the Coordinating Board shall adjust the research expenditure threshold by any increase in the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor during the preceding state fiscal year.

(c) The Coordinating Board staff shall annually publish the threshold of combined Federal Expenditures and Private Expenditures for TUF eligibility.

(d) Once an institution meets the criteria in subsection (a), an institution remains eligible to receive a distribution in each subsequent fiscal year.

§15.24. Allocation of Distributions.

In a state fiscal year, the allocation of funds distributed from the Texas University Fund shall be as follows:

(1) Seventy-five (75) percent to the Permanent Endowment for Education and Research Base Funding; and

(2) Twenty-five (25) percent to Research Performance Funding.

§15.25. Permanent Endowment for Education and Research Base Funding.

(a) In a state fiscal year, the Coordinating Board shall confer with the Legislative Budget Board to determine Permanent Endowment for Education and Research Base Funding for TUF-eligible institutions based on the following categories:

(1) Level 1 Base Funding for TUF-eligible institutions that are eligible to receive the maximum allocation of base funding as calculated in subsection (b); and

(2) Level 2 Base Funding for TUF-eligible institutions that are not eligible to receive the maximum allocation of base funding.

(b) A TUF-eligible institution shall receive Level 1 Base funding if it meets the following criteria:

(1) The institution expended at least $45.0 million in combined Federal Expenditures and Private Expenditures in fiscal years 2021 and 2022; or

(2) The institution expends at least $45.0 million in combined Federal Expenditures and Private Expenditures, adjusted in accordance with subsection (c), per state fiscal year during the prior two fiscal years and the legislature provides an appropriation to the Texas University Fund, as defined in §15.27 of this subchapter (relating to Percentage Share for Legislative Appropriation).

(c) For the purpose of calculating the threshold of research funding under subsection (b), beginning in state fiscal year 2025, and in each subsequent fiscal year, the qualifying amount of combined Federal Expenditures and Private Expenditures will be adjusted by any increase in the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor during the preceding state fiscal year.

(d) Coordinating Board staff shall annually publish the threshold of combined Federal Expenditures and Private Expenditures required for an allocation of funding under subsection (b)(2).

(e) Once an institution meets the criteria in subsection (b), an institution remains eligible to receive Level 1 Base Funding in each subsequent state fiscal year. All other TUF eligible institutions shall receive Level 2 Base Funding in each state fiscal year.

(f) TUF-eligible institutions that are eligible for Level 1 Base funding shall receive the following share of the Permanent Endowment for Education and Research Base Funding. Two divided by the sum of:

(1) the number of TUF-eligible institutions eligible for Level 1 funding multiplied by two; and

(2) the number of TUF-eligible institutions that are not eligible to receive Level 1 funding.

(g) Level 2 Base Funding shall be half the share of Level 1 Base Funding.

(h) The percentage share for Level 1 and Level 2 Base Funding is then multiplied by the total amount distributed for the Permanent Endowment for Education and Research to determine each individual institution's funding amount.

§15.26. Research Performance Funding.

(a) In a state fiscal year, the Coordinating Board shall confer with the Legislative Budget Board to determine Research Performance Funding allocations for each TUF-eligible institution based on the following:

(1) Eighty-five percent (85%) of the Research Performance Funds shall be allocated based on the most recent three-year average of combined Federal Expenditures and Private Expenditures. The allocation shall be proportional based on the institutions' share of total combined Federal Expenditures and Private Expenditures.

(A) Federal Expenditures and Private Expenditures are as reported in each state fiscal year on the Research Expenditure Survey as required by §13.303 of this title (relating to Standards and Accounting Methods for Determining Total Research Expenditures). Private research expenditures include business expenditures, nonprofit organization expenditures, and all other expenditures.

(B) For purposes of the allocation of the Research Performance funds, Federal Expenditures and Private Expenditures shall exclude unrecovered indirect costs and pass through funds to other general academic teaching institutions, medical and dental units, and other agencies of higher education.

(2) Fifteen percent (15%) of the Research Performance Funds shall be allocated based on the most recent three-year average of research doctoral degrees awarded. The allocation shall be proportional based on the institutions' share of the total research doctoral degrees awarded.

(A) Research doctoral degrees that qualify for purposes of calculation are those that are reflected on a list of research doctoral degrees published annually by Coordinating Board staff on March 1 of each fiscal year. Research doctoral degrees include an academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field and that requires completion of original research.

(B) 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.

§15.27. Percentage Share for Legislative Appropriation.

(a) For the purposes of calculating the legislative appropriation required for an individual institution to become TUF-eligible or to receive Level 1 Base Funding, the legislature must appropriate an amount to the Texas University Fund not less than the difference between:

(1) the quotient of:

(A) the market value of the Texas University Fund on September 1 of the state fiscal year; and

(B) one minus an incoming institution's percentage share of the Texas University Fund; and

(2) the market value of the Texas University Fund on September 1 of the state fiscal year.

(b) For purposes of calculating the legislative appropriation to become a TUF-eligible institution, an institution's percentage share of the Texas University Fund for a state fiscal year shall equal the following calculation:

(1) If the institution meets the research expenditure criteria to receive Level 1 Base Funding upon entry, as defined in §15.25 of this subchapter (relating to Permanent Endowment for Education and Research Base Funding), the percentage share shall equal the share of Level 1 Base funding an institution would have received in Permanent Endowment for Education and Research Base Funding, as calculated in §15.25 of this subchapter, had an additional institution been included in the allocation as a recipient of Level 1 Base Funding.

(2) If the institution does not meet the research expenditure criteria to receive Level 1 Base Funding upon entry, as defined in §15.25 of this subchapter, the percentage share shall equal the share of Level 2 Base funding an institution would have received in Permanent Endowment for Education and Research Base Funding, as calculated in §15.25 of this subchapter, had an additional institution been included in the allocation as a recipient of Level 2 Base Funding.

(c) For purposes of calculating the legislative appropriation for a currently TUF-eligible institution to receive Level 1 Base Funding, an institution's percentage share of the Texas University Fund for a state fiscal year shall equal the difference between the share of Level 1 Base Funding and Level 2 Base Funding an institution would have received in Permanent Endowment for Education and Research Base Funding, as calculated in §15.25 of this subchapter, had an additional institution been included in the allocation as a recipient of Level 1 Base Funding, instead of a recipient of Level 2 Base Funding.

§15.28. Endowment Calculation.

(a) A TUF-eligible institution may report a percentage share of the market value of the Texas University Fund as a true endowment for financial reporting purposes.

(b) An institution shall calculate its percentage share as seventy-five percent of the market value of the Texas University Fund multiplied by the institution's share of the Permanent Endowment for Education and Research base funding, as calculated in §15.25 of this subchapter (relating to Permanent Endowment for Education and Research Base Funding).

(c) The market value of the Texas University Fund shall be as of August 31 of the reported fiscal year as determined by the Comptroller of Public Accounts.

§15.29. Reporting.

Coordinating Board staff shall annually publish the most recent three state fiscal years of combined Federal Expenditures and Private Expenditures and research doctorates awarded, as defined under this subchapter, for general academic teaching institutions.

§15.30. National Research Support Fund.

Coordinating Board staff shall annually publish the adjusted threshold of combined Federal Expenditures and Private Expenditures needed to establish eligibility to receive a distribution from the National Research Support Fund. The amount shall align with the threshold established and published for §15.23(a)(2) of this subchapter (relating to Eligibility to Receive a Distribution from the Texas University Fund).

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) 427-6548

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER D. TEXAS FIRST EARLY HIGH SCHOOL COMPLETION PROGRAM

19 TAC §21.51, §21.52

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter D, §21.51 and §21.52, concerning Texas First Early High School Completion Program. Specifically, this amendment will align the rules with statutory amendments to Texas Education Code, §28.0253, that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session.

Rule 21.51 aligns the description of institutions eligible to participate in the program with recent legislative changes. The proposed amendments reflect the expansion of the program to all Texas public institutions of higher education to align with statutory amendments to Texas Education Code, §28.0253, enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session. The amendments add definitions for the terms used in statute and this subchapter governing applicability of the program, including definitions for public high school and open-enrollment charter school.

Rule 21.52(a) adds language to clarify that a student shall be allowed to graduate and receive a high school diploma under the Texas First Early High School Completion Program from a school district or open-enrollment charter school, as required by statute.

Rule 21.52(a)(2)(C) adds a new assessment to meet standards for eligibility for the Texas First Early High School Completion Program by adding the Foreign Language Achievement Testing Services (FLATS) assessment to Figure 1. This amendment reflects the availability of an additional assessment instrument that institutions of higher education may use to establish language proficiency.

Rule 21.52(b) clarifies that the method in which a counselor or administrator at the public school of a student who is eligible for the Texas First Early High School Completion Program will be a method established by the Coordinating Board.

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 the alignment of the rules with statutory changes that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session. 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 Dr. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Jennielle.strother@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 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

The proposed amendment affects Texas Education Code, Chapter 56, Subchapter K-1.

§21.51. Definitions.

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

(1) Coordinating Board--The agency, including staff, known as the Texas Higher Education Coordinating Board [~~"Coordinating board" means the agency, including staff, known as the Texas Higher Education Coordinating Board~~].

(2) Eligible Institution--An institution of higher education according to Texas Education Code, §61.003(8) [~~"Eligible institution" means an institution of higher education that is designated as a research university or emerging research university under the coordinating board's accountability system~~].

(3) Institution of Higher Education--An institution of higher education according to Texas Education Code 61.003 [~~"Institution of higher education" has the meaning assigned by Texas Education Code §61.003~~].

(4) Open-enrollment Charter--Has the meaning assigned by Texas Education Code, §12.002(3) and subchapter D.

(5) [~~(4)~~] Program--The [~~"Program" means the~~] Texas First Early High School Completion Program established under this section includes an open-enrollment charter high school or high school that is within a Texas school district.

§21.52. Eligibility for Texas First Diploma.

(a) Notwithstanding any other state or local law, a school district or open-enrollment charter school shall allow a student to graduate and receive a high school diploma [~~a student is entitled to early high school graduation~~] under the Texas First Early High School Completion Program if the student meets the criteria established in paragraphs (1) and (2) of this subsection. A student who achieves a required score on an assessment to meet the requirement of any one of paragraphs (1) and (2) of this subsection, shall be allowed to use that same assessment to meet the requirement of another section if the student's score meets the required minimum for each section.

(1) The student has met the following minimum criteria at the time of graduation:

(A) Earned at least twenty-two (22) high school credits by any permissible method, including credit by examination;

(B) Earned a final Grade Point Average equivalent to 3.0 on a 4.0 scale;

(C) Earned an overall scaled score in at least the 80th percentile on one or more of the following assessments: ACT, SAT, PSAT/NMSQT, TSIA/TSIA2, or GED, or alternatively, has a grade point average in the top ten percent of the student's current class during the current or semester prior to the counselor's or administrator's verification under subsection (b) of this section of a student's eligibility for early graduation under the Program; and

(D) Completed the requirement for the State of Texas Assessments of Academic Readiness End-of-Course (STAAR EOC) examinations for English I or II, Algebra I, and Biology by one of the following methods:

(i) If the student has taken the STAAR EOC for English I or II, Algebra I, and Biology, the student has achieved the satisfactory level of performance as defined by the Commissioner of Education; or

(ii) If the student has not taken the required STAAR EOC assessment for English I or II, Algebra I, or Biology, the student has satisfied the STAAR EOC requirement by achieving a passing score on a substitute assessment for that subject area authorized under Title 19 Texas Administrative Code, Chapter 101, Subchapter DD, §101.4002(b).

(2) The student has demonstrated the student's mastery of each subject area of English/Language Arts, Mathematics, Science, Social Studies, and a language other than English through assessments or other means eligible institutions commonly use to place students in courses that may be credited toward degree program requirements. A student may demonstrate mastery of each subject area, as applicable, by meeting one or more of the following criteria:

(A) Earning a score on the STAAR EOC assessment that meets the college readiness standards necessary to be exempt from application of the Texas Success Initiative as set out in Title 19 Texas Administrative Code, Chapter 4, Subchapter C, §4.54;

(B) Credit earned in a course in the core curriculum of an institution of higher education in which the student received at least a C; or

(C) Meeting the standards on the assessments set out in Figure 1.

Figure: 19 TAC §21.52(a)(2)(C)

~~Figure: 19 TAC §21.52(a)(2)(C)~~

(b) A counselor or administrator at the public school of a student who is eligible for early graduation under the Program must verify

that the student meets the requirements in subsection (a)(1) and (2) of this section using a method established by the Coordinating Board prior to issuing a diploma to the student under this Program. A student is responsible for providing the official copy of the assessment results to their counselor or administrator to verify these requirements.

(c) A school that issues a diploma under the Program shall require the minimum number of assessments to demonstrate that the student meets the criteria established in subsection (a)(1) and (2) of this section and may not require a student to take any other STAAR End-of-Course assessment to graduate under the Program, except as required by this section.

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

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Nichole Bunker-Henderson
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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS
SUBCHAPTER T. TEXAS FIRST SCHOLARSHIP

19 TAC §§22.550 - 22.552, 22.554 - 22.556

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter T, §§22.550 - 22.552 and 22.554 - 22.556, concerning Texas First Scholarship. Specifically, this amendment will align the rules with statutory changes that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session.

Rule 22.550 aligns the purpose of the program with recent legislative changes. The proposed amendments reflect the expansion of the program to all Texas public institutions of higher education to align with statutory changes that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session.

Rule 22.551 adds the definition of academic year. The proposed amendments establish a definition of academic year to be consistently applied across all institutions for this program. The amendments are proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

Rule 22.552 aligns the description of institutions eligible to participate in the program with recent legislative changes. The proposed amendments reflect the expansion of the program to all Texas public institutions of higher education to align with statutory changes that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session.

Rule 22.554 clarifies the academic year used in determining the discontinuation of a student's eligibility. The proposed amendments establish a standard to be used across all participating institutions to reflect that the discontinuation of a student's eligibility is based on the first academic year that begins after a student's graduation from high school. The amendments are proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

Rule 22.555 clarifies the academic year used in determining the scholarship amount. The proposed amendments align the calculation with the academic year that is also used to determine the extent of a student's eligibility time period. The amendments are proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

Rule 22.556 clarifies the time period used in calculating the institution's disbursement. The proposed amendments align the calculation of the disbursement with the reporting period used to make the calculation. The amendments are proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

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 alignment of the rules with statutory changes that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session. 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. Contéro-Puls, Assistant Commissioner for Student Financial Aid Pro-

grams, 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 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

The proposed amendment affects Texas Education Code, Chapter 56, Subchapter K-1.

§22.550. Authority and Purpose.

(a) Authority. Unless otherwise noted in a section, the authority [~~Authority~~] for this subchapter is provided in the Texas Education Code, Chapter 56, Subchapter K-1, Texas First Scholarship Program. This subchapter establishes procedures to administer Texas Education Code, §§56.221 - 56.227.

(b) Purpose. The purpose of this program is to incentivize the enrollment of high performing students at [~~the~~] Texas [~~public research and emerging research~~] institutions of higher education as defined in Texas Education Code, §61.003.

§22.551. Definitions.

In addition to the words and terms defined in §13.142 of this title [~~Title~~] (relating to Definitions) and §22.1 of this chapter [~~Chapter~~] (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Academic Year--The 12-month period starting with the fall semester.

(2) [~~(1)~~] Program--The Texas First Scholarship program.

(3) [~~(2)~~] Scholarship--The Texas First Scholarship.

§22.552. Eligible Institutions.

(a) Participation.

(1) For any student graduating through the Texas First Early High School Completion Program on or after September 1, 2023, institutions of higher education, as defined in Texas Education Code, §61.003, are required to apply the state credit available to a student through the Program to the eligible student's cost of attendance, as outlined in §22.555 of this subchapter (relating to Scholarship Amount).

(2) For any student graduating through the Texas First Early High School Completion Program before September 1, 2023, institutions of higher education, as defined in Texas Education Code, §61.003), that are [~~Institutions~~] designated as either a public research university or public emerging research university under the coordinating board's accountability system are required to apply the state credit available to a student through the Program to the eligible student's costs of attendance, as outlined in §22.555 of this subchapter [~~(relating to Scholarship Amount)~~].

(b) Responsibilities. Participating public institutions are required to abide by the General Provisions outlined in subchapter [~~Subchapter~~] A of this chapter [~~Chapter~~] (relating to General Provisions).

(c) Approval. Each eligible public institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner or his/her designee, prior to receiving reimbursement through the program.

§22.554. Discontinuation of Eligibility or Non-Eligibility.

State credit offered to a student through this program expires at the end of the first academic year that begins following the student's graduation from high school.

§22.555. Scholarship Amount.

(a) The scholarship is issued by the Coordinating Board [~~staff~~] as a state credit for use by an eligible student at any eligible institution.

(1) For a student who graduated from high school two or more semesters or the equivalent earlier than the student's high school cohort, the state credit offered to the student will equal the maximum annual (two semester) TEXAS Grant award determined by the Coordinating Board [~~staff for the applicable academic year~~]. The calculation is based on TEXAS Grant value for the first academic year that begins following the student's graduation from high school.

(2) For a student who graduated from high school less than two semesters or the equivalent earlier than the student's high school cohort, the state credit offered to the student will equal half of the amount described by paragraph (1) of this subsection.

(b) The amount of state credit offered to a student under the program may not be considered in the calculation of any state or institutional need-based aid awards or the calculation of the student's overall financial need, unless the combination of the credit and other federal, state, and institutional financial aid, excluding work-study and loan programs, for which the student would otherwise be eligible exceeds the estimated total cost of attendance at the eligible institution at which the student is enrolled.

(c) On enrollment of an eligible student at an eligible institution, the institution shall apply the state credit to the student's charges for tuition, mandatory fees, and other costs of attendance.

(1) The amount applied for the semester is equal to the lesser of:

(A) The amount of the state credit available to the student; or

(B) The student's actual tuition, mandatory fees, and other costs of attendance at the institution.

(2) Remaining state credit may be applied to subsequent semesters prior to the end of [~~within~~] the first academic year that begins following the student's graduation from high school.

§22.556. Institutional Reimbursement.

(a) The Coordinating [~~Board~~] staff shall distribute to each eligible institution an amount of funds equal to the amount of state credit applied by the institution under §22.555 of this subchapter (relating to Scholarship Amount) during the [~~preceding~~] academic period reported under subsection (b) of this section [~~year~~].

(b) The institution's annual Financial Aid Database submission will be used to calculate the reimbursement amount.

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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Texas Higher Education Coordinating Board
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CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS
SUBCHAPTER D. LOAN REPAYMENT PROGRAM FOR MENTAL HEALTH PROFESSIONALS

19 TAC §§23.93 - 23.101

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter D, §§23.93 - 23.101, concerning Loan Repayment Program for Mental Health Professionals. Specifically, the amendments will align the eligible specialties, selection of recipients, eligibility for the program, and amount of repayment assistance in the Mental Health Professionals Loan Repayment Program with statutory changes enacted by House Bill 1211 (HB 1211), House Bill 2100 (HB 2100), and Senate Bill 532 (SB 532), 88th Texas Legislature, Regular Session.

Rule 23.93 amends the description of the purpose of the program to align with the program's expansion, as outlined in HB 1211, HB 2100, and SB 532, 88th Texas Legislature, Regular Session.

Rule 23.94 amends definitions for words and terms within the Mental Health Professionals Loan Repayment Program rules. The definitions are adopted to provide clarity for words and terms that are integral to the understanding and administration of the rules. Specifically, definitions for community-based mental health services, local mental health authority, state hospitals, and Title I schools, are added, and the definition of full-time service is amended, as these changes are necessary for the understanding and administration of additional eligibility, as outlined in HB 1211, HB 2100, and SB 532, 88th Texas Legislature, Regular Session. Additional, non-substantive changes are also made to provide clarity and define an acronym.

Rule 23.95 amends the list of eligible practice specialties, adding licensed specialist in school psychology. The change aligns the rule with the amendment to Texas Education Code (TEC), Section 61.601, HB 1211, 88th Texas Legislature, Regular Session.

Rule 23.96 amends the requirements for conditional approval into the program. The amendment adds the requirements for mental health professionals who provide mental health services to patients in state hospitals, individuals receiving community-based mental health services from a local mental health authority, or students enrolled in an eligible district or school. The change aligns the rule with the amendments to TEC, Sections 61.603 and 61.607, HB 1211 and SB 532, 88th Texas Legislature, Regular Session. The amendment also delineates 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 11 of SB 532, 88th Texas Legislature, Regular Session. The amendment also makes a non-substantive change that aligns with a similar change in §23.93 (relating to Definitions).

Rule 23.97 amends the selection process within each practice specialty to account for applications from mental health professionals who provide mental health services to patients in state hospitals that may not be located in mental health professional shortage areas. Applications from mental health professionals who provide mental health services to individuals receiving community-based mental health services from a local mental health authority or students enrolled in an eligible district or school are accounted for in the current rule text. The amendment also makes non-substantive changes that align with similar changes in §23.93 (relating to Definitions).

Rule 23.98 amends the requirements to receive disbursements of loan repayment assistance. The amendment delineates between the requirements for licensed specialists in school psychology and the requirements for other providers. The change aligns the rule with the amendments to TEC, Sections 61.603 and 61.607, made by HB 1211 and SB 532, 88th Texas Legislature, Regular Session. It also delineates 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 11 of HB 532, 88th Texas Legislature, Regular Session. Of note, while HB 1211 amends TEC, Section 61.603 to require one, two, three, four, or five years of service for licensed specialists in school psychology, SB 532 amends TEC, Section 61.607, to only provide payments to all participants in the program after one, two, or three years of service. Rule 23.98 is thus written to conform with the latter.

Rule 23.99 is amended to make a non-substantive change that aligns with a similar change in §23.93 (relating to Definitions).

Rule 23.100 amends the amount of repayment assistance a participant may receive through the program. The maximum amount a licensed specialist in school psychology may receive is added to the rule to align with the amendments to TEC, Section 61.607, HB 1211, 88th Texas Legislature, Regular Session. The rule also amends the percentage of the maximum funding that a participant may receive for each year of participation in the program to align with amendments to TEC, Section 61.607, made by SB 532, 88th Legislative Session. It also delineates 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 11 of SB 532, 88th Texas Legislature, Regular Session.

Rule 23.101 is amended to make a non-substantive change that aligns with a similar change in §23.93 (relating to Definitions).

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the potential expansion in the number of mental health professionals providing services in areas of the state currently experiencing shortages. 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 Dr. 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 amendments are proposed under Texas Education Code, Section 61.608, which provides the Coordinating Board with the authority to adopt rules necessary to administer Texas Education Code, Chapter 61, Subchapter K.

The proposed amendment affects Texas Education Code, Chapter 61, Subchapter K.

§23.93. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 61, Subchapter K, Repayment of Certain Mental Health Professional Education Loans. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.601 - 61.609.

(b) Purpose. The [~~primary~~] purpose of the Loan Repayment Program for Mental Health Professionals is to encourage qualified mental health professionals to provide services to designated recipients [~~practice~~] in a mental health professional shortage area or state hospital, through a mental health authority, or to students in eligible schools [~~designated by the U. S. Department of Health and Human Services, and provide mental health care services to recipients under the medical assistance program authorized by the Texas Human Resources Code, Chapter 32, and to enrollees under the child health plan program authorized by the Texas Health and Safety Code, Chapter 62~~].

§23.94. Definitions.

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

(1) Board Staff --The staff of the Texas Higher Education Coordinating Board.

(2) CHIP--The Children's Health Insurance Program, authorized by the Texas Health and Safety Code, Chapter 62.

(3) Community-Based Mental Health Services--The services found under Subchapter B, Chapter 534, Health and Safety Code.

(4) [~~(3)~~] Full-time Service--Employed or contracted full-time (at least 32 hours per week for providers participating only in the state-funded program, or at least 40 hours per week for providers participating in both the state funded program and the SLRP [~~providers~~]) by an agency or facility [~~in a mental health professional shortage area~~] for the primary purpose of providing direct mental health services to:

(A) in a mental health professional shortage area [~~Medicaid recipients~~]:

(i) Medicaid recipients;

(ii) CHIP enrollees;

(iii) persons in facilities operated by or under contract with the Texas Juvenile Justice Department; and/or

(iv) persons in facilities operated by or under contract with the Texas Department of Criminal Justice; or

(B) patients in state hospitals; [~~CHIP enrollees;~~]

(C) individuals receiving community-based mental health services from a local mental health authority; and/or [~~persons in facilities operated by or under contract with the Texas Juvenile Justice Department; and/or~~]

(D) students enrolled in an eligible district or school. [~~persons in facilities operated by or under contract with the Texas Department of Criminal Justice;~~]

(5) Local Mental Health Authority--as defined in Texas Health and Safety Code, §531.002.

(6) [~~(5)~~] Medicaid--The medical assistance program authorized by Chapter 32, Human Resources Code.

(7) [~~(4)~~] MHPSAs--Mental Health Professional Shortage Areas (MHPSAs) are designated by the U.S. Department of Health and Human Services (HHS) as having shortages of mental health providers and may be geographic (a county or service area), demographic (low income population), or institutional (comprehensive health center, federally qualified health center, or other public facility). Designations meet the requirements of Sec. 332 of the Public Health Service Act, 90 Stat. 2270-2272 (42 U.S.C. 254e). Texas MHPSAs are recommended for designation by HHS based on analysis of data by the Department of State Health Services.

(8) [~~(7)~~] Psychiatrist--A licensed physician who is a graduate of an accredited psychiatric residency training program.

(9) [~~(6)~~] Service Period--A period of 12 consecutive months qualifying a mental health professional for loan repayment.

(10) SLRP--A grant provided by the Health Resources and Services Administration to assist states in operating their own State Loan Repayment Program (SLRP) for primary care providers working in Health Professional Shortage Areas (HPSA).

(11) State Hospital--Facilities found under §552.0011, Health and Safety Code.

(12) 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.).

§23.95. Eligible Practice Specialties.

For purposes of this subchapter, the following mental health providers may apply for enrollment in the program:

(1) a psychiatrist;

(2) a psychologist, as defined by §501.002, Occupations Code;

(3) a licensed professional counselor, as defined by §503.002, Occupations Code;

(4) an advanced practice registered nurse, as defined by §301.152, Occupations Code, who holds a nationally recognized board certification in psychiatric or mental health nursing;

(5) a licensed clinical social worker, as defined by §505.002, Occupations Code;

(6) a licensed specialist in school psychology, as defined by §501.002, Occupations Code;

(7) [~~(6)~~] a licensed chemical dependency counselor, as defined by §504.001, Occupations Code; and

(8) [~~(7)~~] a licensed marriage and family therapist, as defined by §502.002, Occupations Code.

§23.96. Eligibility for Conditional Approval of Applications.

(a) To be eligible for the Board staff to reserve loan repayment funds, a mental health professional must:

(1) ensure that the Board staff has received the completed application by the established deadline, which will be posted on the program web page;

(2) be a U.S. citizen or a Legal Permanent Resident and have no license restrictions;

(3) not be currently fulfilling another obligation to provide mental health services as part of a scholarship agreement, a student loan agreement, or another student loan repayment agreement. [~~;~~]

[~~(4) agree to provide five consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and~~]

[~~(5) agree to provide mental health services to:~~]

[~~(A) Individuals enrolled in Medicaid or CHIP or both; or~~]

[~~(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.~~]

(b) For applicants who first establish eligibility for the program before September 1, 2023, a mental health professional must:

(1) agree to provide five consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and

(2) agree to provide mental health services to:

(A) Individuals enrolled in Medicaid or CHIP or both; or

(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(c) For applicants who first establish eligibility for the program on or after September 1, 2023, a mental health professional must:

(1) agree to provide three consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and

(2) agree to provide mental health services to:

(A) Individuals enrolled in Medicaid or CHIP or both; or

(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(d) Notwithstanding subsection (c), for applicants who first establish eligibility for the program on or after September 1, 2023, who provide mental health services to patients in state hospitals, individuals receiving community-based mental health services from a local mental health authority, or students enrolled in an eligible district or school, a mental health professional must agree to provide three consecutive years of eligible service as outlined in §23.98 of this subchapter (relating to Eligibility for Disbursement of Loan Repayment Assistance).

§23.97. Selection of Eligible Applicants and Limitations.

(a) Each fiscal year an application deadline will be posted on the program web page.

(b) Not more than 10 percent of the number of repayment assistance grants paid under this subchapter each year may be awarded to mental health professionals providing mental health services to persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice. Applications from these professionals will be selected on a first-come-first-served basis.

(c) Not more than 30 percent of the number of repayment assistance grants paid under this subchapter each fiscal year may be awarded to mental health professionals in any one of the eligible practice specialties, unless excess funds remain available after the 30 percent maximum has been met.

(d) For each practice specialty, applications will be ranked in order of the following priorities:

(1) providers who benefitted from awards the previous year;

(2) providers who sign SLRP [~~SLFP~~] contracts;

(3) providers whose employers are located in areas having MHPSA scores that reflect the highest degrees of shortage. If a provider works for an agency located in an MHPSA that has satellite clinics and the provider works in more than one of the clinics, the highest MHPSA score where the provider works shall apply. If a provider travels to make home visits, the provider's agency base location and its MHPSA score shall apply. If a provider works for different employers in multiple MHPSAs having different degrees of shortage, the location having the highest MHPSA score shall apply;

(4) providers in state hospitals;

(5) [~~(4)~~] providers whose employers are located in rural areas, if, in the case of providers serving at multiple sites, at least 75% of their work hours are spent serving in those areas; and

(6) [~~(5)~~] providers whose applications were received on the earliest dates.

(e) If funds remain available after loan repayment awards have been reserved for applicants selected according to the criteria stated in

subsection (d) of this section, applications will be ranked in order of the following priorities, regardless of the applicant's practice specialty:

(1) providers whose employers are located in areas having MHPSA scores that reflect the highest degrees of shortage. If a provider works for an agency located in an MHPSA that has satellite clinics and the provider works in more than one of the clinics, the highest MHPSA score where the provider works shall apply. If a provider travels to make home visits, the provider's agency base location and its MHPSA score shall apply. If a provider works for different employers in multiple MHPSAs having different degrees of shortage, the location having the highest MHPSA score shall apply;

(2) providers whose employers are located in rural areas, if, in the case of providers serving at multiple sites, at least 75% of their work hours are spent serving in those areas; and

(3) providers whose applications were received on the earliest dates.

(f) If state funds are not sufficient to allow for maximum award amounts stated in §23.100 [§23.100(2) and (3)] of this subchapter [title] (relating to Amount of Repayment Assistance) for all eligible applicants, the Board staff may adjust in an equitable manner the state-funded distribution amounts for a fiscal year, in accordance with TEC 61.607(d).

§23.98. Eligibility for Disbursement of Loan Repayment Assistance.

(a) To be eligible to receive loan repayment assistance as a mental health professional who first established eligibility for the program before September 1, 2023, a mental health provider must:

(1) have completed one, two, three, four, or five consecutive years of practice in an MHPSA providing direct patient care to Medicaid enrollees and/or CHIP enrollees, if the practice serves children or persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor or in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor; and

(2) after an award is disbursed for a third consecutive year of service, a psychiatrist must have earned certification from the American Board of Psychiatry and Neurology or the American Osteopathic Board of Psychiatry and Neurology to qualify for continued loan repayment assistance.

(b) To be eligible to receive loan repayment assistance as a mental health professional who first established eligibility for the program on or after September 1, 2023, a mental health provider must have completed one, two, or three consecutive years of practice:

(1) in an MHPSA providing direct patient care to Medicaid enrollees and/or CHIP enrollees, if the practice serves children or persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor or in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor;

(2) providing mental health services to patients in a state hospital; or

(3) to individuals receiving community-based mental health services from a local mental health authority.

(c) Notwithstanding subsection (b), to be eligible to receive loan repayment assistance as a specialist in school psychology as outlined under §23.95(6) of this subchapter (relating to Eligible Practice Specialties), the mental health professional must:

(1) have completed one, two, or three consecutive years of employment in:

(A) a school district which is located partially or completely in a MHPSA;

(B) an open-enrollment charter school located in a MHPSA; or

(C) a Title I school; and

(2) have provided mental health services to students enrolled in that district or school during that time of employment.

§23.99. Eligible Lender and Eligible Education Loan.

(a) The Board staff 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, graduate, and professional education of the mental health professional 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, secondary market, governmental agency, or private foundation. A credit card debt is not considered an educational loan eligible for repayment.

(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 the undergraduate, graduate, or professional education of the individual applying for repayment assistance;

(2) not have been made during residency or to cover costs incurred after completion of graduate or professional education;

(3) not be in default at the time of the professional's application;

(4) not have an existing obligation to provide service for loan forgiveness through another program;

(5) not be subject to repayment through another student loan repayment or loan forgiveness program or as a condition of employment; and

(6) if the loan was consolidated with other loans, the applicant must provide documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for his or her undergraduate, graduate, or medical education.

§23.100. Amount of Repayment Assistance.

(a) Loan repayment awards will be disbursed directly to lenders on behalf of eligible mental health professionals. [and:]

[(1) Repayment assistance for each year of full-time service will be in an amount determined by applying the following applicable percentage to the maximum total amount of assistance allowed for the professional:]

[(A) for the first year, 10 percent;]

[(B) for the second year, 15 percent;]

[(C) for the third year, 20 percent]

[(D) for the fourth year, 25 percent; and]

[(E) for the fifth year, 30 percent.]

[(2) The total amount of state appropriated repayment assistance received by a mental health professional under this subchapter may not exceed:]

[(A) $160,000, for a psychiatrist;]

[(B) $80,000, for:]

[*(i)* a psychologist;]

[*(ii)* a licensed clinical social worker, if the social worker has received a doctoral degree related to social work; or]

[*(iii)* a licensed professional counselor, if the counselor has received a doctoral degree related to counseling; or]

[*(iv)* a licensed marriage and family therapist, if the marriage and family therapist had received a doctoral degree related to marriage and family therapy;]

[(C) $60,000, for an advanced practice registered nurse;]

[(D) $40,000, for a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional counselor who has not received a doctoral degree related to social work or counseling; and]

[(E) $10,000, for assistance received by a licensed chemical dependency counselor, if the chemical dependency counselor has received an associate degree related to chemical dependency counseling or behavioral science.]

[(3) If a mental health provider's total student loan indebtedness is less than the total amount of repayment assistance allowed for the provider's practice specialty, the annual loan repayment award amounts based on full-time service will be the following percentages of the student loan debt owed at the time of application for enrollment in the program:]

[(4) An eligible professional may receive prorated loan repayment assistance based on the percentage of full-time service provided for each service period, for a minimum of 20 hours per week if employed or contracted by an agency or facility in a mental health professional shortage area for the primary purpose of providing direct mental health services to:]

[(A) Medicaid recipients;]

[(B) CHIP enrollees;]

[(C) persons in facilities operated by or under contract with the Texas Juvenile Justice Department; and/or,]

[(D) persons in facilities operated by or under contract with the Texas Department of Criminal Justice.]

[(5) Failure to meet the program requirements will result in non-payment for the applicable service period(s) and, except under circumstances determined by the Board to constitute good cause, removal from the program.]

(b) Repayment assistance for each year of full-time service for mental health professionals who first established eligibility for the program before September 1, 2023, will be in an amount determined by applying the following applicable percentage to the maximum total amount of assistance allowed for the professional:

(1) for the first year, 10 percent;

(2) for the second year, 15 percent;

(3) for the third year, 20 percent;

(4) for the fourth year, 25 percent; and

(5) for the fifth year, 30 percent.

(c) Repayment assistance for each year of full-time service for mental health professionals who first established eligibility for the program on or after September 1, 2023, will be in an amount determined by applying the following applicable percentage to the maximum total amount of assistance allowed for the professional:

(1) for the first year, 33.33 percent;

(2) for the second year, 33.33 percent; and

(3) for the third year, 33.34 percent.

(d) The total amount of state appropriated repayment assistance received by a mental health professional under this subchapter may not exceed:

(1) $160,000, for a psychiatrist;

(2) $80,000, for:

(A) a psychologist;

(B) a licensed clinical social worker, if the social worker has received a doctoral degree related to social work;

(C) a licensed professional counselor, if the counselor has received a doctoral degree related to counseling; or

(D) a licensed marriage and family therapist, if the marriage and family therapist had received a doctoral degree related to marriage and family therapy;

(3) $60,000, for an advanced practice registered nurse;

(4) $40,000, for a licensed specialist in school psychology, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional counselor who has not received a doctoral degree related to social work or counseling; and

(5) $10,000, for assistance received by a licensed chemical dependency counselor, if the chemical dependency counselor has received an associate degree related to chemical dependency counseling or behavioral science.

(e) If a mental health provider's total student loan indebtedness is less than the total amount of repayment assistance allowed for the provider's practice specialty, the annual loan repayment award amounts based on full-time service will be the following percentages of the student loan debt owed at the time of application for enrollment in the program:

(1) For mental health professionals who first established eligibility for the program before September 1, 2023, amounts are 10% for year one, 15% for year two, 20% for year three, 25% for year four, and 30% for year five.

(2) For mental health professionals who first established eligibility for the program on or after September 1, 2023, amounts are 33.33% for year one, 33.33% for year two, and 33.34% for year three.

(f) An eligible professional may receive prorated loan repayment assistance based on the percentage of full-time service provided for each service period, for a minimum of 20 hours per week.

(g) Failure to meet the program requirements will result in non-payment for the applicable service period(s) and, except under circumstances determined by the Board staff to constitute good cause, removal from the program.

§23.101. Dissemination of Information.

The Board staff shall disseminate information about the Mental Health Professional Education Loan Repayment program to each institution of higher education or private or independent institution of higher education and to any appropriate state agency and professional association.

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

Filed with the Office of the Secretary of State on October 13, 2023.

TRD-202303820
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 427-6365

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §232.7 and §232.11, concerning general certification provisions. The proposed amendments would provide minor technical edits to clarify the existing hardship exemption processes established in rule, would implement the statutory requirements of House Bill (HB) 2929, 88th Texas Legislature, Regular Session, 2023, and would update the continuing professional education (CPE) training requirements to remove the limit on certain professional development hours that can be completed by classroom teachers and school counselors every five years for the purposes of standard certificate renewal.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 232, Subchapter A, Certificate Renewal and Continuing Professional Education Requirements, provide for rules that establish the requirements relating to types and classes of certificates issued, certificate renewal, and CPE.

As a result of the 88th Texas Legislature, Regular Session, 2023, HB 2929 amended TEC, §21.054(d) and (f), and added subsection (d-2), removing limits on the number of hours in certain specific topics that classroom teachers and school counselors can obtain in CPE every five years for purposes of certificate renewal.

Following is a description of the proposed amendments to 19 TAC Chapter 232, Subchapter A.

§232.7. Requirements for Certificate Renewal.

The proposed amendment to 19 TAC §232.7(b) would make a minor technical edit in the cross reference to paragraphs (1)-(4) to separate criteria in paragraphs (1)-(3) specific to hardship exemption requests due to catastrophic illnesses of the educator or family member and military service from criteria in paragraph (4) specific to a hardship exemption request made by a local education agency on behalf of an educator with an inactive standard certificate due to non-compliance with completion of CPE hours to meet certificate renewal requirements.

The proposed amendment to §232.7(b)(5) would add a cross reference to subsection (b)(4) to confirm that a fee is required only for hardship exemption requests specified in paragraph (4).

§232.11. Number and Content of Required Continuing Professional Education Hours.

The proposed amendment to 19 TAC §232.11(d)(3) would remove the limit on CPE hours that can be completed by classroom teachers renewing certificates on or after September 1, 2023. The section would be updated to align with provisions of HB 2929 that allow classroom teachers to complete at least 25 percent of training hours, including e-instruction, in specified topics and to confirm that hours completed beyond the 25 percent minimum can also be utilized for certificate renewal purposes.

The proposed new §232.11(d)(4) would add that CPE training hours on topics described in §232.11(d)(3) in excess of 25 percent will be counted toward a teacher's overall training requirements.

The proposed amendment to §232.11(f)(2) would strike the September 1, 2024 certificate renewal reference and related requirements on CPE hours for school counselors and would update language to specify that school counselors renewing on or after September 1, 2023, must complete at least 25 percent of CPE hours in specified topics, in alignment with provisions of HB 2929.

The proposed amendment to §232.11(f)(3) would strike paragraph (3), which limits the total number of CPE hours that a school counselor can complete in specific topics if renewing on or after September 1, 2024. The information is no longer applicable and/or needed based on clarifications about CPE training hours provided in HB 2929.

The proposed amendment to §232.11 would preserve the discretion for educators in choosing CPE hours while still reminding educators of the significance of these topic areas.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that, for the first five years the proposed rulemaking would be in effect, there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: The Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, the

proposal would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, repeal, or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Garcia has determined that for the first five years that the rule will be in effect that the public benefit anticipated as a result of the proposal would be clear guidance for applicants, educators, school districts, and providers on CPE requirements. The TEA staff has determined there is no anticipated cost to persons required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 27, 2023, and ends November 27, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the December 8, 2023 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

19 TAC §232.7

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code (TGC), Chapter 2001, and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.0541, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator (AED); and TEC, §21.0543, which requires the SBEC to propose rules that provide for CPE credit related to digital technology instruction; and Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes that the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a); 21.0031(f); 21.031; 21.041(b)(1)-(4) and (7)-(9); 21.054; 21.0541; and 21.0543; and Texas Occupations Code, §55.002 and §55.003.

§232.7. Requirements for Certificate Renewal.

(a) The Texas Education Agency (TEA) staff shall develop procedures to:

(1) notify educators at least six months prior to the expiration of the renewal period to the email address as specified in §230.91 of this title (relating to Procedures in General);

(2) confirm compliance with all renewal requirements pursuant to this subchapter;

(3) notify educators who are not renewed due to noncompliance with this section; and

(4) verify that educators applying for reactivation of certificate(s) under §232.9 of this title (relating to Inactive Status and Late Renewal) are in compliance with subsection (c) of this section.

(b) The TEA staff shall administratively approve each hardship exemption request that meets the criteria specified in paragraphs (1) - (3) of this subsection for a hardship exemption due to a catastrophic illness or military service or paragraph (4) [~~(1)-(4)~~] of this subsection for a hardship exemption requested by a local education agency .

(1) A hardship exemption must be due to one of the following circumstances that prevented the educator's completion of renewal requirements:

(A) catastrophic illness or injury of the educator;

(B) catastrophic illness or injury of an immediate family member; or

(C) military service of the educator.

(2) The request for a hardship exemption must include documentation from a licensed physician or verified military records.

(3) The request for the amount of time allowed for renewal is equal to:

(A) the amount of time that a licensed physician determined that the educator was not able to complete renewal requirements due to the educator's catastrophic illness or injury; or

(B) the amount of time that a licensed physician determined that the educator was not able to complete renewal requirements due to the catastrophic illness or injury of an immediate family member; or

(C) two years of additional time for a military service member, in accordance with the Texas Occupations Code, §55.003.

(4) A hardship exemption may be approved for a local education agency on behalf of an educator who has an invalid certificate due to lack of earning the required continuing professional education (CPE) hours as prescribed in §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours). The hardship exemption is valid for the academic year of the application and may be renewed up to one additional academic year, provided that the superintendent or designee of the local education agency requests the extension.

(5) If a hardship exemption request, as described in paragraph (4) of this subsection, is approved, the educator must pay the appropriate renewal fee, pursuant to §230.101 of this title (relating to Schedule of Fees for Certification Services).

(c) To be eligible for renewal, an educator must:

(1) subject to §232.16(c) of this title (relating to Verification of Renewal Requirements), satisfy CPE requirements, pursuant to §232.11 of this title;

(2) hold a valid standard certificate that is not currently suspended and has not been surrendered in lieu of revocation or revoked by lawful authority;

(3) not be a respondent in a disciplinary proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);

(4) be in compliance with all terms of any orders of the State Board for Educator Certification resulting from a disciplinary proceeding against the educator under Chapter 249 of this title;

(5) successfully resolve any reported criminal history, as defined by §249.3 of this title (relating to Definitions);

(6) not be in arrears of child support, pursuant to the Texas Family Code, Chapter 232;

(7) pay the renewal fee, provided in §230.101 of this title, which shall be a single fee regardless of the number of certificates being renewed; and

(8) submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the Texas Education Code, §22.0831.

(d) The TEA staff shall renew the certificate(s) of an educator who meets all requirements of this subchapter.

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

Filed with the Office of the Secretary of State on October 16, 2023.

TRD-202303839
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

19 TAC §232.11

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code (TGC), Chapter 2001, and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.054(d), as amended by House Bill (HB) 2929, 88th Texas Legislature, Regular Session, 2023, which specifies that subject to subsection (d-2), continuing education requirements for a classroom teacher may not require that more than 25 percent of the training required every five years include instruction in specified topics; TEC, §21.054(d-2), as added by HB 2929, 88th Texas Legislature, Regular Session, 2023, which specifies that training in a topic of instruction described by subsection (d) attended by a classroom teacher in excess of an amount of hours equal to 25 percent of the training required of the teacher every five years shall be counted towards the teacher's overall training requirements; TEC, §21.054(f), as amended by HB 2929, 88th Texas Legislature, Regular Session, 2023, which specifies that continuing education requirements for a counselor must provide that at least 25 percent of training required every five years include instruction in specified topics; TEC, §21.0541, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator (AED); TEC, §21.0543, which requires the SBEC to propose rules that provide for CPE credit related to digital technology instruction; and TEC, §22.0831(f), which states SBEC may propose rules regarding the deadline

for the national criminal history check and implement sanctions for persons failing to comply with the requirements; and Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes that the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a); 21.0031(f); 21.031; 21.041(b)(1)-(4) and (7)-(9); 21.054; 21.054(d), as amended by HB 2929, 88th Texas Legislature, Regular Session, 2023; 21.054(d-2), as amended by HB 2929, 88th Texas Legislature, Regular Session, 2023; 21.054(f), as amended by HB 2929, 88th Texas Legislature, Regular Session; 2023; 21.0541; 21.0543; and 22.0831(f); and TOC, §55.002 and §55.003.

§232.11. Number and Content of Required Continuing Professional Education Hours.

(a) The appropriate number of clock-hours of continuing professional education (CPE) must be completed during each five-year renewal period.

(b) One semester credit hour earned at an accredited institution of higher education is equivalent to 15 CPE clock-hours.

(c) Required Content.

(1) All educators must receive CPE training regarding educating students with disabilities. This training must include information particular to educating students with dyslexia.

(2) Other than hours earned to comply with subsections (d), (e), (f), (g), and (k) of this section, professional development activities shall be related to the certificate(s) being renewed and focus on the standards required for issuance of the certificate(s), including:

(A) content area knowledge and skills; and

(B) professional ethics and standards of conduct.

(d) Classroom Teacher.

(1) Classroom teacher certificate holders shall complete 150 clock-hours.

(2) A classroom teacher who renews a certificate prior to September 1, 2023, must attain some hours of CPE that includes training directly related to each of the following topics and may include two or more listed topics combined:

(A) collecting and analyzing information that will improve effectiveness in the classroom;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) digital learning, digital teaching, and integrating technology into classroom instruction;

(D) educating diverse student populations, including:

(i) students who are educationally disadvantaged; and

(ii) students at risk of dropping out of school; and

(E) understanding appropriate relationships, boundaries, and communications between educators and students.

(3) Subject to paragraph (4) of this subsection, [~~For~~] a classroom teacher who renews a certificate on or after September 1, 2023, may not be required to obtain more than 25 percent [~~not more than 37.5 hours~~] of CPE training hours, including e-instruction [~~shall include instruction~~] in [~~,~~] and [~~must be~~] directly related to, each of the following topics , which[~~and~~] may include two or more listed topics combined:

(A) collecting and analyzing information that will improve effectiveness in the classroom;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) digital learning, digital teaching, and integrating technology into classroom instruction;

(D) educating diverse student populations, including:

(i) students who are educationally disadvantaged; and

(ii) students at risk of dropping out of school; and

(E) understanding appropriate relationships, boundaries, and communications between educators and students.

(4) Training in a topic of instruction described by paragraph (3) of this subsection obtained by a classroom teacher in excess of an amount of hours equal to 25 percent of CPE training hours shall be counted toward the teacher's overall training requirements.

(e) Principal and Principal as Instructional Leader.

(1) Principal and Principal as Instructional Leader certificate holders shall complete 200 clock-hours.

(2) A principal and principal as instructional leader who renews a certificate prior to September 1, 2023, must attain some hours of CPE that include training directly related to each of the following topics:

(A) effective and efficient management, including:

(i) collecting and analyzing information;

(ii) making decisions and managing time; and

(iii) supervising student discipline and managing behavior;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) digital learning, digital teaching, and integrating technology into campus curriculum and instruction;

(D) effective implementation of the Texas Model for Comprehensive School Counseling Programs under Texas Education Code (TEC) [~~TEC~~], §33.005;

(E) mental health programs addressing a mental health condition;

(F) educating diverse student populations, including:

(i) students who are educationally disadvantaged;

(ii) emergent bilingual students; and

(iii) students at risk of dropping out of school; and

(G) preventing, recognizing, and reporting any sexual conduct between an educator and student that is prohibited under Texas

Penal Code, §21.12, or for which reporting is required under TEC, §21.006.

(3) For a principal and principal as instructional leader who renews a certificate on or after September 1, 2023, not more than 50 hours of CPE training shall include instruction in, and must be directly related to, each of the following topics and may include two or more listed topics combined:

(A) effective and efficient management, including:

(i) collecting and analyzing information;

(ii) making decisions and managing time; and

(iii) supervising student discipline and managing behavior;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) digital learning, digital teaching, and integrating technology into campus curriculum and instruction;

(D) effective implementation of the Texas Model for Comprehensive School Counseling Programs under TEC, §33.005;

(E) mental health programs addressing a mental health condition;

(F) educating diverse student populations, including:

(i) students who are educationally disadvantaged;

(ii) emergent bilingual students; and

(iii) students at risk of dropping out of school; and

(G) preventing, recognizing, and reporting any sexual conduct between an educator and student that is prohibited under Texas Penal Code, §21.12, or for which reporting is required under TEC, §21.006.

(f) School Counselor.

(1) School Counselor certificate holders shall complete 200 clock-hours.

(2) A school counselor who renews a certificate on or after September 1, 2023, [~~prior to September 1, 2024,~~] must attain at least 25 percent [~~some hours~~] of CPE hours that includes training directly related to each of the following five topics [~~that include~~] :

(A) assisting students in developing high school graduation plans;

(B) implementing dropout prevention strategies;

(C) informing students concerning:

(i) college admissions, including college financial aid resources and application procedures; and

(ii) career opportunities;

(D) counseling students concerning mental health conditions and substance abuse, including through the use of grief-informed and trauma-informed interventions and crisis management and suicide prevention strategies; and

(E) effective implementation of the Texas Model for Comprehensive School Counseling Programs under TEC, §33.005.

[~~(3) For a school counselor who renews a certificate on or after September 1, 2024, not more than 50 hours of CPE training shall include instruction in, and must be directly related to, each of the following topics and may include two or more listed topics combined:~~]

[~~(A) assisting students in developing high school graduation plans;~~]

[~~(B) implementing dropout prevention strategies;~~]

[~~(C) informing students concerning:~~]

[~~(i) college admissions, including college financial aid resources and application procedures; and~~]

[~~(ii) career opportunities;~~]

[~~(D) counseling students concerning mental health conditions and substance abuse, including through the use of grief-informed and trauma-informed interventions and crisis management and suicide prevention strategies; and~~]

[~~(E) effective implementation of the Texas Model for Comprehensive School Counseling Programs under TEC, §33.005.~~]

(g) Superintendent.

(1) Superintendent certificate holders shall complete 200 clock-hours.

(2) An individual who holds a superintendent certificate that is renewed on or after January 1, 2021, must complete at least 2.5 hours of training every five years on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children, in accordance with TEC, §21.054(h). For purposes of this subsection, "other maltreatment" has the meaning assigned by Human Resources Code, §42.002.

(h) School Librarian and Learning Resources Specialist certificate holders shall complete 200 clock-hours.

(i) Educational Diagnostician certificate holders shall complete 200 clock-hours.

(j) Reading Specialist certificate holders shall complete 200 clock-hours.

(k) The required CPE for educators who teach students with dyslexia must include training regarding new research and practices in educating students with dyslexia. The required training may be satisfied through an online course approved by Texas Education Agency staff.

(l) Professional development activities may include:

(1) an evidence-based mental health first aid training program or an evidence-based grief-informed and trauma-informed care program that is offered through a classroom instruction format that requires in-person attendance. A person receiving this training will receive twice the number of hours of instruction provided under that program, not to exceed 16 hours;

(2) suicide prevention training that meets the guidelines for suicide prevention training approved under the TEC, §21.451;

(3) an instructional course on the use of an automated external defibrillator in accordance with the guidelines established by the device's manufacturer and approved by the American Heart Association, the American Red Cross, other nationally recognized associations, or the medical director of a local emergency medical services provider, in accordance with the TEC, §21.0541;

(4) education courses that:

(A) use technology to increase the educator's digital literacy; and

(B) assist the educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices;

(5) educating students with mental health conditions, including how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma;

(6) for classroom teachers, educating emergent bilingual students; and

(7) educating students who engage in substance abuse.

(m) An educator holding multiple classes of certificates shall complete the higher number of required CPE clock-hours in the classes held during each five-year renewal period unless otherwise specified in applicable State Board for Educator Certification rules codified in the Texas Administrative Code, Title 19, Part 7.

(n) An educator eligible to renew multiple classes of certificates issued during the same renewal period may satisfy the requirements for any class of certificate issued for less than the full five-year period by completing a prorated number of the required CPE clock-hours. Educators must complete a minimum of one-fifth of the additional CPE clock-hours for each full calendar year that the additional class of certificate is valid.

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

Filed with the Office of the Secretary of State on October 16, 2023.

TRD-202303840
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

CHAPTER 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

19 TAC §§234.1, 234.3, 234.5, 234.6, 234.9, 234.11

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§234.1, 234.3, 234.5, and 234.6 and new §234.9 and §234.11, concerning military service members, military spouses, and military veterans. The proposed revisions would implement Senate Bills (SBs) 422 and 544 and House Bill (HB) 621, 88th Texas Legislature, Regular Session, 2023. The proposed revisions would add military service members as being eligible to receive several of the provisions in place for military spouses; would add provisions to issue a three-year temporary certificate to eligible military veterans, peace officers, fire protection personnel, and emergency medical services personnel; and would also add provisions for the issuance of a one-year temporary certificate to certain instructors for the Community College of the Air Force.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 234 consolidate all military-related provisions into one chapter for all members of the military community (i.e., military service members, military spouses, and military veterans).

The proposed revisions to 19 TAC Chapter 234 would implement SBs 422 and 544 and HB 621, 88th Texas Legislature, Regular Session, 2023. Following is a description of the proposed revisions.

§234.1. Purpose.

The proposed amendment to 19 TAC §234.1 would create a new subsection (b) that adds peace officers, fire protection personnel, emergency medical services personnel, and qualified instructors for the Community College of the Air Force to these provisions usually dedicated to members of the military community (i.e., military service members, military spouses, and military veterans). The proposed change would implement legislation passed during the 88th Texas Legislature Regular Session, 2023, in a more streamlined manner by placing all the statutory provisions into one SBEC rule chapter. Proposed new subsection (c) would be relettered accordingly.

§234.3. Definitions.

The proposed amendment to 19 TAC §234.3 would expand the section by adding the definitions of the following additional eight terms: permanent change of station order, review of credentials, peace officer, fire protection personnel, emergency medical services personnel, Texas Education Agency (TEA) staff, license, and state agency. These definitions are being added to align with provisions in legislation and to offer further clarity in the review and processing of requests from members of the military community and additional groups identified in the most recent legislation passed (e.g., peace officer, fire protection personnel, emergency medical services personnel).

§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans.

The proposed amendment to 19 TAC §234.5(a) would strike the language "as soon as practicable" to replace it with "within 30 days of receipt of a complete application" to align with specifications in SB 422 that emphasize the importance of timely review and processing of certification applications submitted by members of the military community.

The proposed amendment to §234.5(b) would add military service members and military veterans to the three-year certificate issuance provisions referenced in this section that are already in place for military spouses following completion of a successful review of out of state credentials.

Proposed new §234.5(f) would implement provisions from SB 422 to allow a military service member to be issued a three-year temporary certificate upon successful completion of a credentials review or to declare his or her intent to teach in Texas up to three years maximum on a license issued by another state department of education following TEA's review of his or her credentials and written confirmation of approval. These proposed changes mirror provisions reflected in §234.5(d) and §234.5(e) and established for military spouses in previous legislative sessions.

Proposed relettered §234.5(g) would add military spouses to the provisions already in rule, and the subsequent subsections would be relettered, with no additional changes to the rule text.

Proposed new §234.5(m) would be added to reference applicability of the permanent change of station order as an acceptable document that can be submitted by members of the military com-

munity to establish residency requirements as applicable for certificate issuance and to serve as an acceptable form of identification to approve the military-related fee exemptions and other established provisions for members of the military community.

§234.6. Review of Credentials and Issuance of Licensure to Military Service Members, Military Spouses, and Military Veterans.

The proposed amendment to 19 TAC §234.6(b)(1) would add clarification that a military service member is eligible for issuance of the Texas standard certificate following approval of an exemption from required examinations or after the required state certification examinations have been passed. The proposed amendment would also confirm that completion of a criminal background check is also required prior to certificate issuance.

The proposed amendment to §234.6(b)(2)(C) would add clarification that military spouses are eligible for issuance of the Texas standard certificate following approval of an exemption from required examinations or after the required state certification examinations have been passed.

The proposed amendment to §234.6(b)(3) would add clarification that military veterans are eligible for issuance of the Texas standard certificate following approval of an exemption from required examinations or after the required state certification examinations have been passed. The proposed amendment also confirms that completion of a criminal background check is also required prior to certificate issuance.

Proposed new §234.6(c) would implement a provision in SB 422 to clarify that a change in the marital status of a military spouse would not impact his or her right to utilize provisions specified in §234.6(b)(2)(A) and (B).

§234.9. Certification of Military Veterans, Peace Officers, Fire Protection Personnel, and Emergency Medical Services Personnel.

Proposed new 19 TAC §234.9(a)-(c) would implement provisions of HB 621, 88th Texas Legislature, Regular Session, 2023, to identify military veterans, peace officers, fire protection personnel, and emergency medical services personnel as the population of individuals eligible to receive the three-year temporary certificate and would establish the requirements for certificate issuance.

Proposed new §234.9(d) would provide guidance on the process to obtain a Texas standard certificate following expiration of the three-year temporary certificate.

§234.11. Certification of Full-Time Instructors for the Community College of the Air Force.

Proposed new 19 TAC §234.11(a) and (b) would implement provisions of SB 544, 88th Texas Legislature, Regular Session, 2023, to identify full-time instructors of the Community College of the Air Force as the population of individuals eligible to receive the one-year temporary certificate and would establish the requirements for certificate issuance. Proposed new §234.11(c) would provide guidance on the process to obtain a Texas standard certificate following expiration of the one-year temporary certificate.

Technical edits were made where applicable in the proposal to align the singularity of the terms *military service member, military spouse, and military veteran.*

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that, for the first five years the proposed rulemaking would be in effect, there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: The TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would increase the number of individuals subject to the rule's applicability because it would add military service members to some of the provisions already in place for military spouses, would add military veterans, peace officers, fire protection personnel, and emergency medical services personnel to the list of individuals eligible to receive a new, temporary three-year certificate created by the 88th Texas Legislature, Regular Session, 2023, to teach career and technology courses and would add full-time instructors for the Community College of the Air Force to the list of individuals eligible to receive a new temporary, one-year certificate, also created by the legislation. The proposed rulemaking would also create a new regulation by adding sections to these rules to comply with legislation and effectively implement the bills, and it would expand an existing regulation by adding to the population of individuals eligible to obtain certification and benefit from provisions specified in legislation.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not limit or repeal an existing regulation; would not decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Garcia has determined that for the first five years that the rule will be in effect the public benefit anticipated as a result of the proposal would be continued support to members of the military community who seek to become educators in Texas and the creation of additional certification pathways for military veterans, peace officers, fire protection personnel, emergency medical services personnel, and full-time instructors for the Community College of the Air Force. There is no anticipated cost to persons who are required to comply with the proposal, unless the TEA staff is unable to qualify them for military-fee exemption provisions already established in rule by past legislation. Any individuals not eligible for the military-fee exemption provisions would be subject to the

costs already established and applicable to anyone interested in pursuing teacher certification in Texas.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the revisions are not major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 27, 2023, and ends November 27, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/. The SBEC will take registered oral and written comments on the proposal at the December 8, 2023 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

STATUTORY AUTHORITY. The amendments and new sections are proposed under Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0444, as added by House Bill (HB) 621, 88th Texas Legislature, Regular Session, 2023, which creates a temporary certification to teach career and technology education for certain military service members and first responders and requires the SBEC to propose rules for certificate issuance; TEC, §21.052(b-1), which requires the SBEC to propose rules to establish procedures to establish residency and expedite processing of certification applications submitted by a military veteran or military spouse; TEC, §21.052(c), which states the SBEC can specify the term of a temporary certificate issued under this subsection; TEC, §21.052(d-1), which requires the SBEC to issue a three-year temporary certificate to eligible military spouses of active-duty service members; TEC, §21.052(f), which requires the SBEC to maintain an Internet website that outlines the procedures for military community members to obtain certification in Texas; TEC, §21.052(i), which defines active-duty service, lists the branches of the United States armed forces, and confirms the members of the military community eligible for processes established to certify educators from outside the state; TEC, §21.0525, as added by Senate Bill (SB) 544, 88th Texas Legislature, Regular Session, 2023, which creates a temporary teaching certificate for certain persons with experience as instructors for the Community College of the Air Force and requires the SBEC to propose rules for certificate issuance; TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; and TEC, §21.458(a-2), as added by HB 621, 88th Texas Legislature, Regular Session, 2023, which specifies that a school district shall assign a mentor teacher to a classroom teacher who has been issued a temporary certificate to teach career and technology education under TEC, §21.0444, for at least two years; and Texas Occupations Code (TOC), §55.001, which defines key terms and identifies the individuals relevant to the processing and support of members of the military community; TOC, §55.002, which provides clarification and guidelines for implementing fee exemptions for members of the military community; TOC, §55.003, which states military service members are eligible to receive a two-year extension of time to complete requirements for license renewal; TOC, §55.004(a)-(c), which requires state agencies to adopt rules for issuance of licensure to members of the military community and provides alternatives to become eligible for licensure; TOC, §55.004(d), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023, which requires state agencies to adopt rules to allow military service members to use the same options as military spouses to meet the residency and other state-specific requirements for licensure; TOC, §55.0041, as amended by SB 422, 88th Texas Legislature, Regular Session, 2023, which updates the section title to add military service members and include them in all related provisions addressed by this section; TOC, §55.005(a), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023, which specifies that a state agency that issues a license must do so no later than 30 days following the date that a military service member, military veteran, or military spouse applies for licensure; TOC, §55.005(b), which requires that a license issued under §55.005 confers the same rights, privileges, and responsibilities as a license not issued under §55.005; TOC, §55.006, which requires state agencies to determine renewal requirements for expedited licenses issued to members of the military community; TOC, §55.007, which provides state agencies authority to credit verified military service, training, or education toward licensing requirements; TOC, §55.008, which authorizes state agencies to credit verified relevant military service, training, or education relevant to the occupation toward the apprenticeship requirements for licensure; TOC, §55.009, which confirms state agencies that issue licensure shall waive license application and examination fees paid to the state for applicable members of the military community; and TOC, §55.010, which requires state agencies to prominently post notification of licensure provisions for military service members, military veterans, and military spouses on the home page of the agency's website.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement Texas Education Code (TEC), §§21.041(b)(2) and (4); 21.044(a); 21.0444, as added by HB 621, 88th Texas Legislature, Regular Session, 2023; 21.052(b-1), (c), (d-1), (f), and (i); 21.0525, as added by SB 544, 88th Texas Legislature, Regular Session, 2023; 21.054; and 21.458(a-2), as added by HB 621, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code (TOC), §§55.001; 55.002; 55.003; 55.004(a)-(c); 55.004(d), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023; 55.0041, as amended by SB 422, 88th Texas Legislature, Regular Session, 2023; 55.005(a), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023; 55.005(b); 55.006; 55.007; 55.008; 55.009; and 55.010.

§234.1. Purpose.

(a) The purpose of identifying military service members, military spouses, and military veterans is to establish a process to count applicable military service for timely admission into educator preparation programs, expedite the completion of certification credential reviews,

support certification examination and licensure application fee exemptions as applicable, and support certification renewal of members of the military community.

(b) Effective September 1, 2023, in support of legislation passed by the 88th Texas Legislature, Regular Session, 2023, this chapter has been updated to include military veterans, peace officers, fire protection personnel, emergency medical services personnel, who meet the qualifications outlined in this chapter to be issued a three-year temporary certificate to be placed in a career and technology education assignment, and to include qualified instructors for the Community College of the Air Force to be issued a one-year temporary certificate upon enrollment in a Texas-approved educator preparation program.

(c) [(b)] In the event of conflict with any other rule in the Texas Administrative Code, Title 19, Part 7, this chapter shall supersede with regard to the certification of military service members, military spouses, and military veterans.

§234.3. Definitions.

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

(1) Military service member--A person who is on active duty.

(2) Military spouse--A person who is married to a military service member.

(3) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(4) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by the Texas Government Code (TGC), §437.001, or similar military service of another state.

(5) Armed forces of the United States--The army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(6) Permanent change of station order--United States armed forces active duty member document ordering a permanent change of station.

(7) Texas Education Agency staff--an employee of the Texas Education Agency (TEA) who performs administrative functions on behalf of the State Board for Educator Certification.

(8) Review of credentials--the licensure process completed by TEA staff for individuals certified to teach in other states or countries as specified in Chapter 230, Subchapter H, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries).

(9) Peace officer--as defined by Texas Code of Criminal Procedure, Article 2.12.

(10) Fire protection personnel--as defined by TGC, §419.021.

(11) Emergency medical services personnel--as defined by Health and Safety Code, §773.003.

(12) License--a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business, occupation, or profession.

(13) State agency--a department, board, bureau, commission, committee, division, office, council, or agency of the state.

§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans.

(a) The application for certification of a military service member, military veteran, or military spouse, including an application based upon certification by a jurisdiction other than Texas that has certification requirements substantially similar to the Texas certification requirements, shall be processed within 30 days of receipt of a complete application [as soon as practicable].

(b) As soon as practicable after the issuance of a one-year certificate, Texas Education Agency (TEA) staff shall notify a military service member, a military spouse, and a military veteran, in writing or by email, [a military spouse] of the requirements for obtaining a standard Texas certificate.

(c) A military spouse who has been issued a one-year certificate prior to September 1, 2017, under the provisions of this chapter, is eligible for two additional years from the date of issuance, not to exceed a total of three years maximum, to align with provisions for a military spouse referenced in subsection (d) of this section.

(d) Effective September 1, 2017, a military spouse shall be issued a three-year temporary certificate upon completion of the review of credentials.

(e) Effective December 1, 2019, prior to beginning employment, a military spouse must declare his or her intent to teach in Texas with a license issued by another state department of education, by submitting an application and required documents for a review of credentials to the TEA and by completing the criminal background check. TEA staff must provide approval for the military spouse to teach in Texas a maximum of three years with credentials issued by another state.

(f) Effective December 1, 2023, a military service member shall be issued a three-year temporary certificate upon completion of the review of credentials, or, prior to beginning employment, a military service member must declare his or her intent to teach in Texas with a license issued by another state department of education, by submitting an application and required documents for a review of credentials to the TEA and completing the criminal background check. TEA staff must provide approval for the military service member to teach in Texas a maximum of three years with credentials issued by another state.

(g) [(f)] A military service member, [or] a military veteran , or a military spouse shall be entitled to credit verified military service, training, clinical and professional experience, or education toward the training, education, work experience, or related requirements (other than certification examinations) for educator certification. TEA staff and educator preparation programs (EPPs) shall use information from the U.S. Department of Veterans Affairs or other reliable sources to assist in crediting applicable military service, training, or education to certification requirements.

(h) [(g)] A military service member pursuing certification in career and technical education must meet requirements for the certificate, but for career and technical education certificate areas requiring experience and licensure, the military service member shall be entitled to substitute military experience in the trade for the required license or professional credential for the specific trade.

(i) [(h)] A military service member, military spouse, and military veteran shall complete educator examination requirements for certificate issuance as outlined in Texas Education Code, Chapter 21, Subchapter B, and rules in the Texas Administrative Code, Title 19, Part 7, or qualify for an exemption from required Texas examinations through

provisions in §152.1001 of Part 2 of this title (relating to Exceptions to Examination Requirements for Individuals Certified Outside the State).

(j) [~~(i)~~] A military [~~Military~~] service member [~~members~~] and a military veteran [~~veterans~~] are exempt from certification application fees that are paid to the state that lead to initial certification. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

(k) [~~(j)~~] A military [~~Military~~] service member [~~members~~] and a military veteran [~~veterans~~] are exempt from certification application fees that are paid to the state that lead to initial certification resulting from a review of credentials, one-year certificate, or out-of-state standard certificate. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

(l) [~~(k)~~] A military spouse is [~~Military spouses are~~] exempt from certification application fees that are paid to the state that lead to initial certification resulting from a review of credentials, three-year temporary certificate, or out-of-state standard certificate. This member [~~These members~~] of the military community is [~~are~~] exempt from paying the portion of the examination registration fee that is paid to the TEA.

(m) As applicable to meet residency requirements and establish acceptable identification for military-related fee exemption and other provisions, a military service member, military spouse, or military veteran can submit a copy of the permanent change of station order for the military service member, military spouse, or military veteran.

§234.6. Review of Credentials and Issuance of Licensure to Military Service Members, Military Spouses, and Military Veterans.

(a) To complete a review of credentials leading to issuance of licensure in Texas, each military service member [~~members~~], military veteran [~~veterans~~], or military spouse [~~spouses~~] must submit an application for review of credentials, copies of standard certificates issued in the other state(s), and official transcripts showing degree(s) conferred and date(s).

(b) Upon completion of the review, the Texas Education Agency (TEA) will notify each military service member, military veteran, or military spouse, as specified in paragraphs (1) - (3) of this subsection, to provide results of the licensure review and information on next steps in the licensure process as follows.

(1) A military [~~Military~~] service member [~~members~~] will receive written results of the credentials review and be issued the Texas standard certificate that aligns with certificate areas issued in other states following confirmation of exemption from or successful completion of required examinations and completion of a criminal background check.

(2) A military spouse [~~Military spouses~~] will receive written results of the credentials review and have the following three options to teach in Texas with:

(A) the license issued by another state department of education, confirmed by TEA to be in good standing;

(B) the Texas temporary three-year certificate already available under provisions in §234.5(d) of this title (relating to Certification of Military Service Members, Military Spouses, and Military Veterans); and

(C) the Texas standard certificate eligible for issuance immediately following a successful review of credentials by TEA , confirmation of exemption from or successful completion of required examinations, and completion of a criminal background check.

(3) A military veteran [~~Military veterans~~] will receive written results of the credentials review and be issued the Texas standard certificate that aligns with certificate areas issued in other states following confirmation of exemption from or successful completion of required examinations and completion of a criminal background check.

(c) A change in the marital status of a military spouse does not impact the provisions specified in subsection (b)(2)(A) and (B) of this section.

§234.9. Certification of Military Veterans, Peace Officers, Fire Protection Personnel, and Emergency Medical Services Personnel.

(a) Effective September 1, 2023, military veterans, peace officers, fire protection personnel, and emergency medical services personnel as defined in §234.3 of this title (relating to Definitions) shall be issued a one-time, nonrenewable, three-year temporary certificate for career and technology education if they meet the following:

(1) has served in the armed forces of the United States and was honorably discharged, retired, or released from active duty; or

(2) has served as a first responder and, while in good standing not because of pending or final disciplinary actions or a documented performance problem, retired, resigned, or separated from employment as a first responder; and

(A) has an associate degree from an accredited institution of higher education and 48 months of active duty military service or service as a first responder; or

(B) a bachelor's degree, which includes 60 semester credit hours completed at a public or private institution of higher education with a minimum grade point average of at least 2.50 on a four-point scale and military service or service as a first responder.

(b) A school district shall assign a mentor teacher to a classroom teacher who has been issued a temporary certificate to teach career and technology education under Texas Education Code (TEC), §21.0444, for at least two school years. A teacher assigned as a mentor must:

(1) to the extent practicable, teach in the same school;

(2) to the extent practicable, teach the same subject or grade level, as applicable; and

(3) meet the qualifications prescribed by commissioner of education rules adopted under TEC, §21.458(b), or §153.1011 of Part 2 of this title (relating to Mentor Program Allotment).

(c) An individual who meets the qualifications specified in subsection (a) of this section and who is interested in obtaining the three-year, nonrenewable temporary certificate, may submit the following items to the Texas Education Agency staff:

(1) a completed application;

(2) verification of military veteran status or licensure as a peace officer, fire protection services personnel, or emergency medical services personnel; and

(3) an official transcript showing degree conferred and conferral date, or successful completion of college coursework.

(d) A military veteran, peace officer, fire protection personnel, and emergency services personnel must enroll in a Texas-approved educator preparation program to complete requirements for issuance of the standard certificate.

§234.11. Certification of Full-Time Instructors for the Community College of the Air Force.

(a) Effective September 1, 2023, a one-year, temporary certificate may be issued to an individual who served as a full-time instructor for the Community College of the Airforce if he or she meets the following:

(1) holds a bachelor's degree as defined in §227.10 of this title (relating to Admission Criteria);

(2) has at least two semesters' experience as a full-time instructor for the Community College of the Air Force; and

(3) is currently enrolled in a Texas-approved educator preparation program.

(b) An individual who meets the qualifications specified in subsection (a) of this section and is interested in obtaining the one-year temporary certificate, may submit the following items to the Texas Education Agency (TEA) staff:

(1) a completed application;

(2) a copy of credentials to serve as an instructor for the Community College of the Air Force;

(3) an official transcript showing degree conferred and conferral date; and

(4) verification of at least two semesters' experience as a full-time instructor for the Community College of the Air Force.

(c) A qualified instructor for the Community College of the Air Force must take and pass all required examinations identified by TEA staff during the review of credentials and must complete any additional requirements specified for issuance of the standard certificate.

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

Filed with the Office of the Secretary of State on October 16, 2023.

TRD-202303842
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 475-1497

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 556. NURSE AIDES

26 TAC §§556.2, 556.3, 556.5, 556.8

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Title 26, Part 1, Chapter 556, Nurse Aides, amendments to §556.2, concerning Definitions; §556.3 concerning Nurse Aide Competency Evaluation Program (NATCEP) Requirements; §556.5, concerning Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements; and §556.8, concerning Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP). These rules contain references to §556.4, concerning Filing and Processing an Application for a NATCEP, and §556.7, concerning Review and Reapproval of a NATCEP, which are not being changed.

BACKGROUND AND PURPOSE

The purpose of the proposal is to amend the rules to stipulate that NATCEPs must accept 60 hours of classroom training through HHSC's computer-based training (CBT) for nurse aide candidates seeking to qualify for the Certified Nurse Aide (CNA) exam. The proposal updates definitions and references associated with the nurse aide CBT training and clarifies related requirements. Also, the proposal revises rule language regarding required credentials for NATCEP directors and instructors to align the rules more closely with federal requirements. More specifically, the Code of Federal Regulations (CFR) does not differentiate between the credentials required by the NATCEP program director versus the program instructor but states that the program must train nurse aides under the general supervision of a registered nurse with at least two years of nursing experience, at least one of which must be in providing long term care services. This proposal removes specific credentialing requirements in rule for NATCEP directors and instructors and replaces them with language allowing either or both to meet the federal requirements outlined in the CFR.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §556.2 revises definitions for nurse aide rules and updates references. Paragraph (6) updates the definition of "classroom training" to include HHSC's CBT. Paragraph (10) removes the definition of "curriculum" and renumbers the rule accordingly. Paragraph (12) updates the definition of facility to include a hospice inpatient unit licensed under Texas Health and Safety Code, Chapter 142. New paragraph (25) defines the acronym "NATCEP." New paragraph (29) adds a definition for "nurse aide curriculum." Paragraph (34) amends the definition of "performance record" to require documentation of the nurse aide's performance on HHSC Form 5497-NATCEP. Paragraph (37) updates a rule reference. Paragraph (38) updates the rule references for required program instructor credentials. Paragraph (41) updates the rule reference for required skills examiner credentials.

The proposed amendment to §556.3 changes the title to use the acronym "NATCEP" and revises NATCEP requirements. New subsection (j) provides that a NATCEP using a hospice inpatient unit as a clinical site may provide clinical training only in those services authorized to be provided to clients under Texas Health and Safety Code, Chapter 142. The addition of subsection (j) renumbers the subsequent subsections in the section. Subsection (n) states that the NATCEP must ensure the trainee has completed 100 hours of training, provides that the 60 hours of classroom training may be taught by the NATCEP or obtained by a trainee through HHSC's CBT, and clarifies that the 40 hours of clinical training is provided by the NATCEP. Subsection (o) updates the rule reference for requirements regarding the maintenance of NATCEP records. Subsection (p) clarifies that NATCEPs must include 16 hours of classroom training except as provided in subsection (q). Subsection (q) includes the new requirement that a NATCEP must accept proof of completion of HHSC's CBT in lieu of the 16 hours of introductory classroom training in subsection (p) and eight hours of infection control training in subsection (t); it also specifies that the trainee only performs services for which the trainee has been trained and found by a program instructor to be proficient and that such trainee may only do so under appropriate supervision and as clearly identified as a trainee during the clinical training portion of the NATCEP. Sub-

section (r) stipulates that a NATCEP that fails to accept proof of completion of HHSC's CBT for classroom training may be subject to withdrawal of program approval.

Additionally, subsection (s) within §556.3 provides updated references related to program instructor requirements. Subsection (t) clarifies that a NATCEP must teach eight hours of infection control to trainees except as provided in subsection (q), which allows trainees to complete HHSC's CBT. Subsection (w) makes a non-substantive editorial revision for clarity. Subsection (x) clarifies that a NATCEP must use HHSC Form 5497-NATCEP to document a trainee's performance of duties or skills taught and maintain a copy of it. New subsection (y) includes a provision stipulating that if a trainee successfully completes HHSC's CBT, the NATCEP must retain a copy of the HHSC-issued certificate of completion. The proposed amendment also includes non-substantive editorial and renumbering changes. Subsection (z) makes non-substantive editorial changes for clarity. Subsections (aa) and (dd) clarify rule language to differentiate between a "facility" and a "nursing facility" within the rule.

The proposed amendment to §556.5 makes the rule consistent with 42 CFR §483.152 and affords NATCEP staff more flexibility to meet the requirements. Subsection (a) stipulates that a NATCEP must have an approved program director and instructor to provide training, that the training must be performed by or under the general supervision of a registered nurse (RN) who has a minimum of two years of nursing experience, one of which must be in a nursing facility, and that the NATCEP application must certify that the program meets this requirement. Subsection (b) reiterates the requirement that a program director must be an RN in the state of Texas, have a minimum of two years of nursing experience, and have completed a course with a focus on teaching adult students or have experience in teaching adult students or supervising nurse aides. Subsection (c) allows an instructor to be a licensed vocational nurse (LVN) or RN in the state of Texas who has a minimum of two years of nursing experience and has completed a course with a focus on teaching adult students or has experience in teaching adult students or supervising nurse aides. Subsection (d) stipulates that either the program director or instructor must have at least one year of experience providing long term care services in a nursing facility. It also provides that if a NATCEP instructor is an LVN, the NATCEP must have a director with at least one year of experience providing long term care services in a nursing facility or an instructor who is an RN with at least one year of providing long term care services in a nursing facility. Subsection (e) moves the credentialing requirements for program director to subsection (d). It also clarifies that the NATCEP director must determine if trainees pass both the classroom and clinical training portions of the program and sign a competency evaluation application and the certificate of completion or a letter on letterhead stationary of the NATCEP or nursing facility stating that the training passed both the classroom and clinical portions of the competency portions of the NATCEP. Finally, it adds that completion of the classroom training for trainees who complete the HHSC CBT is determined by the certificate of completion, which includes the date the trainee completed it. Subsection (f) moves the credentialing requirements for program instructor to subsection (d). Non-substantive edits update references and renumber and improve clarity and readability.

The proposed amendment to §556.8 changes the title to use the acronym "NATCEP" and revises procedures relating to withdrawal of approval of a NATCEP. Subsection (a) clarifies that HHSC immediately withdraws approval of a facility-based NATCEP assessed a civil money penalty of $5,000 or more, which is adjusted annually under 45 CFR §102. Subsection (b) provides that HHSC will review allegations of noncompliance with this chapter by a NATCEP, notifying the program in writing and giving the program an opportunity to correct the noncompliance or providing documentation showing compliance, in writing, to HHSC within 10 days of receipt of notice of noncompliance. It further stipulates that if the NATCEP fails to correct the noncompliance, provide documentation showing compliance, or respond to HHSC's first notification, HHSC sends a second notice, which the NATCEP has 20 days to comply with or have its approval withdrawn. Subsection (d) replaces HHSC's means of notification of noncompliance via certified mail with email. Non-substantive edits improve clarity and readability.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will expand existing rule;

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

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

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

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities. We are unable to determine what the economic effect on NATCEPs may be, as NATCEPs may make changes in their business practices pursuant to the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COST TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from development of the labor pool of qualified nurse aides to care for nursing facility residents, greater flexibility for NATCEPs to meet federal regulations, and clarified requirements regarding NATCEP approval.

Trey Wood has also determined that for the first five years the rules are in effect, there are no economic costs to persons who are required to comply with the proposed rules because nurse aides opting to take HHSC's free trainings will not need to pay a NATCEP to complete their training.

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 Caroline Sunshine, Policy Specialist, by email to HHSCLTCR-Rules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be 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 emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R025" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §250.0035(d), which stipulates that the Executive Commissioner of HHSC shall adopt rules necessary to implement §250.0035, related the issuance and renewal of certificates of registration and the regulation of nurse aides as necessary to protect the public health and safety.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §531.0035.

§556.2. Definitions.

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

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(5) Armed forces of the United States--The Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice [, or] through online instruction taught in a virtual classroom location, or through an HHSC-approved computer-based training (CBT).

(7) Clinical training--The teaching of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

[(10) Curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities developed by HHSC.]

(10) [(11)] Direct supervision--Observation of a trainee performing skills in a NATCEP.

(11) [(12)] Employee misconduct registry (EMR)--The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(12) [(13)] Facility--Means:

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) a licensed intermediate care facility for an individual with an intellectual disability or related condition licensed under Texas Health and Safety Code, Chapter 252;

(C) a type B assisted living facility licensed under Texas Health and Safety Code, Chapter 247; [or]

(D) a general or special hospital licensed under Texas Health and Safety Code, Chapter 241; or

(E) a hospice inpatient unit licensed under Texas Health and Safety Code, Chapter 142.

(13) [(14)] Facility-based NATCEP--A NATCEP offered by or in a nursing facility.

(14) [(15)] General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

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

(16) [(17)] Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(17) [(18)] Informal Review (IR)--An opportunity for a nurse aide to dispute a finding of misconduct by providing testimony and supporting documentation to an impartial HHSC staff person.

(18) [(19)] Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

(A) a physician;

(B) a physician assistant;

(C) a physical, speech, or occupational therapist;

(D) a physical or occupational therapy assistant;

(E) a registered nurse;

(F) a licensed vocational nurse; or

(G) a licensed social worker.

(19) [~~(20)~~] Licensed nurse--A registered nurse or licensed vocational nurse.

(20) [~~(21)~~] Licensed vocational nurse (LVN)--An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

(21) [~~(22)~~] Military service member--A person who is on active duty.

(22) [~~(23)~~] Military spouse--A person who is married to a military service member.

(23) [~~(24)~~] Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(24) [~~(25)~~] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent, use of a resident's belongings or money without the resident's consent.

(25) NATCEP--Nurse Aide Training and Competency Evaluation Program.

(26) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(27) Non-facility-based NATCEP--A NATCEP not offered by or in a nursing facility.

(28) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity and who has been issued a certificate of registration. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(29) Nurse aide curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities, developed by HHSC.

(30) [~~(29)~~] Nurse Aide Registry (NAR)--A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect, or misappropriation of resident property.

(31) [~~(30)~~] Nurse aide training and competency evaluation program (NATCEP)--A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a nursing facility.

(32) [~~(31)~~] Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(33) [~~(32)~~] Nursing services--Services provided by nursing personnel that include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) management of health care during acute and chronic phases of illness;

(D) guidance and counseling of individuals and families; and

(E) referral to other health care providers and community resources when appropriate.

(34) [~~(33)~~] Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP and documented on HHSC Form 5497-NATCEP, Texas Nurse Aide Performance Record.

(35) [~~(34)~~] Person--A corporation, organization, partnership, association, natural person, or any other legal entity that can function legally.

(36) [~~(35)~~] Personal protective equipment (PPE)--Specialized clothing or equipment, worn by an employee for protection against infectious materials.

(37) [~~(36)~~] Program director--An individual who is approved by HHSC and meets the requirements in §556.5(b) and (d) [~~§556.5(a)~~] of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(38) [~~(37)~~] Program instructor--An individual who is approved by HHSC to conduct the training in a NATCEP and who meets the requirements in §556.5(c) and (d) [~~§556.5(b)~~] of this chapter.

(39) [~~(38)~~] Resident--An individual accepted for care or residing in a facility.

(40) [~~(39)~~] Registered nurse (RN)--An individual licensed by the Texas Board of Nursing to practice professional nursing.

(41) [~~(40)~~] Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(h) [~~§556.5(d)~~] of this chapter.

(42) [~~(41)~~] Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§556.3. NATCEP [~~Nurse Aide Training and Competency Evaluation Program (NATCEP)~~] Requirements.

(a) To train nurse aides, a nursing facility must apply for and obtain approval from HHSC to offer a NATCEP or contract with another entity offering a NATCEP. The nursing facility must participate in Medicare, Medicaid, or both, to apply for approval to be a NATCEP.

(b) A person who wants to offer a NATCEP must file a complete NATCEP application with HHSC.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each location at which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site. The clinical site must have all necessary equipment needed to practice and perform skills training.

(e) A NATCEP may offer clinical training hours in a laboratory setting under the following circumstances:

(1) no appropriate and qualified clinical site is located within 20 miles of the location of the NATCEP; or

(2) HHSC has determined that clinical training provided in a facility poses a risk to an individual's health or safety based on the existence of a disaster declared at the federal or state level. A NATCEP must request the ability to complete clinical training hours in a laboratory setting under the circumstances described in subsection (e)(1) of this section. HHSC will alert the public of the availability of laboratory training under the circumstances described in subsection (e)(2) of this section.

(f) HHSC does not approve a NATCEP offered by or in a nursing facility if, within the previous two years, the nursing facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than $5,000 as adjusted annually under 45 Code of Federal Regulations (CFR) part 102 for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(g) Clinical training provided by a NATCEP in a facility other than a nursing facility must be provided under the direct supervision of the NATCEP instructor and cannot be delegated to any staff of the facility.

(h) A NATCEP using an assisted living facility as a clinical site may provide clinical training only in those services that are authorized to be provided to residents under Texas Health and Safety Code, Chapter 247.

(i) A NATCEP using an intermediate care facility for an individual with an intellectual disability or related conditions as a clinical site may provide clinical training only in those services that are authorized to be provided to individuals under Texas Health and Safety Code, Chapter 252.

(j) A NATCEP using a hospice inpatient unit as a clinical site may provide clinical training only in those services that are authorized to be provided to clients under Texas Health and Safety Code, Chapter 142.

(k) [~~(j)~~] A nursing facility that is prohibited from offering a NATCEP under subsection (e) of this section may contract with a person to offer a NATCEP in accordance with §1819(f)(2)(C) and §1919(f)(2)(C) of the Act so long as the person has not been employed by the nursing facility or by the nursing facility's owner and:

(1) the NATCEP is offered to employees of the nursing facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited nursing facility;

(3) there is no other NATCEP offered within a reasonable distance from the nursing facility; and

(4) an adequate environment exists for operating a NATCEP in the nursing facility.

(l) [~~(k)~~] A person who wants to contract with a nursing facility in accordance with subsection (k) [~~(j)~~] of this section must submit a completed application to HHSC in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited nursing facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the nursing facility is no longer prohibited from offering a NATCEP.

(m) [~~(l)~~] A nursing facility that is prohibited from offering a NATCEP under subsection (e)(3) of this section may request a Centers for Medicare and Medicaid Services waiver of the prohibition related to the civil money penalty in accordance with §1819(f)(2)(D) and §1919(f)(2)(D) of the Act and 42 CFR §483.151(c) if:

(1) the civil money penalty was not related to the quality of care furnished to residents;

(2) the NATCEP submits a request to HHSC for the waiver; and

(3) the Centers for Medicare and Medicaid Services approves the waiver.

(n) [~~(m)~~] A NATCEP must ensure the trainee has completed 100 hours of training [~~provide at least 100 hours of training to a trainee~~]. The 100 hours must include:

(1) 60 hours of classroom training: [~~; and~~]

(A) taught by the NATCEP either in-person or virtually; or

(B) completed by the trainee through HHSC's computer-based training (CBT) within the preceding 12 months; and

(2) 40 hours of clinical training provided by the NATCEP with at least one program instructor for every 10 trainees.

(o) [~~(n)~~] A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (y) [~~(q)~~] of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course. This policy and associated procedures must describe the procedures the NATCEP uses to:

(A) verify a trainee's identity;

(B) ensure protection of a trainee's privacy and personal information; and

(C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(p) [~~(o)~~] A NATCEP must teach the curriculum established by HHSC and described in 42 CFR §483.152. Except as provided in subsection (q) of this section, the [~~The~~] NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

(1) communication and interpersonal skills;

(2) infection control;

(3) safety and emergency procedures, including the Heimlich maneuver;

(4) promoting a resident's independence;

(5) respecting a resident's rights;

(6) basic nursing skills, including:

(A) taking and recording vital signs;

(B) measuring and recording height and weight;

(C) caring for a resident's environment;

(D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(E) caring for a resident when death is imminent;

(7) personal care skills, including:

(A) bathing;

(B) grooming, including mouth care;

(C) dressing;

(D) toileting;

(E) assisting with eating and hydration;

(F) proper feeding techniques;

(G) skin care; and

(H) transfers, positioning, and turning;

(8) mental health and social service needs, including:

(A) modifying the aide's behavior in response to a resident's behavior;

(B) awareness of developmental tasks associated with the aging process;

(C) how to respond to a resident's behavior;

(D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(E) using a resident's family as a source of emotional support;

(9) care of cognitively impaired residents, including:

(A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;

(B) communicating with a cognitively impaired resident;

(C) understanding the behavior of a cognitively impaired resident;

(D) appropriate responses to the behavior of a cognitively impaired resident; and

(E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

(A) training a resident in self-care according to the resident's abilities;

(B) use of assistive devices in transferring, ambulation, eating, and dressing;

(C) maintenance of range of motion;

(D) proper turning and positioning in bed and chair;

(E) bowel and bladder training; and

(F) care and use of prosthetic and orthotic devices; and

(11) a resident's rights, including:

(A) providing privacy and maintenance of confidentiality;

(B) promoting the resident's right to make personal choices to accommodate their needs;

(C) giving assistance in resolving grievances and disputes;

(D) providing needed assistance in getting to and participating in resident, family, group, and other activities;

(E) maintaining care and security of the resident's personal possessions;

(F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

(G) avoiding the need for restraints in accordance with current professional standards.

(q) If a trainee completes HHSC's 60-hour classroom training CBT, a NATCEP must accept proof of completion of the CBT in lieu of the 16 introductory hours of classroom training in subsection (p) of this section and the eight hours of infection control training in subsection (t) of this section. The NATCEP must ensure that the trainee:

(1) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(2) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(3) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(4) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(r) A NATCEP that fails to accept proof of completion of the classroom training in accordance with subsection (n)(1)(B) of this chapter may be subject to §556.8 of this chapter (relating to Withdrawal of Approval of a NATCEP).

(s) [(p)] A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(b) - (d) [§556.5(a) and (b)] of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(t) [(q)] Except as provided in subsection (q) of this section, a [A] NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(u) [(r)] A NATCEP must verify that a trainee:

(1) is not listed on the NAR in revoked status;

(2) is not listed as unemployable on the EMR; and

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) or convicted of a criminal offense listed in THSC §250.006(b) within the five years immediately before participating in the NATCEP.

(v) [(s)] A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of the [a] NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(w) [~~(t)~~] A NATCEP must submit a NATCEP application to HHSC if the information in an approved NATCEP application changes. The [~~A~~] NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(x) [~~(u)~~] A NATCEP must use [~~an~~] HHSC Form 5497-NATCEP, Texas Nurse Aide Performance Record, [~~performance record~~] to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record. The NATCEP must maintain a copy of the performance record.

(y) [~~(v)~~] A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records available to HHSC or its designees at any reasonable time.

(1) The classroom and clinical training records must include:

(A) dates and times of all classroom and clinical training;

(B) the full name and social security number of each trainee;

(C) a record of the date and time of each classroom and clinical training session a trainee attends;

(D) a final course grade that indicates pass or fail for each trainee; and

(E) a physical or electronic sign-in record for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (o)(2) [~~(i)(2)~~] of this section.

(2) If a trainee completes the classroom training by successfully completing HHSC's CBT, a NATCEP must retain records that include a copy of the trainee's certification of completion for the CBT. The certificate of completion must be issued by HHSC and include the date the trainee completed the CBT.

(3) [~~(2)~~] A NATCEP must provide to HHSC, on the NATCEP application, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(z) [~~(w)~~] A nursing facility must not charge a nurse aide for any portion of a [~~the~~] NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins the [a] NATCEP.

(aa) [~~(x)~~] HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a nursing facility within 12 months of [~~after~~] completing the NATCEP.

(bb) [~~(y)~~] HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(cc) [~~(z)~~] HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(dd) [~~(aa)~~] A new employee or trainee orientation given by a nursing facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(ee) [~~(bb)~~] A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.5. Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements.

(a) A NATCEP must have an approved program director and program instructor to provide training.

(1) Training of trainees must be performed by or under the general supervision of a registered nurse (RN) who has a minimum of two years of nursing experience, at least one year of which must be in a nursing facility.

(2) An applicant for a NATCEP must certify on the NATCEP application that the NATCEP meets the requirements in paragraph (1) of this subsection.

(b) A program director must:

(1) be an RN in the state of Texas;

(2) have a minimum of two years of nursing experience; and

(3) have completed a course focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(c) An instructor must:

(1) be a licensed vocational nurse (LVN) or an RN in the state of Texas;

(2) have a minimum of two years of nursing experience; and

(3) have completed a course focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(d) Either the program director or a program instructor must have at least one year of experience providing long term care services in a nursing facility. If an instructor is an LVN, a NATCEP must have:

(1) a director with at least one year of providing long term care services in a nursing facility; or

(2) an instructor who is an RN with at least one year of providing long term care services in a nursing facility.

(e) [~~(a)~~] Program director. A program director must directly perform training or have general supervision of the program instructor and supplemental trainers. A NATCEP must have a program director when the NATCEP applies for initial approval by HHSC in accordance

with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval.

[~~(1) The program director must:~~]

[~~(A) be an RN in the state of Texas;~~]

[~~(B) have a minimum of two years of nursing experience, with at least one year of providing long term care services in a nursing facility; and~~]

[~~(C) have completed a course that focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.~~]

(1) [~~(2)~~] In a facility-based NATCEP, the director of nursing (DON) for the nursing facility may be approved as the program director but must not conduct the training.

(2) [~~(3)~~] A program director may supervise more than one NATCEP.

(3) [~~(4)~~] A program director's responsibilities include, but are not limited to:

(A) directing the NATCEP in compliance with the Act and this chapter;

(B) directly performing training or having general supervision of the program instructor and supplemental trainers;

(C) ensuring that NATCEP records are maintained;

(D) determining if trainees have passed both the classroom and clinical training portions [~~portion~~] of the NATCEP;

(E) signing a competency evaluation application completed by a trainee who has passed both the classroom and clinical training portions [~~portion~~] of the NATCEP; and

(F) signing a certificate of completion or a letter on letterhead stationery of the NATCEP or the nursing facility, stating that the trainee passed both the classroom and clinical training portions [~~portion~~] of the NATCEP if the trainee does not take the competency evaluation with the same NATCEP. The certificate or letter must include the date training was completed, the total training hours completed, and the official NATCEP name and number on file with HHSC.

(G) Completion of the classroom training for trainees who complete the HHSC CBT is determined by the certificate of completion, which includes the date the trainee completed the CBT.

(4) [~~(5)~~] A NATCEP must submit a NATCEP application for HHSC approval if the program director of the NATCEP changes.

(f) [~~(b)~~] Program instructor. A NATCEP must have at least one qualified program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter and when training occurs.

[~~(1) A program instructor must:~~]

[~~(A) be a licensed nurse;~~]

[~~(B) have a minimum of one year of nursing experience in a nursing facility;~~]

[~~(C) have completed a course that focused on teaching adult students or have experience teaching adult students or supervising nurse aides; and~~]

[~~(D) work under the general supervision of the program director or be the program director.~~]

(1) [~~(2)~~] The program instructor is responsible for conducting the classroom and clinical training of the NATCEP under the general supervision of the program director.

(2) [~~(3)~~] An applicant for a NATCEP must certify on the NATCEP application that all program instructors meet the requirements in subsection (c) of this section [~~paragraph (1)(A) - (D) of this subsection~~].

(3) [~~(4)~~] A NATCEP must submit a NATCEP application for HHSC approval if a program instructor of the NATCEP changes.

(g) [~~(c)~~] Supplemental trainers. Supplemental trainers may supplement the training provided by the program instructor in a NATCEP.

(1) A supplemental trainer must be a licensed health professional acting within the scope of the professional's practice and have at least one year of experience in the field of instruction.

(2) The program director must select and supervise each supplemental trainer.

(3) A supplemental trainer must not act in the capacity of the program instructor without HHSC approval. To request approval, a NATCEP must submit a NATCEP application to HHSC.

(h) [~~(d)~~] Skills examiner. A skills examiner must administer the [a] competency evaluation.

(1) HHSC or its designee approves an individual as a skills examiner if the individual:

(A) is an RN;

(B) has a minimum of one year of professional experience in providing care for the elderly or chronically ill of any age; and

(C) has completed a skills training seminar conducted by HHSC or its designee.

(2) A skills examiner must:

(A) adhere to HHSC standards for each skill examined;

(B) conduct a competency evaluation in an objective manner according to the criteria established by HHSC;

(C) validate competency evaluation results on forms prescribed by HHSC;

(D) submit prescribed forms and reports to HHSC or its designee; and

(E) not administer a competency evaluation to an individual who participates in a NATCEP for which the skills examiner was the program director, the program instructor, or a supplemental trainer.

§556.8. Withdrawal of Approval of a NATCEP [~~Nurse Aide Training and Competency Evaluation Program (NATCEP)~~].

(a) HHSC immediately withdraws approval of a [~~nursing~~] facility-based NATCEP if the nursing facility where the NATCEP is offered has:

(1) been granted a waiver concerning the services of an RN under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i)-(ii) of the Act;

(2) been subject to an extended (or partially extended) survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) been assessed a civil money penalty of not less than $5,000, as adjusted annually under 45 Code of Federal Regulations (CFR), Part 102, for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) been subject to denial of payment under Title XVIII or Title XIX of the Act;

(5) operated under state-appointed or federally appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Social Security Act;

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2); or

(8) refused to permit unannounced visits by HHSC.

(b) HHSC withdraws approval of a NATCEP if the NATCEP does not comply with §556.3 of this chapter (relating to NATCEP [~~Nurse Aide Training and Competency Evaluation Program (NATCEP)~~] Requirements).

(1) HHSC reviews allegations of noncompliance with this chapter by a NATCEP. If HHSC receives an allegation of noncompliance, HHSC notifies the NATCEP in writing and gives the NATCEP an opportunity to correct the noncompliance or provide documentation showing compliance. The NATCEP must correct the noncompliance or provide evidence of compliance and submit notification of the correction or documentation to show compliance to HHSC, in writing, within 10 days after receipt of the notice of noncompliance.

(2) If the NATCEP fails to correct the noncompliance, provide documentation showing compliance, or respond to the first notification from HHSC, HHSC sends a second notice. The NATCEP must correct the noncompliance or provide documentation showing compliance and submit notification of the correction or documentation to show compliance to HHSC, in writing, within 20 days after receipt of the second notice. Failure to comply will result in withdrawal of approval of the NATCEP.

(c) If HHSC withdraws approval of a NATCEP for failure to comply with §556.3 of this chapter, HHSC does not approve the NATCEP for at least two years after the date the approval was withdrawn.

(d) If HHSC proposes to withdraw approval of a NATCEP based on subsection (a) of this section, HHSC notifies the NATCEP [~~by certified mail~~] of the facts or conduct alleged to warrant the withdrawal. HHSC sends [~~mails~~] the notice to the facility's last known email address as shown in HHSC records.

(e) A dually certified nursing facility that offers a NATCEP may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself, in accordance with 42 CFR [~~Code of Federal Regulations (CFR)~~], Part 498.

(f) A nursing facility that offers a NATCEP and that participates only in Medicaid may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act), except the nursing facility must request the hearing within 60 days after receipt of the notice described in subsection (d) of this section, as allowed by 42 CFR §431.153.

(g) A nursing facility may request a hearing under subsection (e) or (f) of this section, but not both.

(h) If the finding of noncompliance that led to the denial of approval of the NATCEP by HHSC is overturned, HHSC rescinds the denial of approval of the NATCEP.

(i) If HHSC proposes to withdraw approval of a NATCEP based on §556.3 of this chapter or §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the NATCEP may request a hearing to challenge the withdrawal. A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedures Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If a NATCEP does not make a timely request for a hearing, the applicant has waived the opportunity for a hearing and HHSC may withdraw the approval.

(j) A trainee who started a NATCEP before HHSC sent notice that it was withdrawing approval of the NATCEP may complete the NATCEP.

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

Filed with the Office of the Secretary of State on October 12, 2023.

TRD-202303793
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 438-3161

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.334

The Comptroller of Public Accounts proposes amendment to §3.334, concerning local sales and use taxes.

The comptroller proposes to add subsection (c)(7) regarding the location where an order is received:

"The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller."

The text is taken from Section 3.10.1C5 of the Streamlined Sales and Use Tax Agreement. *See* https://www.streamlinedsalestax.org/docs/default-source/agreement/ssuta/ssuta-

as-amended-through-05-24-23-with-hyperlinks-and-compiler-notes-at-end.pdf.

In its 2014 rulemaking, the comptroller proposed a definition of "receive," but deleted the proposed definition in response to concerns stated in oral and written comments. *See* (39 TexReg 4179) (May 30, 2014) (proposed rule amendment) and (39 TexReg 9598) (December 5, 2014) (adopted rule amendment).

In its January 2023 rulemaking, the comptroller again declined to adopt a definition of "receive" and instead, addressed the two circumstances that were most prominently debated - automated website orders and fulfillment warehouses. Subsection (b) of the adopted rule articulated the comptroller's interpretation that an automated website "receives" the order and that a fulfillment warehouse does not "receive" the order when it is forwarded from the website to the warehouse. *See* (48 TexReg 400) (January 27, 2023).

Since then, it has become apparent that other circumstances also require a clear articulation of the comptroller's interpretation of the term "received." Thus, the comptroller is proposing a general standard that is applicable to all situations, as well as to automated website orders and fulfillment warehouses.

The proposed standard comports with the ordinary usage of the terms, as evidenced by the fact that the standard has been approved by twenty-four states under the Streamlined Sales Tax Agreement. The proposed standard will also promote uniformity with those states that have elected or will elect origin-based sourcing.

The comptroller is currently in litigation with cities claiming that the location where an order is received should be the location where the vendor forwards the order for fulfillment, rather than the location where the order is received from the customer. *See City of Coppell, Texas; the City of Humble, Texas; the City of DeSoto, Texas; the City of Carrollton, Texas; the City of Farmers Branch, Texas; and the City of Round Rock, Texas v. Glenn Hegar,* Cause No. D-1-GN-21-003198 in Travis County, Texas District Court. However, as explained more fully in the January 2023 rulemaking, the legislative history indicates that the legislature did not intend a fulfillment warehouse to be the location where the order was received unless the fulfillment warehouse received the order directly from the customer. *See* (48 TexReg 398) (January 27, 2023).

In addition, as explained more fully in the January 2023 rulemaking (48 TexReg 396), the comptroller's current interpretation goes as far back as Comptroller's Decision No. 15,654 (1985), which stated:

"But it seems to the administrative law judge that the legislature was amending the law if not entirely in reaction to the then-pending case of *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633 (Tex. Civ. App.-Texarkana, writ ref'd n.r.e.), at least partly in reaction to that case. And if that be so, then the legislature did not want warehousing and storage facilities (many of which are outside city limits) to be the places where sales were consummated for local sales tax purposes unless orders were actually received there by personnel working there, but wanted the office location out of which the salesman operated to be the place where the sales were consummated."

The comptroller expects this issue to be fully litigated. But in the interim, the comptroller must still apply the local tax consummation statutes to pending controversies, and taxpayers are entitled to understand the basis for the comptroller's rulings. Adoption of a definitive standard may also facilitate a more definitive decision from the courts.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by updating the rule to reflect or clarify the current policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

The comptroller will hold a hearing to take public comments, on November 8, 2023 in Room 2.034 of the Barbara Jordan Building, 1601 Congress Ave., Austin, Texas 78701. Interested persons may sign up to testify beginning at 8:30 a.m. and testimony will be heard on a first come first serve basis. All persons will have 10 minutes to present their testimony and shall also provide their testimony in writing prior to their oral testimony.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The comptroller proposes the amendment under Tax Code, §§111.002 (Comptroller's Rule; Compliance; Forfeiture); 321.306 (Comptroller's Rules); 322.203 (Comptroller's Rules); 323.306 (Comptroller's Rules), which authorize the comptroller to adopt rules to implement the tax statutes.

The amendment to this section implements Tax Code, §151.0595 (Single Local Tax Rate for Remote Sellers); Tax Code, Chapter 321, Subchapters A, B, C, D, and F; Tax Code, Chapter 322; Tax Code, Chapter 323.

§3.334. Local Sales and Use Taxes.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cable system--The system through which a cable service provider delivers cable television or bundled cable service, as those terms are defined in §3.313 of this title (relating to Cable Television Service and Bundled Cable Service).

(2) City--An incorporated city, municipality, town, or village.

(3) City sales and use tax--The tax authorized under Tax Code, §321.101(a), including the additional municipal sales and use tax authorized under Tax Code, §321.101(b), the municipal sales and use tax for street maintenance authorized under Tax Code, §327.003, the Type A Development Corporation sales and use tax authorized under Local Government Code, §504.251, the Type B Development Corporation sales and use tax authorized under Local Government Code, §505.251, a sports and community venue project sales and use tax

adopted by a city under Local Government Code, §334.081, and a municipal development corporation sales and use tax adopted by a city under Local Government Code, §379A.081. The term does not include the fire control, prevention, and emergency medical services district sales and use tax authorized under Tax Code, §321.106, or the municipal crime control and prevention district sales and use tax authorized under Tax Code, §321.108.

(4) Comptroller's website--The comptroller's website concerning local taxes located at: https://comptroller.texas.gov/taxes/sales/.

(5) County sales and use tax--The tax authorized under Tax Code, §323.101, including a sports and community venue project sales and use tax adopted by a county under Local Government Code, §334.081. The term does not include the county health services sales and use tax authorized under Tax Code, §324.021, the county landfill and criminal detention center sales and use tax authorized under Tax Code, §325.021, or the crime control and prevention district sales and use tax authorized under Tax Code, §323.105.

(6) Drop shipment--A transaction in which an order is received by a seller at one location, but the item purchased is shipped by the seller from another location, or is shipped by the seller's third-party supplier, directly to a location designated by the purchaser.

(7) Engaged in business--This term has the meaning given in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(8) Extraterritorial jurisdiction-An unincorporated area that is contiguous to the corporate boundaries of a city as defined in Local Government Code, §42.021.

(9) Fulfill--To complete an order by transferring possession of a taxable item to a purchaser, or to ship or deliver a taxable item to a location designated by the purchaser. The term does not include receiving or tracking an order, determining shipping costs, managing inventory, or other activities that do not involve the transfer, shipment, or delivery of a taxable item to the purchaser or a location designated by the purchaser.

(10) Itinerant vendor--A seller who travels to various locations for the purpose of receiving orders and making sales of taxable items and who has no place of business in this state. A person who sells items through vending machines is also an itinerant vendor. A salesperson that operates out of a place of business in this state is not an itinerant vendor.

(11) Kiosk--A small stand-alone area or structure:

(A) that is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) that is located entirely within a location that is a place of business of another seller, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser.

(12) Local taxes--Sales and use taxes imposed by any local taxing jurisdiction.

(13) Local taxing jurisdiction--Any of the following:

(A) a city that imposes sales and use tax as provided under paragraph (3) of this subsection;

(B) a county that imposes sales and use tax as provided under paragraph (5) of this subsection;

(C) a special purpose district created under the Special District Local Laws Code or other provisions of Texas law that is authorized to impose sales and use tax by the Tax Code or other provisions of Texas law and as governed by the provisions of Tax Code, Chapters 321 or 323 and other provisions of Texas law; or

(D) a transit authority that imposes sales and use tax as authorized by Transportation Code, Chapters, 451, 452, 453, 457, or 460 and governed by the provisions of Tax Code, Chapter, 322.

(14) Marketplace provider--This term has the meaning given in §3.286 of this title.

(15) Order placed in person--An order placed by a purchaser with the seller while physically present at the seller's place of business regardless of how the seller subsequently enters the order.

(16) Place of business of the seller - general definition--A place of business of the seller must be an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items from persons other than employees, independent contractors, and natural persons affiliated with the seller. An "established outlet, office, or location" usually requires staffing by one or more sales personnel. The term does not include a computer server, Internet protocol address, domain name, website, or software application. The "purpose" element of the definition may be established by proof that the sales personnel of the seller receive three or more orders for taxable items at the facility during the calendar year. Additional criteria for determining when a location is a place of business of the seller are provided in subsection (b) of this section for distribution centers, manufacturing plants, storage yards, warehouses and similar facilities; kiosks; and purchasing offices. An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business, is not a place of business of the seller if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax legally due under Tax Code, Chapters 321, 322, and 323 or exists solely to rebate a portion of the tax imposed by those chapters to the contracting business. An outlet, office, facility, or location does not exist to avoid the tax legally due under Tax Code, Chapters 321, 322, and 323 or solely to rebate a portion of the tax imposed by those chapters if the outlet, office, facility, or location provides significant business services, beyond processing invoices, to the contracting business, including logistics management, purchasing, inventory control, or other vital business services.

(17) Purchasing office--An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business.

(18) Remote Seller--As defined in §3.286 of this title, a remote seller is a seller engaged in business in this state whose only activity in the state is:

(A) engaging in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items; or

(B) soliciting orders for taxable items by mail or through other media including the Internet or other media that may be developed in the future.

(19) Seller--This term has the meaning given in §3.286 of this title and also refers to any agent or employee of the seller.

(20) Special purpose district--A local governmental entity authorized by the Texas legislature for a specific purpose, such as crime control, a local library, emergency services, county health services, or a county landfill and criminal detention center.

(21) Storage--This term has the meaning given in §3.346 of this title (relating to Use Tax).

(22) Temporary place of business of the seller--A location operated by a seller for a limited period of time for the purpose of selling and receiving orders for taxable items and where the seller has inventory available for immediate delivery to a purchaser. For example, a person who rents a booth at a weekend craft fair or art show to sell and take orders for jewelry, or a person who maintains a facility at a job site to rent tools and equipment to a contractor during the construction of real property, has established a temporary place of business. A temporary place of business of the seller includes a sale outside of a distribution center, manufacturing plant, storage yard, warehouse, or similar facility of the seller in a parking lot or similar space sharing the same physical address as the facility but not within the walls of the facility.

(23) Transit authority--A metropolitan rapid transit authority (MTA), advanced transportation district (ATD), regional or subregional transportation authority (RTA), city transit department (CTD), county transit authority (CTA), regional mobility authority (RMA) or coordinated county transportation authority created under Transportation Code, Chapters 370, 451, 452, 453, 457, or 460.

(24) Two percent cap--A reference to the general rule that, except as otherwise provided by Texas law and as explained in this section, a seller cannot collect, and a purchaser is not obligated to pay, more than 2.0% of the sales price of a taxable item in total local sales and use taxes for all local taxing jurisdictions.

(25) Use--This term has the meaning given in §3.346 of this title.

(26) Use tax--A tax imposed on the storage, use or other consumption of a taxable item in this state.

(b) Determining the place of business of a seller.

(1) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller for the purpose of selling taxable items where sales personnel of the seller receive three or more orders for taxable items during the calendar year from persons other than employees, independent contractors, and natural persons affiliated with the seller is a place of business of the seller. Forwarding previously received orders to the facility for fulfilment does not make the facility a place of business.

(B) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller.

(2) Kiosks. A kiosk is not a place of business of the seller for the purpose of determining where a sale is consummated for local tax purposes. A seller who owns or operates a kiosk in Texas is, however, engaged in business in this state as provided in §3.286 of this title.

(3) Purchasing offices.

(A) A purchasing office is not a place of business of the seller if the purchasing office exists solely to rebate a portion of the local sales and use tax imposed by Tax Code, Chapters 321, 322, or 323 to a business with which it contracts; or if the purchasing office functions or exists to avoid the tax legally due under Tax Code, Chapters 321, 322, or 323. A purchasing office does not exist solely to rebate a portion of the local sales and use tax or to avoid the tax legally due under Tax Code, Chapters 321, 322, or 323 if the purchasing office provides significant business services to the contracting business beyond processing invoices, including logistics management, purchasing, inventory control, or other vital business services.

(B) In making a determination under subparagraph (A) of this paragraph, as to whether a purchasing office provides significant business services to the contracting business beyond processing invoices, the comptroller will compare the total value of the other business services to the value of processing invoices. If the total value of the other business services, including logistics management, purchasing, inventory control, or other vital business services, is less than the value of the service to process invoices, then the purchasing office will be presumed not to be a place of business of the seller.

(C) If the comptroller determines that a purchasing office is not a place of business of the seller, the sale of any taxable item is deemed to be consummated at the place of business of the seller from whom the purchasing office purchased the taxable item for resale and local sales and use taxes are due according to the following rules.

(i) When taxable items are purchased from a Texas seller, local sales taxes are due based on the location of the seller's place of business where the sale is deemed to be consummated, as determined in accordance with subsection (c) of this section.

(ii) When the sale of a taxable item is deemed to be consummated at a location outside of this state, local use tax is due based on the location where the items are first stored, used or consumed by the entity that contracted with the purchasing office in accordance with subsection (d) of this section.

(4) An order that is received by a salesperson who is not at a place of business of the seller when the salesperson receives the order is treated as being received at the location from which the salesperson operates. Examples include orders that a salesperson receives by mail, telephone, including Voice over Internet Protocol and cellular phone calls, facsimile, and email while traveling. The location from which the salesperson operates is the principal fixed location where the salesperson conducts work-related activities. The location from which a salesperson operates will be a place of business of the seller only if the location meets the definition of a "place of business of a seller" in subsection (a)(16) of this section on its own, without regard to the orders imputed to that location by this paragraph.

(5) A facility without sales personnel is usually not a "place of business of the seller." A vending machine is not "an established outlet, office, or location," and does not constitute a "place of business of the seller." Instead, a vending machine sale is treated as a sale by an itinerant vendor. See subsections (a)(10) and (c)(6) of this section. However, a walk-in retail outlet with a stock of goods available for immediate purchase through a cashier-less point of sale terminal at the outlet would be "an established outlet, office, or location" so as to constitute a "place of business of the seller" even though sales personnel are not required for every sale. A computer that operates an automated shopping cart software program is not an established outlet, office, or

location," and does not constitute a "place of business of the seller." A computer that operates an automated telephone ordering system is not "an established outlet, office, or location," and does not constitute a "place of business of the seller."

(c) Local sales tax - Consummation of sale - determining the local taxing jurisdictions to which sales tax is due. Except for the special rules applicable to remote sellers in subsection (i)(3) of this section, direct payment permit purchases in subsection (j) of this section, and certain taxable items, including taxable items sold by a marketplace provider, as provided in subsection (k) of this section, each sale of a taxable item is consummated at the location indicated by the provisions of this subsection. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in Texas, regardless of whether they have no place of business in Texas, a single place of business in Texas, or multiple places of business in Texas.

(1) Consummation of sale - order received at a place of business of the seller in Texas.

(A) Order placed in person. Except as provided by paragraph (3) of this subsection, when an order for a taxable item is placed in person at a seller's place of business in Texas, including at a temporary place of business of the seller in Texas, the sale of that item is consummated at that place of business of the seller, regardless of the location where the order is fulfilled.

(B) Order not placed in person.

(i) Order fulfilled at a place of business of the seller in Texas. When an order is received at a place of business of the seller in Texas and is fulfilled at a place of business of the seller in Texas, the sale is consummated at the place of business where the order is fulfilled.

(ii) Order not fulfilled at a place of business of the seller in Texas. When an order is received at a place of business of the seller in Texas and is fulfilled at a location that is not a place of business of the seller in Texas, the sale is consummated at the place of business where the order is received.

(2) Consummation of sale - order not received at a place of business of the seller in Texas.

(A) Order fulfilled at a place of business of the seller in Texas. When an order is received at a location that is not a place of business of the seller in Texas or is received outside of Texas, and is fulfilled from a place of business of the seller in Texas, the sale is consummated at the place of business where the order is fulfilled.

(B) Order not fulfilled from a place of business of the seller in Texas.

(i) Order fulfilled in Texas. When an order is received at a location that is not a place of business of the seller in Texas and is fulfilled from a location in Texas that is not a place of business of the seller, the sale is consummated at the location in Texas to which the order is shipped or delivered, or at which the purchaser of the item takes possession.

(ii) Order not fulfilled in Texas. When an order is received by a seller at a location that is not a place of business of the seller in Texas, and is fulfilled from a location outside of Texas, the sale is not consummated in Texas. However, a use is consummated at the first point in Texas where the item is stored, used, or consumed after the interstate transit has ceased. A taxable item delivered to a point in Texas is presumed to be for storage, use, or consumption at that point until the contrary is established. Local use tax should be collected as provided in subsection (d) of this section. Except as provided in subsection (i)(3) of this section, a remote seller required to collect state use tax under §3.286(b)(2) of this title must also collect local use tax.

(3) Exception for qualifying economic development agreements entered into before January 1, 2009, pursuant to Tax Code, §321.203(c-4) - (c-5) or §323.203(c-4) - (c-5). This paragraph is effective until September 1, 2024. If applicable, the local sales tax due on the sale of a taxable item is based on the location of the qualifying warehouse, which is a place of business of the seller, from which the item is shipped or delivered or at which the purchaser of the item takes possession.

(4) Local sales taxes are due to each local taxing jurisdiction with sales tax in effect where the sale is consummated. Local use tax may also be due if the total amount of local sales taxes due does not reach the two percent cap, and the item purchased is shipped or delivered to a location in one or more different local taxing jurisdictions, as provided in subsection (d) of this section.

(5) Multiple special purpose district taxes, multiple transit authority sales taxes, or a combination of the two may apply to a single transaction. If the sale of a taxable item is consummated at a location within the boundaries of multiple special purpose districts or transit authorities, local sales tax is owed to each of the jurisdictions in effect at that location. For example, a place of business of the seller located in the city of San Antonio is within the boundaries of both the San Antonio Advanced Transportation District and the San Antonio Metropolitan Transit Authority, and the seller is required to collect sales tax for both transit authorities. Similarly, a place of business of the seller in Flower Mound is located within the boundaries of two special purpose districts, the Flower Mound Crime Control District and the Flower Mound Fire Control District, and the seller is responsible for collecting sales tax for both special purpose districts.

(6) Itinerant vendors; vending machines.

(A) Itinerant vendors. Sales made by itinerant vendors are consummated at, and itinerant vendors must collect sales tax based upon, the location where the item is delivered or at which the purchaser of the item takes possession. Itinerant vendors do not have any responsibility to collect use tax.

(B) Vending machines. Sales of taxable items made from a vending machine are consummated at the location of the vending machine. See §3.293 of this title (relating to Food; Food Products; Meals; Food Service) for more information about vending machine sales.

<u>(7) The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.</u>

(d) Local use tax. The provisions addressing the imposition of state use tax in §3.346 of this title also apply to the imposition of local use tax. For example, consistent with §3.346(e) of this title, all taxable items that are shipped or delivered to a location in this state that is within the boundaries of a local taxing jurisdiction are presumed to have been purchased for use in that local taxing jurisdiction as well as presumed to have been purchased for use in the state.

(1) General rules.

(A) When local use taxes are due in addition to local sales taxes as provided by subsection (c) of this section, all applicable

use taxes must be collected or accrued in the following order until the two percent cap is reached: city, county, special purpose district, and transit authority. If more than one special purpose district use tax is due, all such taxes are to be collected or accrued before any transit authority use tax is collected or accrued. See subparagraphs (D) and (E) of this paragraph.

(B) If a local use tax cannot be collected or accrued at its full rate without exceeding the two percent cap, the seller cannot collect it, or any portion of it, and the purchaser is not responsible for accruing it.

(C) If a seller collects a local sales tax on an item, or a purchaser accrues a local sales tax on an item, a use tax for the same type of jurisdiction is not due on the same item. For example, after a city sales tax has been collected or accrued for an item, no use tax is due to that same or a different city on that item, but use tax may be due to a county, special purpose district, or transit authority. Similarly, if one or more special purpose district sales taxes have been collected or accrued for an item, no special purpose district use tax is due on that item, and if one or more transit authority sales taxes have been collected or accrued for an item, no transit authority use tax is due on that item.

(D) Collection or accrual of use tax for multiple special purpose districts. If more than one special purpose district use tax is in effect at the location where use of an item occurs, the special purpose district taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all special purpose district taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the district with the earliest effective date would exceed the two percent cap, the tax for that district is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (C) of this paragraph, whether use tax is due for the district that next became effective.

(i) If the competing special purpose district taxes became effective on the same date, the special purpose district taxes are due in the order of the earliest date for which the election in which the district residents authorized the imposition of sales and use tax by the district was held.

(ii) If the elections to impose the local taxes were held on the same date, the special purpose district taxes are due in the order of the earliest date for which the enabling legislation under which each district was created became effective.

(E) Collection or accrual of use tax for multiple transit authorities. If more than one transit authority use tax is in effect at the location where use of an item occurs, and the two percent cap has not been met, the transit authority taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all transit authority taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the authority with the earliest effective date would exceed the two percent cap, the tax for that authority is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (D) of this paragraph, whether use tax is due for the authority that next became effective.

(i) If the competing transit authorities became effective on the same date, the transit authority taxes are due in the order of the earliest date for which the election in which the authority residents authorized the imposition of sales and use tax by the authority was held.

(ii) If the elections to impose local taxes were held on the same date, the transit authority use taxes are due in the order of the earliest date for which the enabling legislation under which each authority was created became effective.

(2) General use tax rules applied to specific situations. The following fact patterns explain how local use tax is to be collected or accrued and remitted to the comptroller based on, and subject to, the general rules in paragraph (1) of this subsection.

(A) Sale consummated outside the state, item delivered from outside the state or from a location in Texas that is not operated by the seller - local use tax due. Except as provided in subsection (i)(3) of this section, if a sale is consummated outside of this state according to the provisions of subsection (c) of this section, and the item purchased is either shipped or delivered to a location in this state as designated by the purchaser from a location outside of the state, or if the order is drop shipped directly to the purchaser from a third-party supplier, local use tax is owed based upon the location in this state to which the order is shipped or delivered or at which the purchaser of the item takes possession. The seller is responsible for collecting the local use tax due on the sale. If the seller does not collect the local use taxes due on the sale, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller according to the provisions in paragraph (1) of this subsection. For example, if an order for a taxable item is received by a seller at a location outside of Texas, and the order is shipped to the purchaser from a location outside of the state, local use tax is due based upon the location to which the order is shipped or delivered or at which the purchaser of the item takes possession.

(B) Sale consummated in Texas outside a local taxing jurisdiction, item delivered into one or more local taxing jurisdictions - local use tax due. If a sale is consummated at a location in Texas that is outside of the boundaries of any local taxing jurisdiction according to the provisions of subsection (c) of this section, and the order is shipped or delivered to the purchaser at a location in this state that is within the boundaries of one or more local taxing jurisdictions, local use tax is due based on the location to which the items are shipped or delivered or at which the purchaser of the item takes possession. The seller is responsible for collecting the local use taxes due on the sale, regardless of the location of the seller in Texas. If the seller fails to collect any local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller.

(C) Sale consummated in any local taxing jurisdictions imposing less than 2.0% in total local taxes - local sales taxes and use taxes due. If a sale is consummated at a location in Texas where the total local sales tax rate imposed by the taxing jurisdictions in effect at that location does not equal 2.0% according to the provisions of subsection (c) of this section, and the item is shipped or delivered to the purchaser at a location in this state that is inside the boundaries of a different local taxing jurisdiction, additional local use tax may be due based on the location to which the order is shipped or delivered or at which the purchaser of the item takes possession, subject to the two percent cap. The seller is responsible for collecting any additional local use taxes due on the sale, regardless of the location of the seller in Texas. See subsection (i) of this section. If the seller fails to collect the additional local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller.

(i) Example one - if an order is received in person at a place of business of the seller, such that the sale is consummated at the location where the order is received as provided under subsection (c)(1)(A) of this section, and the local sales tax due on the sale does not meet the two percent cap, additional local use taxes are due based on the location to which the order is shipped or delivered or at which the purchaser of the item takes possession, subject to the provisions in paragraph (1) of this subsection.

(ii) Example two - if a seller receives an order for a taxable item at a seller's place of business in Texas, and the seller ships or delivers the item from an out-of-state location to a location in this state as designated by the purchaser, local sales tax is due based upon the location of the place of business of the seller where the order is received. If the local sales tax due on the item does not meet the two percent cap, use taxes, subject to the provisions in paragraph (1) of this subsection, are due based upon the location where the items are shipped or delivered or at which the purchaser of the item takes possession.

(e) Effect of other law.

(1) Tax Code, Title 2, Subtitles A (General Provisions) and B (Enforcement and Collection), Tax Code, Chapter 141 (Multistate Tax Compact) and Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) apply to transactions involving local taxes. Related sections of this title and comptroller rulings shall also apply with respect to local taxes. This includes authorities such as court cases and federal law that affect whether an item is taxable or is excluded or exempt from taxation.

(2) Permits, exemption certificates, and resale certificates required by Tax Code, Chapter 151, shall also satisfy the requirements for collecting and remitting local taxes, unless otherwise indicated by this section or other sections of this title. For example, see subsection (n) of this section concerning prior contract exemptions.

(3) Any provisions in this section or other sections of this title related to a seller's responsibilities for collecting and remitting local taxes to the comptroller shall also apply to a purchaser if the seller does not collect local taxes that are due. The comptroller may proceed against the seller or purchaser for the local tax owed by either.

(f) Tax rates. Except as otherwise provided by law, no local governmental entity may adopt or increase a sales and use tax if, as a result of the adoption or increase of the tax, the combined rate of all sales and use taxes imposed by local taxing jurisdictions having territory in the local governmental entity would exceed 2.0% at any location within the boundaries of the local governmental entity's jurisdiction. The following are the local tax rates that may be adopted.

(1) Cities. Cities may impose sales and use tax at a rate of up to 2.0%.

(2) Counties. Counties may impose sales and use tax at rates ranging from 0.5% to 1.5%.

(3) Special purpose districts. Special purpose districts may impose sales and use tax at rates ranging from 0.125% to 2.0%.

(4) Transit authorities. Transit authorities may impose sales and use tax at rates ranging from 0.25% to 1.0%.

(g) Jurisdictional boundaries, combined areas, and city tax imposed through strategic partnership agreements.

(1) Jurisdictional boundaries.

(A) City boundaries. City taxing jurisdictional boundaries cannot overlap one another and a city cannot impose a sales and use tax in an area that is already within the jurisdiction of another city.

(B) County boundaries. County tax applies to all locations within that county.

(C) Special purpose district and transit authority boundaries. Special purpose districts and transit authorities may cross or share boundaries with other local taxing jurisdictions and may encompass, in whole or in part, other local taxing jurisdictions, including cities and counties. A geographic location or address in this state may lie within the boundaries of more than one special purpose district or more than one transit authority.

(D) Extraterritorial jurisdictions. Except as otherwise provided by paragraph (3) of this subsection concerning strategic partnership agreements and subsection (l)(5) of this section concerning the City of El Paso and Fort Bliss, city sales and use tax does not apply to taxable sales that are consummated outside the boundaries of the city, including sales made in a city's extraterritorial jurisdiction. However, an extraterritorial jurisdiction may lie within the boundaries of a special purpose district, transit authority, county, or any combination of the three, and the sales and use taxes for those jurisdictions would apply to those sales.

(2) Combined areas. A combined area is an area where the boundaries of a city overlap the boundaries of one or more other local taxing jurisdictions as a result of an annexation of additional territory by the city, and where, as the result of the imposition of the city tax in the area in addition to the local taxes imposed by the existing taxing jurisdictions, the combined local tax rate would exceed 2.0%. The comptroller shall make accommodations to maintain a 2.0% rate in any combined area by distributing the 2.0% tax revenue generated in these combined areas to the local taxing jurisdictions located in the combined areas as provided in Tax Code, §321.102 or Health and Safety Code, §775.0754. Combined areas are identified on the comptroller's website. Sellers engaged in transactions on which local sales or use taxes are due in a combined area, or persons who must self-accrue and remit tax directly to the comptroller, must use the combined area local code when reporting the tax rather than the codes for the individual city, county, special purpose districts, or transit authorities that make up the combined area.

(3) City tax imposed through strategic partnership agreements.

(A) The governing bodies of a district, as defined in Local Government Code, §43.0751, and a city may enter into a limited-purpose annexation agreement known as a strategic partnership agreement. Under this agreement, the city may impose sales and use tax within all or part of the boundaries of a district. Areas within a district that are annexed for this limited purpose are treated as though they are within the boundaries of the city for purposes of city sales and use tax.

(B) Counties, transit authorities, and special purpose districts may not enter into strategic partnership agreements. Sales and use taxes imposed by those taxing jurisdictions do not apply in the limited-purpose annexed area as part of a strategic partnership agreement between a city and an authorized district. However, a county, special purpose district, or transit authority sales and use tax, or any combination of these three types of taxes, may apply at locations included in a strategic partnership agreement between a city and an authorized district if the tax is imposed in that area by the applicable jurisdiction as allowed under its own controlling authorities.

(C) Prior to September 1, 2011, the term "district" was defined in Local Government Code, §43.0751 as a municipal utility district or a water control and improvement district. The definition was amended effective September 1, 2011, to mean a conservation and reclamation district operating under Water Code, Chapter 49.

(h) Places of business of the seller and job sites crossed by local taxing jurisdiction boundaries.

(1) Places of business of the seller crossed by local taxing jurisdiction boundaries. If a place of business of the seller is crossed by one or more local taxing jurisdiction boundaries so that a portion of the place of business of the seller is located within a taxing jurisdiction and

the remainder of the place of business of the seller lies outside of the taxing jurisdiction, tax is due to the local taxing jurisdictions in which the sales office is located. If there is no sales office, sales tax is due to the local taxing jurisdictions in which any cash registers are located.

(2) Job sites.

(A) Residential repair and remodeling; new construction of an improvement to realty. When a contractor is improving real property under a separated contract, and the job site is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on any separately stated charges for taxable items incorporated into the real property must be allocated to the local taxing jurisdictions based on the total square footage of the real property improvement located within each jurisdiction, including the square footage of any standalone structures that are part of the construction, repair, or remodeling project. For more information about tax due on materials used at residential and new construction job sites, refer to §3.291 of this title (relating to Contractors).

(B) Nonresidential real property repair and improvement. When taxable services are performed to repair, remodel, or restore nonresidential real property, including a pipeline, transmission line, or parking lot, that is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on the taxable services, including materials and any other charges connected to the services performed, must be allocated among the local taxing jurisdictions based upon the total mileage or square footage, as appropriate, of the repair, remodeling, or restoration project located in each jurisdiction. For more information about tax due on materials used at nonresidential real property repair and remodeling job sites, refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(i) Sellers' and purchasers' responsibilities for collecting or accruing local taxes.

(1) Sale consummated in Texas; seller responsible for collecting local sales taxes and applicable local use taxes. When a sale of a taxable item is consummated at a location in Texas as provided by subsection (c) of this section, the seller must collect each local sales tax in effect at the location. If the total rate of local sales tax due on the sale does not reach the two percent cap, and the seller ships or delivers the item into another local taxing jurisdiction, then the seller is required to collect additional local use taxes due, if any, based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession, regardless of the location of the seller in Texas. For more information regarding local use taxes, refer to subsection (d) of this section.

(2) Out-of-state sale; seller engaged in business in Texas. Except as provided in paragraph (3) of this subsection, when a sale is not consummated in Texas, a seller who is engaged in business in this state is required to collect and remit local use taxes due, if any, on orders of taxable items shipped or delivered at the direction of the purchaser into a local taxing jurisdiction in this state based upon the location in this state to which the item is shipped or delivered or at which the purchaser of the item takes possession as provided in subsection (d) of this section.

(3) Local use tax rate for remote sellers.

(A) A remote seller required to collect and remit one or more local use taxes in connection with a sale of a taxable item must compute the amount using:

(i) the combined tax rate of all applicable local use taxes based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession; or

(ii) at the remote seller's election, the single local use tax rate published in the *Texas Register*.

(B) A remote seller that is storing tangible personal property in Texas to be used for fulfillment at a facility of a marketplace provider that has certified that it will assume the rights and duties of a seller with respect to the tangible personal property, as provided for in §3.286 of this title, may elect the single local use tax rate under subparagraph (A)(ii) of this paragraph.

(C) Notice to the comptroller of election and revocation of election.

(i) Before using the single local use tax rate, a remote seller must notify the comptroller of its election using a form prescribed by the comptroller. A remote seller may also notify the comptroller of the election on its use tax permit application form. The remote seller must use the single local use tax rate for all of its sales of taxable items until the election is revoked as provided in clause (ii) of this subparagraph.

(ii) A remote seller may revoke its election by filing a form prescribed by the comptroller. If the comptroller receives the notice by October 1, the revocation will be effective January 1 of the following year. If the comptroller receives the notice after October 1, the revocation will be effective January 1 of the year after the following year. For example, a remote seller must notify the comptroller by October 1, 2020, for the revocation to be effective January 1, 2021. If the comptroller receives the revocation on November 1, 2020, the revocation will be effective January 1, 2022.

(D) Single local use tax rate.

(i) The single local use tax rate in effect for the period beginning October 1, 2019, and ending December 31, 2019, is 1.75%.

(ii) The single local use tax rate in effect for the period beginning January 1, 2020, and ending December 31, 2020, is 1.75%.

(E) Annual publication of single local use tax rate. Before the beginning of a calendar year, the comptroller will publish notice of the single local use tax rate in the *Texas Register* that will be in effect for that calendar year.

(F) Calculating the single local use tax rate. The single local use tax rate effective in a calendar year is equal to the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year. As soon as practicable after the end of a state fiscal year, the comptroller must determine the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year by:

(i) dividing the total amount of net local sales and use taxes remitted to the comptroller during the state fiscal year by the total amount of net state sales and use tax remitted to the comptroller during the state fiscal year;

(ii) multiplying the amount computed under clause (i) of this subparagraph by the rate provided in Tax Code, §151.051; and

(iii) rounding the amount computed under clause (ii) of this subparagraph to the nearest .0025.

(G) Direct refund. A purchaser may request a refund based on local use taxes paid in a calendar year for the difference between the single local use tax rate paid by the purchaser and the amount the purchaser would have paid based on the combined tax rate for all applicable local use taxes. Notwithstanding the refund requirements

under §3.325(a)(1) of this title (relating to Refunds and Payments Under Protest), a non-permitted purchaser may request a refund directly from the comptroller for the tax paid in the previous calendar year, no earlier than January 1 of the following calendar year within the statute of limitation under Tax Code, 111.104 (Refunds).

(H) Marketplace providers. Notwithstanding subparagraph (A) of this paragraph, marketplace providers may not use the single local use tax rate and must compute the amount of local use tax to collect and remit using the combined tax rate of all applicable local use taxes.

(4) Purchaser responsible for accruing and remitting local taxes if seller fails to collect.

(A) If a seller does not collect the state sales tax, any applicable local sales taxes, or both, on a sale of a taxable item that is consummated in Texas, then the purchaser is responsible for filing a return and paying the tax. The local sales taxes due are based on the location in this state where the sale is consummated as provided in subsection (c) of this section.

(B) A purchaser who buys an item for use in Texas from a seller who does not collect the state use tax, any applicable local use taxes, or both, is responsible for filing a return and paying the tax. The local use taxes due are based on the location where the item is first stored, used, or consumed by the purchaser.

(C) For more information about how to report and pay use tax directly to the comptroller, see §3.286 of this title.

(5) Local tax is due on the sales price of a taxable item, as defined in Tax Code, §151.007, in the report period in which the taxable item is purchased or the period in which the taxable item is first stored, used, or otherwise consumed in a local taxing jurisdiction.

(6) A purchaser is not liable for additional local use tax if the purchaser pays local use tax using the rate elected by an eligible remote seller according to paragraph (3) of this subsection. The remote seller must be identified on the comptroller's website as electing to use the single local use tax rate. A purchaser must verify that the remote seller is listed on the comptroller's website. If the remote seller is not listed on the comptroller's website, the purchaser will be liable for additional use tax due in accordance to paragraph (4) of this subsection.

(j) Items purchased under a direct payment permit.

(1) When taxable items are purchased under a direct payment permit, local use tax is due based upon the location where the permit holder first stores the taxable items, except that if the taxable items are not stored, then local use tax is due based upon the location where the taxable items are first used or otherwise consumed by the permit holder.

(2) If, in a local taxing jurisdiction, storage facilities contain taxable items purchased under a direct payment exemption certificate and at the time of storage it is not known whether the taxable items will be used in Texas, then the taxpayer may elect to report the use tax either when the taxable items are first stored in Texas or are first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner. See also §3.288(i) of this title (relating to Direct Payment Procedures and Qualifications) and §3.346(g) of this title.

(3) If local use tax is paid on stored items that are subsequently removed from Texas before they are used, the tax may be recovered in accordance with the refund and credit provisions of §3.325 of this title and §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(k) Special rules for certain taxable goods and services. Sales of the following taxable goods and services are consummated at, and local tax is due based upon, the location indicated in this subsection.

(1) Amusement services. Local tax is due based upon the location where the performance or event occurs. For more information on amusement services, refer to §3.298 of this title (relating to Amusement Services).

(2) Cable services. When a service provider uses a cable system to provide cable television or bundled cable services to customers, local tax is due as provided for in §3.313 of this title. When a service provider uses a satellite system to provide cable services to customers, no local tax is due on the service in accordance with the Telecommunications Act of 1996, §602.

(3) Florists. Local sales tax is due on all taxable items sold by a florist based upon the location where the order is received, regardless of where or by whom delivery is made. Local use tax is not due on deliveries of taxable items sold by florists. For example, if the place of business of the florist where an order is taken is not within the boundaries of any local taxing jurisdiction, no local sales tax is due on the item and no local use tax is due regardless of the location of delivery. If a Texas florist delivers an order in a local taxing jurisdiction at the instruction of an unrelated florist, and if the unrelated florist did not take the order within the boundaries of a local taxing jurisdiction, local use tax is not due on the delivery. For more information about florists' sales and use tax obligations, refer to §3.307 of this title (relating to Florists).

(4) Landline telecommunications services. Local taxes due on landline telecommunications services are based upon the location of the device from which the call or other transmission originates. If the seller cannot determine where the call or transmission originates, local taxes due are based on the address to which the service is billed. For more information, refer to §3.344 of this title (relating to Telecommunications Services).

(5) Marketplace provider sales. Local taxes are due on sales of taxable items through a marketplace provider based on the location in this state to which the item is shipped or delivered or at which the purchaser takes possession. For more information, refer to §3.286 of this title.

(6) Mobile telecommunications services. Local taxes due on mobile telecommunications services are based upon the location of the customer's place of primary use as defined in §3.344(a)(8) of this title, and local taxes are to be collected as indicated in §3.344(h) of this title.

(7) Motor vehicle parking and storage. Local taxes are due based on the location of the space or facility where the vehicle is parked. For more information, refer to §3.315 of this title (relating to Motor Vehicle Parking and Storage).

(8) Natural gas and electricity. Any local city and special purpose taxes due are based upon the location where the natural gas or electricity is delivered to the purchaser. As explained in subsection (l)(1) of this section, residential use of natural gas and electricity is exempt from all county sales and use taxes and all transit authority sales and use taxes, most special purpose district sales and use taxes, and many city sales and use taxes. A list of the cities and special purpose districts that do impose, and those that are eligible to impose, local sales and use tax on residential use of natural gas and electricity is available on the comptroller's website. For more information, also refer to §3.295 of this title (relating to Natural Gas and Electricity).

(9) Nonresidential real property repair and remodeling services. Local taxes are due on services to remodel, repair, or restore

nonresidential real property based on the location of the job site where the remodeling, repair, or restoration is performed. See also subsection (h)(2)(B) of this section and §3.357 of this title.

(10) Residential real property repair and remodeling and new construction of a real property improvement performed under a separated contract. When a contractor constructs a new improvement to realty pursuant to a separated contract or improves residential real property pursuant to a separated contract, the sale is consummated at the job site at which the contractor incorporates taxable items into the customer's real property. See also subsection (h)(2)(A) of this section and §3.291 of this title.

(11) Waste collection services. Local taxes are due on garbage or other solid waste collection or removal services based on the location at which the waste is collected or from which the waste is removed. For more information, refer to §3.356 of this title (relating to Real Property Service).

(l) Special exemptions and provisions applicable to individual jurisdictions.

(1) Residential use of natural gas and electricity.

(A) Mandatory exemptions from local sales and use tax. Residential use of natural gas and electricity is exempt from most local sales and use taxes. Counties, transit authorities, and most special purpose districts are not authorized to impose sales and use tax on the residential use of natural gas and electricity. Pursuant to Tax Code, §321.105, any city that adopted a local sales and use tax effective October 1, 1979, or later is prohibited from imposing tax on the residential use of natural gas and electricity. See §3.295 of this title.

(B) Imposition of tax allowed in certain cities. Cities that adopted local sales tax prior to October 1, 1979, may, in accordance with the provisions in Tax Code, §321.105, choose to repeal the exemption for residential use of natural gas and electricity. The comptroller's website provides a list of cities that impose tax on the residential use of natural gas and electricity, as well as a list of those cities that do not currently impose the tax, but are eligible to do so.

(C) Effective January 1, 2010, a fire control, prevention, and emergency medical services district organized under Local Government Code, Chapter 344 that imposes sales tax under Tax Code, §321.106, or a crime control and prevention district organized under Local Government Code, Chapter 363 that imposes sales tax under Tax Code, §321.108, that is located in all or part of a municipality that imposes a tax on the residential use of natural gas and electricity as provided under Tax Code, §321.105 may impose tax on residential use of natural gas and electricity at locations within the district. A list of the special purpose districts that impose tax on residential use of natural gas and electricity and those districts eligible to impose the tax that do not currently do so is available on the comptroller's website.

(2) Telecommunication services. Telecommunications services are exempt from all local sales taxes unless the governing body of a city, county, transit authority, or special purpose district votes to impose sales tax on these services. However, since 1999, under Tax Code, §322.109(d), transit authorities created under Transportation Code, Chapter 451 cannot repeal the exemption unless the repeal is first approved by the governing body of each city that created the local taxing jurisdiction. The local sales tax is limited to telecommunications services occurring between locations within Texas. See §3.344 of this title. The comptroller's website provides a list of local taxing jurisdictions that impose tax on telecommunications services.

(3) Emergency services districts.

(A) Authority to exclude territory from imposition of emergency services district sales and use tax. Pursuant to the provisions of Health and Safety Code, §775.0751(c-1), an emergency services district wishing to enact a sales and use tax may exclude from the election called to authorize the tax any territory in the district where the sales and use tax is then at 2.0%. The tax, if authorized by the voters eligible to vote on the enactment of the tax, then applies only in the portions of the district included in the election. The tax does not apply to sales made in the excluded territories in the district and sellers in the excluded territories should continue to collect local sales and use taxes for the local taxing jurisdictions in effect at the time of the election under which the district sales and use tax was authorized as applicable.

(B) Consolidation of districts resulting in sales tax sub-districts. Pursuant to the provisions of Health and Safety Code, §775.018(f), if the territory of a district proposed under Health and Safety Code, Chapter 775 overlaps with the boundaries of another district created under that chapter, the commissioners court of each county and boards of the counties in which the districts are located may choose to create a consolidated district in the overlapping territory. If two districts that want to consolidate under Health and Safety Code, §775.024 have different sales and use tax rates, the territory of the former districts located within the consolidated area will be designated as sub-districts and the sales tax rate within each sub-district will continue to be imposed at the rate the tax was imposed by the former district that each sub-district was part of prior to the consolidation.

(4) East Aldine Management District.

(A) Special sales and use tax zones within district; separate sales and use tax rate. As set out in Special District Local Laws Code, §3817.154(e) and (f), the East Aldine Management District board may create special sales and use tax zones within the boundaries of the District and, with voter approval, enact a special sales and use tax rate in each zone that is different from the sales and use tax rate imposed in the rest of the district.

(B) Exemptions from special zone sales and use tax. The sale, production, distribution, lease, or rental of; and the use, storage, or other consumption within a special sales and use tax zone of; a taxable item sold, leased, or rented by the entities identified in clauses (i) - (vi) of this subparagraph are exempt from the special zone sales and use tax. State and all other applicable local taxes apply unless otherwise exempted by law. The special zone sales and use tax exemption applies to:

(i) a retail electric provider as defined by Utilities Code, §31.002;

(ii) an electric utility or a power generation company as defined by Utilities Code, §31.002;

(iii) a gas utility as defined by Utilities Code, §101.003 or §121.001, or a person who owns pipelines used for transportation or sale of oil or gas or a product or constituent of oil or gas;

(iv) a person who owns pipelines used for the transportation or sale of carbon dioxide;

(v) a telecommunications provider as defined by Utilities Code, §51.002; or

(vi) a cable service provider or video service provider as defined by Utilities Code, §66.002.

(5) Imposition of city sales tax and transit tax on certain military installations; El Paso and Fort Bliss. Pursuant to Tax Code, §321.1045 (Imposition of Sales and Use Tax in Certain Federal Military Installations), for purposes of the local sales and use tax imposed under

Tax Code, Chapter 321, the city of El Paso includes the area within the boundaries of Fort Bliss to the extent it is in the city's extraterritorial jurisdiction. However, the El Paso transit authority does not include Fort Bliss. See Transportation Code, §453.051 concerning the Creation of Transit Departments.

(m) Restrictions on local sales tax rebates and other economic incentives. Pursuant to Local Government Code, §501.161, Section 4A and 4B development corporations may not offer to provide economic incentives, such as local sales tax rebates authorized under Local Government Code, Chapters 380 or 381, to persons whose business consists primarily of purchasing taxable items using resale certificates and then reselling those same items to a related party. A related party means a person or entity which owns at least 80% of the business enterprise to which sales and use taxes would be rebated as part of an economic incentive.

(n) Prior contract exemptions. The provisions of §3.319 of this title (relating to Prior Contracts) concerning definitions and exclusions apply to prior contract exemptions.

(1) Certain contracts and bids exempt. No local taxes are due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of any local tax if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of any local tax if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(2) Annexations. Any annexation of territory into an existing local taxing jurisdiction is also a basis for claiming the exemption provided by this subsection.

(3) Local taxing jurisdiction rate increase; partial exemption for certain contracts and bids. When an existing local taxing jurisdiction raises its sales and use tax rate, the additional amount of tax that would be due as a result of the rate increase is not due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of the tax rate increase if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of the tax rate increase if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(4) Three-year statute of limitations.

(A) The exemption in paragraph (1) of this subsection and the partial exemption in paragraph (3) of this subsection have no effect after three years from the date the adoption or increase of the tax takes effect in the local taxing jurisdiction.

(B) The provisions of §3.319 of this title apply to this subsection to the extent they are consistent.

(C) Leases. Any renewal or exercise of an option to extend the time of a lease or rental contract under the exemptions provided by this subsection shall be deemed to be a new contract and no exemption will apply.

(5) Records. Persons claiming the exemption provided by this subsection must maintain records which can be verified by the comptroller or the exemption will be lost.

(6) Exemption certificate. An identification number is required on the prior contract exemption certificates furnished to sellers. The identification number should be the person's 11-digit Texas taxpayer number or federal employer's identification (FEI) number.

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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Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

34 TAC §31.5, §31.6

The Teacher Retirement System of Texas (TRS) proposes to amend §31.5 (relating to Notice and Forfeiture Requirements for Certain Service Retirees) and §31.6 (relating to Second EAR Warning Payments) under Subchapter A (relating to General Provisions and Procedures) of Chapter 31 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

In 2021, the Texas Legislature passed House Bill 1585 which added, among other provisions, an employment after retirement ("EAR") notice procedure (also called a "three strikes" procedure) that ensured TRS would issue at least two warnings to a TRS service retiree before that retiree would forfeit his or her entire annuity for a month because the retiree exceeded the limits on employment after retirement during that month.

Importantly, this notice procedure, which is under Government Code §824.601(b-3), requires that a TRS service retiree cannot be subject to a second warning (and the possible dollar-for-dollar partial forfeiture associated with a second warning) until the month after the month TRS issues a first warning to a TRS retiree for exceeding the limits on EAR. Further, a TRS retiree cannot be subject to mandatory full forfeiture of his or her annuity until the month after the month TRS issues the second warning letter. These requirements are clear in the statute.

However, §31.5 and §31.6 currently provide, at least in part, that a TRS service retiree is not subject to a second warning until the retiree receives, rather than TRS issues, a first warning. Further, the rules provide that a TRS retiree is not subject to a mandatory forfeiture until the retiree receives, rather than TRS issues, both required notices.

By requiring that the retiree receive, rather than TRS issue, these EAR notices before the retiree can be subject to the next level of EAR forfeiture, §31.5 and §31.6 are in conflict with Government Code §824.601(b-3). In addition, the receipt, rather than issue, standard creates a substantial administrative hurdle for TRS in administering the EAR "three strikes" procedure.

Specifically, TRS sends EAR notices to service retirees by both first class and certified mail to the retiree's current mailing address on file with TRS to ensure that the retirees timely receive their EAR notices. However, if a retiree did not maintain an accurate current mailing address with TRS, and TRS was unable to locate (or at least was delayed in locating) the retiree, the retiree could arguably not be subject to the next EAR notice and potentially full forfeiture until TRS receives a current mailing address for the member.

In addition, because the month TRS issues an EAR notice can be different from the month a TRS service retiree receives that notice, the month in which a TRS retiree is subject to the next level of EAR forfeiture could, in some cases, be ambiguous even if the retiree receives the EAR notice.

If adopted, TRS intends for proposed amended §31.5 and §31.6 to become effective on February 1, 2024.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rules will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rules.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rules will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed amended rules will be for the proposed amended rules to conform with statute.

Mr. Green has also determined that the public will incur no new costs as a result of complying with the proposed amended rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amended rules. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rules. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rules are in effect, the proposed amended rules will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rules, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rules because the proposed amended rules do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

The proposed amended rules are proposed under the authority of Government Code §824.604, which provides that board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed amended rules affect the following statutes: Government Code §824.601, which relates to loss of monthly benefits; Government Code § 824.602, which relates to exceptions; and Government Code §824.6021, relating to temporary exception to mitigate learning loss attributable to COVID-19 pandemic.

§31.5. Notice and Forfeiture Requirements for Certain Service Retirees.

(a) A service retiree with an effective date of retirement after January 1, 2021, shall only forfeit the service retiree's monthly annuity payment based on the service retiree's employment by a Texas public educational institution during a calendar month if TRS [~~the retiree~~] has previously issued [~~received~~] the warnings required by subsections (b) and (c) of this section to the retiree.

(b) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter (relating to Employment after Retirement Exceptions), TRS shall issue a written EAR warning to the service retiree notifying the retiree of this fact. The EAR warning under this subsection may address multiple months of the service retiree's employment.

(c) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter and that employment occurs in a month after the month TRS issued to the service retiree the warning under subsection (b) of this section, then TRS shall issue a second EAR warning to the service retiree that:

(1) notifies the service retiree of this fact; and

(2) requires the service retiree to pay TRS an amount equal to the lesser of the total amount of either:

(A) the service retiree's gross monthly annuity payments for the months addressed by this warning; or

(B) the total gross amount of compensation earned by the service retiree during the months addressed by this warning as described by §31.6 of this title (relating to Second EAR Warning Payments).

(d) The EAR warning under subsection (c) of this section may address multiple months of the service retiree's employment.

(e) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter and that employment occurs in a month after the month TRS issued to the retiree the second EAR warning under subsection (c) of this section, the service retiree is not entitled to receive a monthly annuity payment for any such month and TRS shall collect any annuity payments the service retiree received to which the service retiree was not entitled.

(f) If TRS determines after issuing an EAR warning under subsections (b) or (c) of this section that the service retiree's employment by a Texas public educational institution did not qualify for an exception under Subchapter B of this chapter and that employment occurred in a month prior to or during the month TRS issued such a warning but was not included in the warning, then TRS shall:

(1) issue an EAR warning in accordance with subsection (b) of this section if the excluded month was the month TRS issued the EAR warning under that subsection or an earlier month; or

(2) issue an EAR warning and request for payment under subsection (c) of this section if the excluded month was the month TRS issued the EAR warning under that subsection or in an earlier month that was also after the month TRS issued the EAR warning under subsection (b) of this section.

(g) If a service retiree appeals a TRS determination regarding the service retiree's employment with a Texas public educational institution during a month or months that TRS included in an EAR warning under subsection (b) or (c) of this section, the EAR warning shall still be considered to have been issued by TRS unless the service retiree's appeal contests every month addressed by the applicable warning. If the service retiree contests the TRS determination for every month included in an EAR warning, that EAR warning shall not be considered to have been issued during the pendency of the service retiree's appeal.

(h) If a service retiree prevails on an appeal of every month included in an EAR warning under subsection (b) or (c) of this section, then TRS shall rescind the EAR warning. If the service retiree's appeal does not prevail on any month included in an EAR warning under subsection (b) or (c) of this section, then the EAR warning shall be reinstated and TRS shall adjust the amounts owed by the service retiree to TRS, if any, for months after the issuance of the reinstated EAR warning in which TRS determined the service retiree's employment by a Texas public educational institution did not qualify for an exception to the limits on EAR as provided by Subchapter B of this chapter.

(i) TRS shall consider an EAR warning under this section to have been issued on the date TRS sends the warning to the service retiree.

§31.6. Second EAR Warning Payments.

(a) If TRS issues [~~A service retiree who receives~~] a second EAR warning as provided in §31.5 of this title (relating to Notice and Repayment Requirements for Certain Service Retirees) to a service retiree, the service retiree shall pay to TRS an amount equal to the lesser of either:

(1) the service retiree's gross monthly annuity payments for the months addressed by this warning; or

(2) the total gross amount of compensation earned by the service retiree during the months addressed by this warning as described by this section.

(b) The amount in subsection (a)(2) of this section shall only include all compensation earned by the service retiree based on the service retiree's employment with a Texas public educational institution during a month subject to the second EAR warning regardless of when such an amount is paid to the service retiree. The amount shall not include:

(1) compensation paid to the service retiree during the applicable months unless the service retiree also earned the compensation based on the service retiree's employment with a Texas public educational institution during a month subject to the second warning;

(2) compensation earned by the service retiree in a position that qualifies for the exception under §31.16 of this title (relating to Federally-funded COVID-19 Personnel); and

(3) compensation paid to the service retiree that would not qualify as creditable compensation if paid to an active member by an employer for the same services.

(c) A service retiree may elect to pay the greater of the two amounts described by subsection (a) of this section. If a retiree elects to pay the greater amount, the retiree must notify TRS of this election in writing.

(d) If an employer adjusts the compensation earned by a service retiree in a month subject to a second EAR warning payment under this section but does not adjust the hours or days worked by the retiree relating to that compensation, the amount due shall be adjusted for that payment, and TRS shall request or return any amounts necessary to correct the payment so long as the adjustment is received no later than 12 months after the end of the school year in which the compensation was earned.

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

Filed with the Office of the Secretary of State on October 13, 2023.

TRD-202303807
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 542-6506

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.152 (Application for License), §401.302 (Scratch Ticket Game Rules), §401.362 (Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property), and §401.370 (Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost) without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4744). The rules will not be republished.

The amendment to §401.152 defines the term "director" throughout the rules to mean the lottery operations director.

The amendment to §401.302 eliminates a redundant word related to the payment of scratch ticket prizes and makes the terms identical to those of draw games.

The amendments to §401.362 provide for an additional documentation option other than a Fire Marshal's report for reporting fire damaged or destroyed lottery tickets and eliminate the $25 administrative fee for a pack of unactivated tickets that is unsaleable due to damage or destruction.

The amendments to §401.370 eliminate the $25 administrative fee for each unactivated pack of stolen or lost tickets and update the requirement for reporting lost or stolen tickets to the Commission's enforcement division through the lottery operator hotline.

The Commission received no written comments on the proposed amendments during the public comment period.

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.152

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on October 13, 2023.

TRD-202303823
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: November 2, 2023
Proposal publication date: September 1, 2023
For further information, please call: (512) 344-5392

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.302

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission’s jurisdiction.

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

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5392

SUBCHAPTER E. RETAILER RULES

16 TAC §401.362, §401.370

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission’s jurisdiction.

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

Filed with the Office of the Secretary of State on October 13, 2023.

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5392

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §100.1

The State Board of Education (SBOE) adopts an amendment to §100.1, concerning the open-enrollment charter school selection process. The amendment is adopted without changes to the proposed text as published in the July 21, 2023 issue of the *Texas Register* (48 TexReg 3968) and will not be republished. The adopted amendment modifies the no-contact period for open-enrollment charter applicants or any person or entity acting on their behalf.

REASONED JUSTIFICATION: Section 100.1 establishes the process for approval of an open-enrollment charter, including a no-contact period for open-enrollment charter applicants or any person or entity acting on their behalf with the commissioner of education, the commissioner's designee, a member of the SBOE, or a member of an external application review panel.

A petition was received from the Texas Public Charter Schools Association requesting that the no-contact period established in §100.1(d) be eliminated. The SBOE considered the petition at its January-February 2023 meeting and directed Texas Education Agency staff to present an amendment to §100.1 that would end the no-contact period for charter school applicants on the date the applicant passes the external review with a passing score.

The adopted amendment to §100.1(d) removes the no-contact period for open-enrollment charter applicants or any person or entity acting on their behalf with the commissioner, the commissioner's designee, or a member of an external application review panel. The no-contact period with a member of the SBOE has been modified to end on the date the applicant passes through an external review with a qualifying score.

The SBOE approved the amendment for first reading and filing authorization at its June 23, 2023 meeting and for second reading and final adoption at its September 1, 2023 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date will allow the modified no-contact period to begin as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period began July 21, 2023, and ended at 5:00 p.m. on August 25, 2023. The SBOE also provided an opportunity for registered oral and written comments at its August-September 2023 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment: Texas Public Charter Schools Association (TPCSA) stated that existing §100.1 is unnecessary as the charter application process is not analogous to a traditional procurement process because the charter school applicants are not in competition with each other and the SBOE does not directly negotiate or contract with charter school applicants. TPCSA also stated that existing §100.1 is unfair as it does not apply to all interested parties because parties opposed to applicants are able to contact SBOE members. TPCSA also stated that existing §100.1 is unconstitutional because the Texas Constitution, Article 1, Section 27, parallels the federal constitutional right to petition the government. Finally, TPCSA requested the board approve the proposed amendment to §100.1 with an effective date earlier than August 26, 2024, to ensure the modified rule is effective for Generation 29 charter applicants.

Response: The SBOE agrees with the need for an earlier effective date to allow the amendment to be implemented for Generation 29 charter applicants; therefore, the rule was adopted with an effective date of 20 days after filing as adopted with the Texas Register. The SBOE also provides the following clarification. TPCSA's comments related to the current rule do not address the proposed amendment to §100.1, which modifies the no-contact period for open-enrollment charter applicants or any person or entity acting on their behalf. The SBOE determined that the amended rule was appropriate as proposed and adopted the rule without changes since approved for first reading.

Comment: Texas American Federation of Teachers (Texas AFT) stated that the organization does not see a reason to amend the current charter selection process outlined in §100.1, as SBOE members have the opportunity to engage with charter applicants under the current rule. Texas AFT requested the rule be amended to specify that the no-contact period ends on the date of the commissioner's proposal of charter applicants to the SBOE. Texas AFT also questioned the reason for striking the language in subsection (d) regarding communication with the commissioner or the commissioner's designee.

Response: The SBOE disagrees with the commenter's suggested revisions. The SBOE determined that the modified no-contact period was appropriate as proposed and adopted the rule without changes since approved for first reading. In addition, the SBOE provides the following clarification. Rules regarding contact with the commissioner, the commissioner's designee, and other TEA staff are addressed in commissioner rules in 19 TAC Chapter 100, Subchapter AA.

Comment: An individual opposed the proposed amendment and stated support for transparency and accountability in the charter selection process outlined in §100.1. The individual stated that best practice is for the commissioner to engage later in the process for clarity.

Response: The SBOE agrees that the charter selection process should be transparent and accountable. The SBOE has determined that the modified no-contact period and the commissioner's role in the process are appropriate, and the rule was adopted without changes since approved for first reading.

Comment: Texas Association of School Boards stated that 21 organizations oppose the proposed amendment. TASB commented that the current rule reinforces the integrity of the charter application process by ensuring transparency and that the current process allows for opportunity for contact between SBOE members or TEA staff with charter applicants. TASB requested the SBOE maintain the no-contact rule until the date the commissioner announces recommendations to the SBOE and maintain the no-contact rule with the commissioner, the commissioner's designee, and the external review team. TASB also asked for clarification on how the proposed amendment aligns with commissioner rules regarding contact between applicants and the commissioner, the commissioner's designee, and external reviewers.

Response: The SBOE disagrees with the commenter's suggested revisions. The SBOE determined that the modified no-contact period was appropriate as proposed and adopted the rule without changes since approved for first reading. In addition, the SBOE provides the following clarification. Rules regarding contact with the commissioner, the commissioner's designee, and other TEA staff are addressed in commissioner rules in 19 TAC Chapter 100, Subchapter AA, while rules governing the SBOE will be addressed in SBOE rules.

Comment: A parent commented in opposition to the proposed amendment because the current rule (1) reinforces transparency and integrity in the charter selection process and ensures that discussion and deliberation are made in public forums; (2) allows a charter applicant to contact SBOE members and TEA staff before their application is submitted and partake in various interviews throughout the process; and (3) allows SBOE members to initiate contact at any time. The parent requested the SBOE maintain the no-contact rule until the date the commissioner announces recommendations to the SBOE and maintain the no-contact rule with the commissioner, the commissioner's designee, and the external review team.

Response: The SBOE disagrees with the commenter's suggested revisions. The SBOE determined that the modified no-contact period was appropriate as proposed and adopted the rule without changes since approved for first reading.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §12.101, which requires the commissioner of education to notify the State Board of Education of each charter the commissioner proposes to grant. It also establishes that unless, before the 90th day after the date on which the board receives the notice from the commissioner, a majority of the members of the board present and voting vote against the grant of that charter, the commissioner's proposal to grant each charter takes effect.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.101.

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

Filed with the Office of the Secretary of State on October 11, 2023.

TRD-202303784

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 31, 2023
Proposal publication date: July 21, 2023
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners adopts amending 22 TAC §329.1. General Licensure Requirements and Procedures to clarify changes in contact information that need to be reported to the board and requests for name changes. The amendment is adopted without changes to the proposed text as published in the September 08, 2023, issue of the *Texas Register* (48 TexReg 4980). The rule will not be republished.

The amendment eliminates reference to an address of record, changes the wording from residential to home address, and adds phone numbers and email addresses to the change of information that a licensee is required to report to the board. Additionally, the amendment clarifies that name changes must be submitted on a form prescribed by the board with the appropriate fee and a copy of legal documentation enacting the name change, and eliminates the requirement of making a name change with the renewal application.

No public comment was received.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Filed with the Office of the Secretary of State on October 13, 2023.

TRD-202303813
Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: November 2, 2023
Proposal publication date: September 8, 2023
For further information, please call: (512) 305-6900

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22 TAC §329.6, §329.7

The Texas Board of Physical Therapy Examiners adopts amendments to 22 TAC §329.6. Licensure by Endorsement and §329.7. Exemptions from Licensure pertaining to military service member exemption pursuant to SB 422 amendment of Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF

MILITARY SERVICE MEMBERS AND MILITARY SPOUSES, of Chapter 55, Occupations Code during the 88th Legislative Session.

The amendments are adopted in order to authorize a military service member to engage in the practice of physical therapy without obtaining a license as a physical therapist or physical therapist assistant if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the licensure in this state and the military service member is stationed at a military installation in this state.

The amendments to §329.6 are adopted without changes to the proposed text as published in the September 08, 2023 issue of the *Texas Register* (48 TexReg 4981) and will not be republished. The amendments to §329.7 are adopted with changes to the proposed text as published in the September 08, 2023 issue of the *Texas Register* (48 TexReg 4981) by adding (C) to §329.7. Exemptions from Licensure. (5) in order to clarify that the adopted amendments do not modify or alter rights that might be provided under federal law. The rule will be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide written/oral commentary concerning the proposed amendment of this rule. The 30-day comment period ended on October 8, 2023. A summary of correspondence relating to the amendment and the Board's responses follow:

Notification Letter from the U.S. Department of Justice, Civil Rights Division to State Licensing Authorities dated July 13, 2023 regarding a new provision in the Servicemembers Civil Relief Act (SCRA) about the portability of professional licenses for servicemembers and their spouses.

The Board's response is the amendments as proposed align with the new provision in the SCRA.

Directive from Governor Greg Abbott to Heads of State Agencies dated August 30, 2023 regarding review of the new provision of the SCRA, 50 U.S.C. § 4025a, and implementation of any changes needed under that law.

The Board's response is the amendments as proposed align with the new provision in the SCRA.

Email from Sara Hays, Advisor, Office of Governor Greg Abbott Policy & Budget Division dated August 30, 2023 recommending amendments pertaining to changes in Occupation Code, Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) add the following or a version of the following to include SCRA: "Subsection (*) establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law."

The Board's response is to add (C) to §329.7. Exemptions from Licensure. (5) to read: "This exemption establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that might be provided under federal law."

The amended rules are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Rulemaking authority is expressly granted to a state agency in SECTION 5. of SB 422, 88th Legislative Session.

§329.7. Exemptions from Licensure.

(a) The following categories of individuals practicing physical therapy in the state are exempt from licensure by the board.

(1) A person practicing physical therapy in the U.S. armed services, U.S. Public Health Service, or Veterans Administration in compliance with federal regulations for licensure of health care providers; and

(2) A person who is licensed in another jurisdiction of the U.S. and who, by contract or employment, is practicing physical therapy in this state for not more than 60 days in a 12 month period for an athletic team or organization or a performing arts company temporarily competing or performing in this state.

(b) The following categories of individuals practicing physical therapy in the state are exempt from licensure by the board and must notify the board of their intent to practice in the state.

(1) A physical therapist who is licensed in good standing in another jurisdiction of the U.S. if the person is engaging, for not more than 90 days in a 12 month period and under the supervision of a physical therapist licensed in this state, in a special project or clinic required for completion of a post-professional degree in physical therapy from an accredited college or university.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice;

(ii) the name of the institution or facility in which the individual will be practicing;

(iii) the name of the supervising physical therapist; and

(iv) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(2) A physical therapist or a physical therapist assistant who is licensed in good standing in another jurisdiction of the U.S. or authorized to practice physical therapy without restriction in another country if the person is engaging in patient contact and treatment as either an instructor or participant while attending an educational seminar or activity in this state for not more than 60 days in a 12 month period.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the educational activity;

(ii) the name of the course or activity sponsor;

(iii) the location of the educational activity; and

(iv) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the educational activity.

(3) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is prac-

ticing physical therapy for not more than 60 days during a declared local, state, or national disaster or emergency.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice;

(ii) the name of the facility in which the individual will be practicing; and

(iii) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(4) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is displaced from the person's residence or place of employment due to a declared local, state, or national disaster and is practicing physical therapy in this state for not more than 60 days after the date the disaster is declared.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice;

(ii) the name of the facility in which the individual will be practicing; and

(iii) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(5) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is a military service member or military spouse for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas.

(A) The military service member or military spouse must submit written notification including the following:

(i) proof of the military service member or military spouse's residency in this state including a copy of the permanent change of station order for the military service member to whom the spouse is married;

(ii) a copy of the military service member or military spouse's military identification card; and

(iii) a list of the jurisdictions in which the military service member or military spouse has held or currently holds a license.

(B) The board will issue a written confirmation stating that:

(i) licensure in other jurisdictions has been verified;

(ii) the military service member or military spouse is authorized to practice physical therapy in the state; and

(iii) authorization does not exceed three years from the date the confirmation is received.

(C) This exemption establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that might be provided under federal law.

(c) For individuals exempt from licensure under subsection (b) of this section, the following applies:

(1) any jurisdiction of the U.S. that licenses physical therapists and physical therapist assistants is deemed to have substantially equivalent requirements for licensure;

(2) verification of licensure in other jurisdictions may be through online primary source verification; and

(3) the individual must comply with all of the laws and regulations applicable to the provision of physical therapy in Texas.

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

Filed with the Office of the Secretary of State on October 13, 2023.

TRD-202303814
Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: November 2, 2023
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For further information, please call: (512) 305-6900

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 284. COMPETITIVE AND INTEGRATED EMPLOYMENT INITIATIVE FOR CERTAIN MEDICAID RECIPIENTS

26 TAC §§284.101, 284.103, 284.105, 284.107, 284.109, 284.111

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §284.101, concerning Purpose; §284.103, concerning Applicability; §284.105, concerning Uniform Process; §284.107, concerning Strategies to Increase Number of Individuals Receiving Employment Services; §284.109, concerning Referrals to the Texas Workforce Commission; and §284.111, concerning Increasing the Number of Individuals Receiving Employment Services.

Sections 284.105, 284.107, 284.109, and 284.111 are adopted with changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2659). These rules will be republished. Sections 284.101 and 284.103 are adopted without changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2659). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Texas Government Code §531.02448, regarding Competitive and Integrated Employment Initiative for Certain Medicaid Recipients, added by Senate Bill (S.B.) 50, 87th Legislature, Regular Session, 2021.

The Community Living Assistance and Support Services (CLASS), Deaf Blind with Multiple Disabilities (DBMD), Home

and Community-based Services (HCS), Texas Home Living (TxHmL), and STAR+PLUS Home and Community-based Services (STAR+PLUS HCBS) programs each provide employment services. Employment assistance services assist an individual in locating competitive employment in the community. Supported employment assists an individual in sustaining competitive employment.

To implement S.B. 50, HHSC developed a form to use in the CLASS, DBMD, HCS, TxHmL, and STAR+PLUS HCBS programs to determine an individual's employment goals and the employment opportunities and employment services available to the individual in the individual's program. The adopted rules require the entity responsible for developing an individual's person-centered service plan to determine an individual's desire to work. The adopted rules require an individual's response to be documented in the individual's person-centered service plan. When the individual indicates a desire to work, the responsible entity is required to complete the HHSC Employment First Discovery Tool at the time the plan is developed during initial enrollment, and annual renewals, and revisions if the individual's person-centered service plan does not include an employment service.

After completing the HHSC Employment First Discovery Tool, if an individual's person-centered service plan does not include employment services through the waiver program in which the individual is enrolled, the adopted rules require an individual's case manager or service coordinator to refer the individual for employment services available through the Texas Workforce Commission (TWC). The adopted rules specify HHSC's determination that the number of individuals receiving employment services on December 31, 2023, from the TWC or through the waiver programs in which the individuals are enrolled, will be at least five percent greater than the number of individuals receiving employment services on December 31, 2022.

COMMENTS

The 31-day comment period ended June 26, 2023.

During this period, HHSC received comments regarding the proposed rules from five commenters, including the TWC, the Texas Council of Community Centers, the Providers Alliance for Community Services of Texas, and two individuals.

A summary of comments relating to the rules and HHSC's responses follows.

Comment: A commenter questioned whether asking a person if they would like to work will ultimately result in the goal of increasing competitive employment. The commenter further questioned whether this expectation could be framed differently in order to increase employment within the waivers.

Response: HHSC declines to make changes in response to this comment. HHSC thinks the comment is about proposed §284.105(a), which requires an individual's service planning team to determine during the person-centered planning process whether an individual desires to work. HHSC disagrees that this requirement is the same as asking a person if they would like to work. Texas Government Code Section §531.02448(b) directs HHSC to develop a uniform process to assess an individual's employment goals. This requires that each individual who indicates a desire to work is referred to receive employment services from the TWC or through the waiver program in which the individual is enrolled. HHSC may consider including this topic in future training materials.

Comment: A commenter noted that S.B. 50 requires HHSC to develop a uniform process but does not require a uniform assessment tool, and that a uniform process does not require a single, uniform tool. This commenter recommended that HHSC ensure assessors across Medicaid programs ask individuals the same, or substantially similar, required questions related to employment during their respective service planning processes. Additionally, the commenter suggested re-naming the form from "Employment First Uniform Assessment Form" to "Employment First Discovery Tool."

Response: HHSC agrees it is imperative the same questions are asked across programs and designed the "Employment First Uniform Assessment Form" to accomplish this task. HHSC does not agree that developing a uniform process does not require using a uniform assessment tool, but agrees to renaming the assessment form to the "HHSC Employment First Discovery Tool" and revised §§284.105(a)(2), 284.107(1), and 284.109 accordingly. The form will now be referred to as the "Employment First Discovery Tool."

Comment: A commenter asked if the Employment First Discovery Tool assesses the individual's ability to work.

Response: The renamed "Employment First Discovery Tool" is not meant to be a functional assessment. Rather, it is an inquiry of the individual's employment interests and goals. This tool is part of the overall discussion within the person-centered planning process. HHSC did not make changes in response to this comment.

Comment: One commenter requested that HHSC add to handbooks, or other policy material, proven techniques for determining whether someone wants to work.

Response: HHSC did not makes changes in response to this comment because amending non-rule policy is outside the scope of this rule project. However, HHSC may consider adding a "discovery process" as part of the provider education process to train case managers and service coordinators on how to lead the person-centered planning process to determine whether an individual wants to work.

Comment: One commenter requested that HHSC add language related to referrals to the TWC in §284.105.

Response: HHSC disagrees and declines to revise §284.105 in response to this comment because this rule describes the uniform process for providing employment services in the waiver program in which the individual is enrolled if the individual expresses the desire to work. Section 284.109 addresses referrals to TWC and requires a case manager or service coordinator to refer an individual to TWC for employment services if the individual's person-centered service plan does not include employment services through the waiver program in which the individual is enrolled.

Comment: One commenter requested that HHSC include in §284.105(c)(2) an individual expressing a desire to advance in their employment as a trigger for a service plan revision.

Response: HHSC disagrees and declines to revise §284.105(c)(2) as suggested. Texas Government Code §531.02448(d)(3) directs HHSC to ensure each individual who indicates a desire to work is referred to receive employment services from the TWC or through the waiver program in which the individual is enrolled. It is outside the scope of the rule project to include requirements for revising an individual's person-centered service plan when an individual is already

receiving employment services through the individual's waiver program and the plan needs to be revised.

Comment: A commenter recommended that HHSC revise the rule to allow use of the form during a service plan revision even if a meeting of the entire service planning team does not convene. The commenter also suggested to revise §284.105(c)(2) to include the phrase "the purpose of the revision is because."

Response: HHSC disagrees with the first recommendation and declines to make changes in response because §284.105(a) requires an individual's service planning team to determine during the person-centered planning process whether an individual desires to work. Section 284.105(c) requires an individual's case manager or service coordinator to ensure the requirements in subsection (a) of the rule are met when the individual's service planning team meets to revise the individual's person-centered service plan if the individual expresses a desire to work and the individual's person-centered service plan does not include an employment service. HHSC agrees with the suggestion to revise §284.105(c)(2) and made changes to add the phrase "the purpose of the revision is because."

Comment: One commenter requested that the Employment First Discovery Tool be completed or revised anytime a desire to work or a desire for advancement in employment is identified.

Response: HHSC did not make changes in response to this comment because §284.105(a)(2) and (c) already requires completion of the Employment First Discovery Tool any time an individual expresses a desire to work. Also, HHSC disagrees with the suggestion to amend the rules to require the tool to be completed when an individual expresses a desire for advancement in employment because it is outside the scope of the rule project to include requirements for revising an individual's person-centered service plan when an individual is already receiving employment services through the individual's waiver program and the plan needs to be revised.

Comment: One commenter requested that HHSC use Texas Workforce Solutions - Vocational Rehabilitation Services (TWS-VRS) when referencing TWC in the proposed rules.

Response: HHSC disagrees and declines to revise §§284.107, 284.109, and 284.111 as suggested. HHSC believes it is not necessary to specify the division/department of TWC responsible for receiving the referrals for employment services.

Comment: A commenter recommended that HHSC clarify in the rule when the HCS/TxHmL provider should take action versus the local intellectual and developmental disability authority (LIDDA) service coordinator.

Response: HHSC agrees that §284.105(a) and (c) and §284.109 need to clearly reflect the person who on behalf of a program provider, a LIDDA, or an MCO must take the action indicated in these rules. Section 284.101(b) requires that the rules in the chapter must be read in conjunction with the rules and policies related to the Medicaid programs listed in §284.103. In the CLASS, DBMD, and STAR+PLUS HCBS programs the person responsible for taking the actions in §284.105(a) and (c) and §284.109 is referred to as the case manager. In the HCS and TxHmL programs the person responsible for taking the actions in §284.105(a) and (c) and §284.109 is referred to as the service coordinator. Therefore, HHSC revised §284.105(a) and (c) and §284.109 by removing "program provider's," "local intellectual and developmental disability authority," and "or managed care organization or MCO" to clarify that the responsible person is the case manager or service coordinator, depending on the waiver program in which an individual is enrolled.

Comment: A commenter indicated that, based on personal experience, a referral by the service coordinator to TWC is rarely done, and instead the referral comes from the long-term care providers. The commenter further indicated that since the rule does not direct the provider to make the referral to TWC, an enhanced emphasis on the service coordinators following through with the referral rather than placing the responsibility on the provider is preferable.

Response: HHSC disagrees with the comment and declines to make changes because §284.109 explicitly requires the service coordinator or case manager to refer an individual to TWC, if the situation warrants a referral. Whether the requirement applies to a case manager or a service coordinator depends on the waiver program in which the individual is enrolled.

Comment: One commenter recommended HHSC specify that the programs referenced in §284.111 are "waiver" programs.

Response: HHSC agrees and revised §284.111 as suggested by adding "waiver" to this section.

Comment: One commenter recommended that HHSC obtain additional feedback from internal and external stakeholders specifically related to how the tool fits within the existing service planning process.

Response: HHSC met with internal and external stakeholder groups to solicit feedback and ideas. HHSC's intent is for the questions in the Employment First Discovery Tool to be a part of the service planning process. If the response to a question in the Employment First Discovery Tool has already been captured in another service plan form, the case manager or service coordinator may note this in the Employment First Discovery Tool with a clear reference to the corresponding section of the service plan form. HHSC will update the Employment First Discovery Tool instructions to note that questions previously captured in another service planning form may be noted in the Employment First Discovery Tool with a clear reference to the corresponding section of the service plan form. HHSC did not make changes in response to this comment.

Comment: A commenter recommended that HHSC review the Employment First Discovery Tool with stakeholders and revise the questions to assess readiness to work. The commenter also expressed concern that the Employment First Discovery Tool in its current form does not collect the information TWC needs for their assessments.

Response: HHSC disagrees that the questions in the Employment First Discovery Tool need to be revised to assess readiness to work. The Employment First Discovery Tool is not meant to assess an individual's readiness to work. It is meant to guide the conversation regarding the type of work that may suit the individual's interest. Also, the Employment First Discovery Tool is not intended to replace any part of TWC's assessment process. HHSC did not make changes in response to this comment.

Comment: A commenter remarked that the Employment First Discovery Tool instructions do not align with the rule language and recommended that HHSC incorporate implementation activities into current service planning processes.

Response: HHSC's intent is for the questions in the Employment First Discovery Tool to be a part of the service planning process. If a question on the tool has already been captured in another

service plan form, the case manager or service coordinator may note this on the tool with a clear reference to the appropriate section of the service plan form. HHSC will update the Employment First Discovery Tool instructions to note that questions previously captured in another service planning form may be carried over to the Employment First Discovery Tool. HHSC did not make changes in response to this comment.

Comment: A commenter indicated support for the LIDDAs taking a more active role in the referral process to the TWC.

Response: HHSC appreciates the comment.

STATUTORY AUTHORITY

The new sections 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(c) and Texas Government Code §531.021(a), which authorizes HHSC to administer the federal medical assistance (Medicaid) program.

§284.105. Uniform Process.

(a) An individual's service planning team must determine during the person-centered planning process whether an individual desires to work and if so, the individual's case manager or service coordinator must:

(1) document the individual's desire to work on the individual's person-centered service plan; and

(2) complete the HHSC Employment First Discovery Tool available on the HHSC website to determine:

(A) the individual's employment goals; and

(B) the employment opportunities and employment services available to the individual through the program in which the individual is enrolled.

(b) An individual's service planning team must use the individual's employment goals, employment opportunities, and the employment services chosen by the individual to develop the individual's person-centered service plan.

(c) An individual's case manager or service coordinator must ensure that the requirements in subsections (a) and (b) of this section are followed when the individual's service planning team meets to:

(1) develop the individual's person-centered service plan upon:

(A) initial enrollment; and

(B) for annual renewals; and

(2) revise the individual's person-centered service plan if the purpose of the revision is because the individual expresses a desire to work and the individual's person-centered service plan does not include an employment service.

§284.107. Strategies to Increase Number of Individuals Receiving Employment Services.

The Texas Health and Human Services Commission (HHSC) utilizes the following strategies to increase the number of individuals receiving employment services from the Texas Workforce Commission (TWC) or through the waiver program in which an individual is enrolled:

(1) use of the HHSC Employment First Discovery Tool identified in §284.105(a)(2) of this chapter (relating to Uniform Process);

(2) maintain a memorandum of understanding between HHSC and TWC to enable data sharing between those agencies in order to measure the number of individuals utilizing employment services;

(3) implement an employment-first policy jointly adopted by HHSC, the Texas Education Agency (TEA), and the TWC in accordance with Texas Government Code §531.02447(b); and

(4) implement additional strategies as outlined in the Promoting Independence Plan, which is HHSC's plan for implementing its obligation to provide people with disabilities opportunities to live, work, and be served in integrated settings.

§284.109. Referrals to the Texas Workforce Commission.

After completing the HHSC Employment First Discovery Tool, as described in §284.105(a)(2) of this chapter (relating to Uniform Process), if an individual's person-centered service plan does not include employment services through the waiver program in which the individual is enrolled, the individual's case manager or service coordinator must refer the individual to the Texas Workforce Commission (TWC) for employment services available through the TWC.

§284.111. Increasing the Number of Individuals Receiving Employment Services.

The Texas Health and Human Services Commission will ensure that the number of individuals receiving employment services from the Texas Workforce Commission or through the waiver programs in which the individuals are enrolled on December 31, 2023, is at least 5% greater than the number of individuals receiving employment services on December 31, 2022.

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

Filed with the Office of the Secretary of State on October 12, 2023.

TRD-202303799
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: November 1, 2023
Proposal publication date: May 26, 2023
For further information, please call: (512) 438-4224

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 361. REGIONAL FLOOD PLANNING

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code (TAC) §§361.10 - 361.13, 361.21, 361.30 - 361.35, 361.38 - 361.40, 361.43 - 361.45, 361.50, 361.51, 361.61, 361.70 - 361.72; new §361.36 and §361.37. Sections 361.10, 361.11, 361.13, 361.21, 361.30, 361.31, 361.33,

361.34, 361.36 - 361.40, 361.45, 361.50, 361.51, and 361.72 are adopted with changes as published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2060). These rules will be republished. Sections 361.12, 361.32, 361.35, 361.43, 361.44, 361.61, 361.70, and 361.71 are adopted without changes as published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2060). These rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT. Several rule sections that were proposed for removal are restored in these final rules.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Subchapter A

In the adopted amendment §361.10, the definitions of Flood Management Evaluation, Flood Management Strategy, Flood Risk, Nature-based Flood Mitigation, Potentially Feasible Flood Mitigation Project or Potentially Feasible Flood Management Strategy were all modified in response to comments.

In the adopted amendments, the definition of Nature-based Flood Mitigation was restored to the original definition.

In the adopted amendments §361.13, the technical memorandums will include a list of ongoing flood studies in addition to previous flood studies considered by the RFPGs to be relevant. The technical memorandums will also include a summary and maps of locations that the RFPG consider the greatest flood risk and flood mitigation needs.

Subchapter B

Adopted amendment §361.21 added a requirement that the RFPGs hold a public meeting in a central location to accept comments on the Regional Flood Plan.

Subchapter C

There are clarifications to the requirements of the Regional Flood Plan content throughout Subchapter C.

Adopted amendment §361.30, allows RFPGs to not include information that is not available. This includes information about key historical flood events. Further clarification of political subdivisions with flood-related authority is provided. Additionally, several descriptors of the FPR that were proposed to be removed from the rule have been restored in this final rule language.

In adopted amendment §361.31, the list of examples of major flood-related infrastructure that is to be included in the flood plan is modified. The description of natural flood mitigation features and the description of major flood infrastructure were also modified.

In adopted amendment §361.33, a change was made to clarify that in the event that data for dams is not available, it is not required as part of the existing condition flood hazard analyses.

Adopted amendment §361.34 changes the requirements for several of the required analyses to ensure meaningful data is collected from each region. This involved providing more flexibility to the RGPGs while TWDB provides greater detail in guidance.

Additionally, minor changes were made in §361.34 to the future condition risk analysis and the future condition flood exposure analyses were made to provide more flexibility to the RFPGs when future condition results are not available. Also, the identification of vulnerabilities of critical facilities was modified to remove some factors that were supposed to be considered. Now the rule provides much more flexibility for the future condition flood exposure analysis.

The future condition vulnerability analysis was also modified in the adopted amendment to §361.34 to provide more flexibility for conducting the analysis.

Adopted amendments to §361.36 include: flood mitigation and flood plain management goals are no longer required to be included in the flood mitigation need analysis. The flood mitigation need analysis is now going to be completed prior to the mitigation and management goals.

A minor clarification was made to the adopted amendment in §361.37.

In the adopted amendment to §361.38, a comparison of FMSs and FMPs is restored; however, modifications were made to clarify that an equitable comparison and assessment of the FMSs and FMPs are to be made independently for each category. The FMs are to be compared among FMSs and FMPs are to be compared among FMPs.

Additional changes were made to the adopted amendments in §361.38 to better align the requirements with the data available to the RFPGs. For the evaluation of potential FMEs, the estimated flood risk reduction benefits have been removed from the requirements. Further, the order of the evaluations of FMEs and the assessment of potentially feasible FMPs and FMSs is reversed to ensure the FMEs are evaluated prior to the FMPs and FMSs.

In the adopted amendments to §361.39, changes were made to clarify that FMEs and FMSs will be ranked in the state flood plan. Additional clarification was made so the RFPGs may provide a reference to a benefit-cost calculation if it has already been done by another entity rather than the RFPG calculating the number itself.

The adopted amendment to §361.40 makes a modification to include a summary of how the recommended actions will meet the needs and goals identified.

The adopted amendment to §361.50 makes a modification so that each individual FME, FMP, and FMS does not have to be voted on individually, rather the RFPGs may vote on the items in a way that the RFPGs find best.

The adopted amendments to §361.70 simplify the process for the RFPG Sponsor to receive funding.

The adopted amendments to §361.72 provide that the RFPG Sponsors will be allowed reimbursement for time spent at the RFPG meetings. Further, Sponsors will also be reimbursed for time spent on administrative tasks.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The intent of the rulemaking is to facilitate the regional and state flood planning process.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §16.062. Therefore, these rules do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated these rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to facilitate the regional and state flood planning process while making the process more efficient for the regional flood planning regions. The rules will substantially advance this state purpose by clarifying requirements of the flood plan regions.

The TWDB's analysis indicate that Texas Government Code, Chapter 2007 does not apply to these rules because these are actions that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is responsible for developing the state flood plan.

Nevertheless, the TWDB further evaluated these rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject rules do not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

Harris County Engineering Department provided comments related to the Fiscal Note and the Growth Impact Statement of the preamble. Harris County Engineering Department requested clarification related to the Fiscal Note and thought that the Growth Impact Statement asserted that there would be no funding for the Flood Infrastructure Fund.

Response: The Fiscal Note and the Growth Impact Statement pertain to the rules related to the Regional Flood Plan. Funding projects is a separate process with a separate set of rules.

The San Jacinto River Authority requested clarification as to whether HUC10 and HUC8 were intended to be referenced in the rules.

Response: TWDB acknowledges and agrees with the comment. The rules have been modified to remove references HUC10.

Halff Associates stated that it supports the proposed reductions in overly burdensome requirements at the planning level analysis. Halff explained that it found that some of the requirements for potentially feasible flood mitigation actions, such as benefit-cost analysis, were time consuming for actions that ultimately could not meet the no negative impact requirement and were therefore not recommended as Flood Mitigation Projects (FMPs). Halff noted that it supports removing requirements that do not add value to the flood planning process.

Response: The TWDB acknowledges and appreciates the comment. Please find any relevant changes made in subsequent comments and responses. Note that many items that are considered necessary to meet this statutory requirement related to no negative impact and that are needed to evaluate and rank projects, were retained. No changes have been made in the response to this comment.

Section 361.10. Definitions and Acronyms.

Harris County Engineering Department supports the definitions added for Critical Facilities and Emergency Need.

Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.

Halff Associates recommend a definition for "Low Water Crossing" be added to this section.

Response: TWDB acknowledges and appreciates the comment. Exhibit C: Technical Guidelines for Regional Flood Planning provides a definition for Low Water Crossing. No change has been made in response to this comment.

Halff recommend that a definition of "Major Flood Infrastructure" be added to the list of definitions. Halff provided example parameters for consideration.

Response: TWDB acknowledges and appreciates the comment. Since the meaning of "major" differs significantly from flood planning region to flood planning region, flexibility will remain in the rule and each RFPG will determine its meaning. However, guidance documents will be enhanced to offer an optional default definition and include helpful examples. No change has been made in response to this comment.

Halff recommended adding examples to the definitions of "Critical Facilities" with "include but not limited to facilities and infrastructure..."

Response: TWDB acknowledges and appreciates the comment. TWDB notes that Exhibit C: Technical Guidelines for Regional Flood Planning does contain examples for Critical Facilities. No change has been made in response to this comment.

Halff recommended removing "Emergency Need" entirely from the regional flood plans. In the alternative, Halff recommended removing the word "imminent" from the proposed definition related to anticipated failure...Halff explained that the planning cycle spans 5 years, which is too long to respond to a true emergency need. Halff stated that this has already created confusion as several residents contacted the Region 3 Trinity RFPG requesting help in the August 2022 flood event in North Texas. Halff went on to explain that the RFPGs do not provide emer-

gency response services and the TWDB rules prohibit them from evaluating emergency response plans.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that statute Texas Water Code Section 16.062(E)(2)(E)(i) requires an indication of whether a flood mitigation solution "meets an emergency need" and therefore must be addressed in a meaningful manner. A definition has been provided in rule in response to stakeholder input and to improve consistency in how it is considered, statewide. No change has been made to this comment.

Halff recommended adding to the definition of "Floodplain Management" that "effective floodplain management includes regulatory and enforcement requirements/standards for development and other activities in pluvial and fluvial flood risk areas by the location jurisdiction."

Response: TWDB acknowledges and appreciates the comment. The recommendation will be considered for addition to the guidance documents. No change has been made in response to this comment.

Freese and Nichols suggested revising the definition for Flood Management Evaluation (FME) to be a proposed study to define or "quantify" (in lieu of "identify" as currently drafted) flood risk or flood risk reduction solutions. Freese and Nichols state that in many cases, flood risk and a potential flood risk reduction solution have already been identified and FMEs have been recommended to further define the solution or satisfy requirements to be considered an FMP.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to revise the definition.

Halff suggested that the definition for FME include specific categories, such as watershed studies, H&H modeling, mapping, etc.

Response: TWDB acknowledges and appreciates the comment. Guidance documents will be enhanced accordingly. No change has been made in response to this comment.

Freese and Nichols suggested revising the definition of Flood Management Strategy (FMA) to better differentiate between FMEs and FMPs as well as clarify the types of actions that are eligible for funding within the FMS category. Freese and Nichols suggested removing the phrase, "ideas that still need to be formulated," in exchange for, "that result in flood risk reduction benefits that cannot be directly quantified through standard practices." Freese and Nichols and Halff Associates also suggested that the definition include examples of types of actions that would qualify as an FMS and whose non-recurring, non-capital cost would be eligible for funding under the FMS category, to help to clarify the purpose and use of this category.

Response: TWDB appreciates the comment and agrees. The rule has been modified to revise the definition for Flood Management Strategy (FMS). Guidance documents will also be updated to include additional specificity and examples.

Halff recommended that the definition of "Flood Risk" be adjusted to include resilience, such as "...and the vulnerability and resilience of the people...".

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to revise the definition of Flood Risk.

Halff Associates suggested that "Nature-based Flood Mitigation" be renamed as "Nature- based Flood Risk Reduction." Halff Associates stated that in areas that are already developed, nature-based solutions are difficult to develop as stand-alone solutions, and instead, nature-based solutions tend to be components of a larger solution.

Response: TWDB acknowledges and appreciates the comment. "Mitigation" is a commonly used and accepted term, which is helpful when aiming for clarity with Flood Mitigation Projects. No change has been made in response to this comment.

The National Wildlife Federation recommended that the definition of Nature-based solution not be changed as proposed. The National Wildlife Federation stated that the proposed definition did not accurately capture the goal of nature-based solution projects.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to restore the original definition of Nature-based Flood Mitigation.

The Great Edwards Aquifer Alliance suggested modifying the definition of Nature-based Flood Mitigation to include "flood mitigation strategies that provide additional environmental and social benefits."

Response: TWDB acknowledges and appreciates the comment. The original definition of Nature-based Flood Mitigation has been restored based on comments received from multiple entities. No further change has been made in response to this comment.

Matthew Berg and Simfero Consultants stated that the proposed definition of nature-based mitigation is unnecessarily narrow and not reflective of the reality in Texas. Freese and Nichols as well as Matthew Berg and Simfero provided several alternative definitions for nature-based mitigation. Freese and Nichols encouraged the TWDB to adopt a definition that specifically represents the primary goal of these nature-based solutions as flood mitigation, relates to the types of flood risks seen in Texas, and assists RFPGs in determining what components of FMPs can be considered nature-based.

Response: TWDB acknowledges and appreciates the comments. Based on comments received from multiple entities, the rule has been modified to restore the original definition of Nature-based Flood Mitigation.

For the definition of Political Subdivision, Halff recommended deleting the proposed addition of "water supply corporation." Halff Associates explained that many WSCs specifically requested to be removed from the regional flood planning group contact lists because flood planning was irrelevant to their responsibilities.

Response: TWDB acknowledges and appreciates the comment. Please note that some water supply corporations may have flood-related responsibilities. RFPG contact lists may be modified at the discretion of the RFPGs. No change has been made in response to this comment.

The definition of "Potentially Feasible Flood Management Project or Potentially Feasible Flood Mitigation Strategy" includes the determination as to whether or not the action is "permittable." Halff Associates recommended a modification of the definition of Potentially Feasible Flood Management Project or Potentially Feasible Flood Mitigation Strategy because the level of analyses for most FMPs is such that one cannot make definitive statements about potential implementation constraints.

Response: TWDB appreciates the comment and agrees. The rule has been modified to change the definition.

Section 361.11. Designations and governance of Flood Planning Regions.

Halff Associates suggested rewording "Water Utilities" to read "Water and/or Wastewater Utilities."

Response: TWDB acknowledges and appreciates the comment. Texas Water Code Section 16.062(c) specifically requires water utilities. TWDB notes that the rules will continue to allow flexibility for RFPGs to determine whether wastewater utilities should be included. No change has been made in response to this comment.

Halff stated its support of the formal inclusion of a transportation authority in regional flood planning. Specifically, Halff recommended that the Texas Department of Transportation (TxDOT) be added as a required non-voting state agency on each of the RFPGs. Half noted that their participation is critical as most of the hurricane evacuation routes use TxDOT roadways and many TxDOT roadways throughout the state are at risk from periodic inundation, closure, and/or damage during and from flood events. Half explained that the regional flood plans would benefit from this additional representation.

Response: TWDB acknowledges and agrees with the comment. The rule was modified at the publication stage to further emphasize that RFPGs must consider including a non-voting position to represent regional or local transportation authorities for example, from the Texas Department of Transportation.

Halff encouraged the TWDB to provide funding to the RFPGs during the year that the State Flood Plan is being prepared to allow the RFPGs to perform additional activities that they may not have time or opportunity to perform during the four-year plan development.

Response: TWDB acknowledges and appreciates the comment. Provisions of grant funding to support the development of regional flood plans by RFPGs during each 5-year planning cycle occurs under a separate process from rulemaking. No change has been made in response to this comment.

The San Jacinto River Authority noted that §361.12(c)(4) does not read right.

Response: TWDB appreciates and agrees with the comment. The rule has been modified.

Section 361.13. Regional Flood Planning Group Deliverables.

Freese and Nichols suggested that the TWDB consider adding relevant ongoing studies to the technical memo deliverable, §361.13(e)(2). Freese and Nichols explained that ongoing studies are no FMEs since they are already funded, and they are not previous studies because they are not completed. Freese and Nichols stated that ongoing studies also do not fit well in the Ongoing Projects feature class and table since they are not mitigation projects. Further, Freese and Nichols explained that requiring regions to access where ongoing studies are occurring would add value to the process and would include, for example, identifying FIF Category 1 studies or Base level Engineering mapping which were eventually requested by the TWDB via comments on deliverables.

Response: Response: TWDB appreciates and agrees with the comment. The rule has been modified to include ongoing studies.

The American Flood Coalition suggested that a geodatabase and associated maps of existing hydrologic and hydraulic models available, continue to be requirement in the technical memo, §361.13(e)(5). The American Flood Coalition stated that the availability of existing hydrologic and hydraulic models should be considered a best practice.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that significant preliminary input was received from stakeholders recommending the removal of this requirement due to models not yet being identified during the Technical Memorandum stage of the planning process. Additionally, TWDB notes that while the requirements will be removed in rule, it will remain as a requirement in Exhibit C: Technical Guidelines for Regional Flood Planning and in the Scope of Work. No change has been made in response to this comment.

Freese and Nichols requested that the TWDB consider revising language in §361.13(e)(5) to specify alignment with RFP task requirements. Freese and Nichols requested clarification whether the list is intended to be a list of models that could be used to evaluate FMPs or generally identify model availability throughout the region.

Response: TWDB acknowledges and appreciates the comment. This recommendation will be considered for elaboration in guidance documents. No change has been made in response to this comment.

Freese and Nichols requested that since the TWDB moved the needs analysis ahead of goal setting in the rules (§361.36 and §361.37), the TWDB consider replacing this technical memorandum deliverable with the results (geodatabase and mapping) of the needs analysis performed. Freese and Nicols also requested that the TWDB clarify how the needs analysis should inform goal setting and whether the TWDB expects for flood planning regions to have completed both the needs analysis and goal setting ahead of submitting the technical memorandum.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to add new technical memorandum deliverable requiring a summary and associated maps of locations within the FPR that the RFPG considers to have the greatest flood risk study and flood mitigation needs.

American Flood Coalition suggested §361.13(e)(10) not be deleted. The Coalition stated that by maintaining a record of infeasible FMSs and FMPs, TWDB might be better positioned to make future adjustments to FMS and FMP criteria and understand opportunities for technical assistance.

Response: TWDB acknowledges and appreciates the comment. TWDB received significant preliminary input from stakeholders recommending the removal of this requirement. Note that removal of this requirement does not prevent RFPGs from maintaining related records that they consider beneficial. No change has been made in response to this comment.

Halff stated its support for the removal of the lists of flood management strategies and plans that were identified and found to be infeasible as these lists do not add value to the overall flood plan.

Response: TWDB acknowledges and appreciates the comment. No change has been made to §361.13 in response to this comment.

SUBCHAPTER B. GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

Section 361.21. General Notice Requirements.

Halff expressed its support for the proposed removal of the 14-day notice for some RFPG actions. Half stated that the requirement was often complicated to meet for regional Flood Planning Groups that met on a monthly basis. Halff commended TWDB for developing the public notification summary spreadsheet for the first cycle of regional flood planning. Halff found it to be very useful in planning and preparing for RFPG meetings.

Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.

Halff requested that the TWDB consider reducing the number of hard copies of the draft plan that are required to be printed and made available for public review. Halff stated that the number of hard copies of the draft and final plans required to be submitted to the TWDB, including the appendices, should be clarified.

Response: TWDB acknowledges and appreciates the comment. The number of required hard copies of the draft Regional Flood Plan was reduced from three to one. No further change has been made in response to this comment.

SUBCHAPTER C. REGIONAL FLOOD PLAN REQUIREMENTS

Section 361.30. Description of the Flood Planning Region.

The American Flood Coalition suggested that the TWDB consider maintaining several specific descriptors in future regional flood plans that were proposed to be deleted from §361.30. The American Flood Coalition stated that the factors may change over the years, and having a strong understanding of these regional factors could significantly alter regional and state decision making.

Response: TWDB appreciates and partially agrees with the comment. The original descriptions, in general, aside from the "economic sectors most at risk of flood impacts," have been restored in the rule.

Halff supported the reduction in required information describing the region in §361.30. Halff recommended that the region description requirements be made more consistent with those used in the regional water plan.

Halff suggested removal of the requirement for a description of the areas in the region that are flood-prone and the types of major flood risks to life and property in the region. Alternatively, Halff requested that the TWDB consider combining that with the requirements to describe the types of historical flood risks and key historical flood events within the region.

Response. TWDB acknowledges and appreciates the comment. The requirement of this section is intended to be much more general in comparison to that of the flood risk analyses in Scope of Work Task 2. No change has been made in response to this comment.

Freese and Nichols requested that the TWDB consider incorporating a definition for, "flood-related authority," or add clarification in guidance. Freese and Nichols stated that this was a subject of debate for many regions and caused confusion regarding what was required. Further, Freese and Nichols requested that the TWDB consider whether the term, "flood-related authority," could be replaced with something that incorporated more explanation.

Response: TWDB appreciates and agrees with the comment. The rule has been modified to read: "...flood-related regulatory authority..."

Harris County Engineering Department recommended keeping the language in §361.30 in order to capture a comprehensive understanding of each regions' needs for regulations as to not cause upstream or downstream impacts.

Response: TWDB acknowledges and agrees with the comment. The rule has been restored to its original wording.

Harris County Engineering Department recommended keeping the language in §361.30 related to agricultural and natural resources most impacted by flooding to capture a comprehensive understanding of each region's natural and agricultural resources.

Response: TWDB acknowledges and agrees with the comment. The rule has been restored to its original wording.

Section 361.31. Description of the Existing Natural Flood Mitigation Features and Constructed Major Flood Infrastructure in the Region.

The San Jacinto River Authority questioned the removal of infrastructure examples in §361.31.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to restore a longer list of examples and guidance documents will be enhanced.

Greater Edwards Aquifer Alliance proposed a definition for "functioning floodplain" in §361.31(a)(1)(A).

Response: TWDB acknowledges and appreciates the comment. The rule has been modified to remove the overly broad and undefined term "functioning floodplains." The change does not prevent RFPGs from describing them or proposing restoration projects or strategies to address more specific features to improve the functionality of the floodplains within their regions.

The National Wildlife Federation and the Great Edwards Aquifer Alliance recommended against removing wetlands from items that need to be described in the "Description of the Existing Natural Flood Mitigation Features and Constructed Major flood Infrastructure in the Region" in §361.31.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to restore wetlands to the list of identified natural flood mitigation features.

Halff Associates noted that the phrase "stormwater management systems" is vague in §361.31(a)(2)(E) and requested clarification.

Response: TWDB acknowledges and appreciates the comment. The rule has been modified to include the following: stormwater management systems including storm drains, inlets, tunnels, and pump stations.

Freese and Nichols stated that in §361.31(b), a feature-by-feature analysis and description in the plan is not aligned with the goal of this process to be planning-level. Freese and Nichols suggested removing this requirement or revising to require the plan to include a general description by feature type in the regional infrastructure by feature type within a certain boundary such as political jurisdiction (city, county) or within a watershed (HUC-8, HUC-12) to simplify this task, but provide geospatial value. Freese and Nichols went on to propose that if feature-by-feature information is mandatory, only including that data in the GDB should be required and not in the regional flood plan text. Freese and Nichols suggested that the TWDB consider change to data requirements recommended by Freese and Nichols as part of the Infrastructure Assessment Methodologies and Toolkit

for Assessment of Community Flood Infrastructure to Support Statewide and Regional Flood Planning project.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to require analysis by feature type rather than individual feature and to allow for descriptions based on geographic groupings.

Section 361.32. Description of the Major Infrastructure and Flood Mitigation projects Currently Under Development.

The American Flood Coalition suggested "when available" not be added to §361.32(3). The American Flood Coalition stat that projects with already dedicated funding should have an available expected year of completion and by adding "when available" the due diligence required of the RFPGs would be limited.

Response: TWDB acknowledges and appreciates the comment. TWDB received significant preliminary input from regional planning stakeholders indicating the lack of availability of data reflecting the difficulty of obtaining this data for existing projects. No change has been made in response to this comment.

Section 361.33 Existing Condition Flood Risk Analyses in the Region.

The San Jacinto River authority noted that §361.33(b)(6) regarding FEMA accreditation reads oddly.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to improve the language. Other minor changes have been made including the removal of 'dams', in accordance with a different comment.

Halff Associates noted that dams should be removed from §361.33(b)(6) because they are not accredited by FEMA. Halff Associated explained that dam hazards classification and condition assessment reports are protected information that are not publicly available and should not be included or required in the regional flood plans.

Halff Associates also explained that the concept of adding levee accreditations is more complex than it may appear. Halff Associates stated that levee accreditation information is publicly available and FEMA typically requires maps with areas protected by levees to show the potential flood-prone area if the levee was not in place. Halff Associates stated that while the information may be valuable, it will require significant effort to develop with limited data and will likely receive significant political pushback.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to remove the requirement regarding dams not meeting FEMA accreditation. However, TWDB maintains the importance of levee accreditation information and thus, it remains a requirement in the rule.

Freese and Nichols suggested that §361.33(a)(7) be revised to change the terminology of inundation.

Response: TWDB appreciates and agrees with the comment. TWDB notes that §361.33(a)(7) does not exist and believes Freese and Nichols intended this comment to apply to §361.33(b)(7). Section 361.33(b)(7) language has been modified in accordance with the comment.

The American Flood Coalition requested an explanation of why high-level region-wide and floodplain level, largely GIS-based analyses would no longer be required in §361.33(c) and (c)(2).

Response: TWDB acknowledges and appreciates the comment. The regions are required to perform detailed exposure analysis to identify who might be harmed in the region and within the floodplain. The in-depth exposure analysis already achieves the underlying aim thereby making a high-level GIS analysis unnecessary. No change has been made in response to this comment.

Freese and Nichols suggested removing requirement of §361.33(c)(2) due to impracticality of implementing this at a regional scale. Freese and Nichols stated that if there are existing maps available that show these areas as inundated, this can be included but the generation of new maps should not be required of the RFPGs. Additionally, Freese and Nichols suggested moving this to the hazard analysis section, as these changes would be made in the hazard layer, not the exposure layer.

Response: TWDB acknowledges and appreciates the comment. The rule has been modified to add the suggested language to the hazard analysis section. In the exposure section it simply implies that exposure analyses are done by intersecting the buildings and other layers with hazard layer that was generated by considering the location f existing levees that do not meet FEMA accreditation as inundated by flooding without those structures in place.

San Jacinto River Authority requested clarification related to the removal of HUC from §361.33(e)(4).

Response: TWDB acknowledges and appreciates the comment. TWDB notes that although certain HUC references in rules have been removed, certain HUC data remains required in the geodatabase submission. It was determined that the data produced as part of the existing condition flood exposure analysis and vulnerability analysis in Section §361.33(e)(4) does not need to be summarized by HUC. TWDB plans to elaborate on HUC requirements in guidance materials, which stakeholders will have an opportunity to review. No change has been made in response to this comment.

Section 361.34. Future Condition Flood Risk Analyses in the Region.

The American Flood Coalition asked TWDB to explain why there would be inconsistencies between the requirements in analyzing existing conditions for §361.33 with future conditions for §361.34.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that the future condition flood risk analysis and the existing condition flood risk analysis were not intended to be identical. Available level of information and details for future condition is fairly limited compared to currently available existing condition flood hazard information. While their underlying frameworks in requiring analyses of hazard, exposure, and vulnerability are fundamentally the same, variances in data availability, and differences in assumptions, including related to future changes in factors such as future sea level, require there to be differences. No change has been made in response to this comment.

Halff Associates agree with the proposed removal of the future 0.2% future flood condition from §361.34. Halff Associates explained that to comply with this requirement RFPGs had to make assumptions on top of the assumptions to estimate the future 0.2% flood event and the associated risk and exposure. Halff Associates noted the uncertainty associated with such analysis provides an outcome with little value that resulted in concern among planning group members.

San Jacinto River Authority questioned why the rules would not require analyses for 0.2% for future conditions to get the most comprehensive analysis possible.

Similarly, the National Wildlife Federation, Harris County Engineering Department and the American Flood Coalition requested that the future conditions analysis for 0.2% annual chance of flooding remain a requirement in §361.34.

Response: TWDB acknowledges and appreciates the comment. The requirement to analyze the 0.2% annual chance flood event in the future condition flood hazard analysis has been restored based on public comments. TWDB notes the removal of the future 0.2% future flood condition risk analysis was proposed due to preliminary input from RFPG stakeholders indicating the difficulty and uncertainty in its estimation. To address stakeholder concerns, the TWDB is developing an application cursory floodplain dataset providing consistent statewide future condition flood hazard information that is expected to be available to RFPGs during the second planning cycle. To further address the concerns about implementing this requirement, TWDB guidance documents will be enhanced to simplify the requirement. No change has been made in response to this comment.

San Jacinto River Authority wondered if "major" project should be defined in §361.34(b)(1)(F).

Response: TWDB acknowledges and appreciates the comment. Since the relative significant of certain projects or infrastructure sizes may differ between flood planning regions, the rule defers to each RFPG to determine what it considers "major." However, in accordance with the comment, guidance documents will be enhanced to offer examples. No change has been made in response to this comment.

Freese and Nichols suggested removal of §361.34(b)(4). Freese and Nichols stated that simplified desktop analysis in GIS is feasible for performing this analysis, however, obtaining, running, and producing new future condition model results is not feasible with the scope and budget of this regional-scale, planning-level analysis.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to provide flexibility in accordance with the comment. Note that, to address stakeholder concerns, the TWDB is developing an applicable cursory floodplain dataset providing consistent statewide future condition flood hazard information that is expected to be available to RFPGs during the second planning cycle. To further address the concerns about implementing this requirement, TWDB guidance documents will be enhanced to simplify the requirement.

San Jacinto River Authority suggested that "potential" be added at the beginning of §361.34(c) to match §361.34(a).

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to include "potential" in response to the comment.

San Jacinto River Authority questioned whether §361.34(c) and §361.33(c) should match and both include the term, largely GIS-based.

Response: TWDB acknowledges and appreciates the comment. The rule has been modified so that the language is consistent in both places.

San Jacinto River Authority stated that §361.34(c) reads oddly.

Response: TWDB appreciates and agrees with the comment. The rule has been modified to read better in response to the comment.

Freese and Nichols suggested only including general language regarding the vulnerability analysis and removing specific details.

National Wildlife Federation requested that the requirement to summarize HUC 8 data from the existing and future condition flood risk analysis in §361.34(e)(4) not be removed. National Wildlife Federation stated that the HUC datasets provide a comprehensive aggregated collection of hydrological changes that can help RFPGs to be consistent in their flood mitigation mapping. National Wildlife Federation explained that removing the HUC 8 data can also impede the need for standardized flood risk datasets across the state. Instead, National Wildlife Federation suggested that if a region dies not have complete data, they can request a waiver from this requirement but if the region has complete HUC 8 data, it should be required to be used by the region.

Response: TWDB acknowledges and appreciates the comment. However, the rules refer to what is presented in the plan, not the data collected. HUC-level data is still required to be submitted in the regional datasets. TWDB determined that while HUC-level data in this section may not be the most useful information for members of the public who are reading the text of the plan, it remains useful as part of the data submission. Since HUC8 level information is part of data submission and TWDB intends to make all state flood plan data available for public dissemination, NWF will be able to download and summarize the data set on HUC-8 as needed once the state flood plan is published. No change has been made in response to this comment.

Section 361.35. Evaluation of Previous and Current Floodplain Management and Recommendations for Changes to Floodplain Management.

Halff Associates stated that the RFPGs have the authority to recommend and/or require specific floodplain management policies for a flood mitigation action to be recommended in regional flood plans, and that RFPGs may also identify gaps in current policies and suggest improvements for consideration by local entities. Halff Associates asserted that RFPGs can also develop and provide model ordinances as a guide for local implementation of floodplain regulations and standards. Halff Associates explained that the RFPGs do not have the authority or capability to implement or enforce compliance with such recommendations.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that it is indeed an important distinction to highlight that RFPGs do not have the authority to enforce floodplain management policies or regulations. No change has been made in response to this comment.

Section 361.36. Flood Mitigation Need Analysis.

Halff Associates stated its support for the proposed additions to §361.36.

Response: The TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.

Section 361.37. Flood Mitigation and Floodplain Management Goals.

San Jacinto River Authority asked if §361.37 should be changed from "input from the public" to "public comments" to be consistent with previous changes?

Response: TWDB acknowledges and appreciates the comment. TWDB notes that "public comment" should be reversed for formal public comment periods. No change has been made in response to this comment.

Freese and Nichols suggested referencing the needs analysis (§361.36) in this paragraph to indicate how the needs analysis informs goals.

Response: TWDB appreciates and agrees with the comment. The rule has been modified in response to this comment.

Freese and Nichols suggested adding clarity regarding how progress towards achieving goals will be evaluated in future cycles.

Response: TWDB appreciates and agrees with the comment. TWDB will consider how measurement of progress towards goals should be captured in flood planning cycles and include measurement methods for RRFPGs to consider in guidance documents. No change was made in response to this comment.

Section 361.38. Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects.

Halff Associates requested clarification as to which entities can serve as an FME, FMP or FMS sponsor. Halff Associates stated that RFPGs received many requests for potentially feasible solutions to be included in the plan but were not provided insight as to whether or not the proposed sponsor would be eligible to pursue future TWDB funding. Halff Associates requested clarification whether or not a RFPG can serve as a sponsor for a recommended FME, FMP or FMS as the RFPG does not appear to have the authority to implement a recommended FMP without a local jurisdiction's approval and participation.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that flexibility in rules regarding who might support or fund a flood mitigation solution is being preserved so that eligibility for funding from a variety of sources is not restricted. TWDB is not the only source of funding for flood mitigation solutions. However, detailed, additional guidance was provided to RFPGs throughout the first planning cycle on this matter and additional guidance will be incorporated into guidance documents. No change has been made in response to this comment.

Harris County Engineering Department noted that the proposed changes to §361.38 disadvantages local drainage and small-scale projects because often the level of service for storm sewer systems are much smaller than the 1% annual chance flood event. Additionally, Harris County Engineering Department explained that Region 6 is data rich meaning best available data results in more stringent criteria than other neighboring regions and with the adoption of MAAPNext, the future 1% will take tremendous effort and skyrocket project costs.

Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.

San Jacinto River Authority pointed out a drafting error in the deletion of "FMS and" from §361.38(b).

Response: TWDB acknowledges and agrees with the comment. The rule has been revised to restore the inclusion of FMSs.

San Jacinto River Authority and Freese and Nichols requested clarification whether FMSs and FMEs should also be ranked in §361.38(g).

Response: TWDB acknowledges and appreciates the comment. TWDB notes that FMEs, FMPs, and FMSs will all be ranked in the State Flood Plan. However, this section in rule is intended to establish specific requirements that FMPs must meet, including in order to be ranked. It is not intended to list or restrict what will be ranked. No change has been made in response to this comment.

Freese and Nichols suggested separating out FMSs and FMPs in §361.38(h) considering the new guidance given to RFPGs regarding what qualified as an FMS. Freese and Nichols noted that FMSs such as education campaigns or regulatory enhancements will not be evaluated with models, BCRs, etc., as is required for FMPs.

Response: TWDB acknowledges and appreciates the comment. A minor modification was made to the rules.

Halff Associates stated that the RFPGs currently consider potential water supply impacts and benefits in the flood planning process and their focus should remain on flood control as water supply is tangential and is addressed by the regional water planning groups.

Response: TWDB acknowledges and appreciates the comment and notes that indication of whether flood control solutions serve as water supply sources is statutorily required by Texas Water Code Section 16.062(e)(2)(E)(iii) and is therefore included in the rules. No change has been made in response to this comment.

Great Edwards Aquifer Alliance recommended modifying §361.36(4) to add groundwater recharge to types of water supply source benefits.

Response: TWDB acknowledges and appreciates the comment, which will be considered as a potential enhancement to guidance documents. No change has been made in response to this comment.

The American Flood Coalition suggested maintaining the equitable comparison requirements in §361.38(h)(4) and (i)(4) in order for the RFPGs to be able to equitably make recommendations on FMSs, FMPs, and FMEs to be included, evaluated, and considered within the State Flood Plan.

Response: TWDB acknowledges and generally agrees with the comment. Sections 361.38(h)(4) and 361.38(i)(4) have been restored.

Harris County Engineering Department recommended providing a baseline for FMEs and FMPs comparison for Flood Infrastructure Funding. Harris County Engineering Department stated that equity is a goal that Harris County upholds and it would like to understand what the comparison baseline will be to maintain fairness and equitable distribution of grant funds.

Response: TWDB acknowledges the comment. Sections 361.38(h)(4) and 361.38(i)(4) have been restored and modified for clarity. It is important to note, however, that funding opportunities are separate from the regional flood planning process. TWDB also notes that the intent of the rule is not for the FME, FMP, and FMS categories to be compared amongst each other. Instead, FMEs, FMPs, and FMSs should be compared within each category and only when comparable (e.g., by location). For example, a comparison of all FMPs addressing a common flood risk within a certain area is required to understand which may be the best solution.

Halff Associates stated its support for providing the RFPGs with more flexibility in the identification of potential flood mitigation ac-

tions. Halff agreed that the equitable comparison of potentially feasible actions was overly burdensome without readily available and consistent data throughout a region. Halff noted the RFPGs struggled with providing equitable comparisons of potentially feasible actions.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that §361.38(h)(4) and (i)(4), which had been removed in the draft proposed changes, have been restored and modified for clarity based on public comments received. TWDB notes that the intent of the rule is not for the FME, FMP, and FMS categories to be compared amongst each other. Instead, FMEs, FMPs, and FMSs should be compared within each category and only when comparable (e.g., by location). For example, a comparison of all FMPs addressing a common flood risk within a certain area is required to understand which may be the best solution. No change has been made in response to this comment.

Freese and Nichols suggested removing specifics from §361.38(h)(6) and allowing flexibility to determine specific benefits to be reported.

Response: TWDB acknowledges and appreciates the comment. TWDB considers the listed items to be important enough to include in rule. However, conditional language had already been included in the proposed rule "where applicable" to provide some flexibility and will remain in the final rule. No change has been made in response to this comment.

In reference to §361.38(b), Great Edwards Aquifer Alliance recommended using "avoidance" data for FMPs such as land conservation for justification and to document such impact to the 1% annual chance flood event.

Response: TWDB appreciates and agrees with the comment. The rule has been modified to include quantitative reporting of avoidance of future flood risk and preventing the creation of future flood risk.

Based on the updated definition of emergency need provided in §361.10, Freese and Nichols requested the removal of the requirement that FMEs be evaluated for emergency need as required in §361.38(i)(2).

Response: TWDB acknowledges and appreciates the comment. TWDB notes that consideration of emergency need is statutorily required by Texas Water Code Section 16.062(e)(2)(E)(i) and TWDB considers it relevant to all recommended flood mitigation solutions. No change has been made in response to this comment.

Freese and Nichols suggested revising language in §361.38(i)(5) to remove reference to estimated benefits of an FME and change to, "quantitative reporting of estimated flood risk within the FME area." Freese and Nichols stated that reporting known flood risk within an FME area is reasonable, however, that flood risk does not equate to estimated benefits. Further, Freese and Nichols stated that many types of FMEs, such as mapping efforts, may not result in a reduction in known flood risk as they do not directly develop flood risk reduction solutions.

Response: TWDB appreciates and agrees with the comment. The rule has been modified.

Section 361.39. Recommended Flood Management Evaluations, Flood Mitigation Projects, and Flood Management Strategies.

San Jacinto River Authority made the observation that there is not much discussion of FMEs in §361.39.

Response: TWDB acknowledges and appreciates the comment. FMEs generally require less information compared to FMPs and FMSs. Enhanced discussion of FMEs will be considered for guidance documents, as appropriate. No change has been made in response to this comment.

Harris County Engineering Department noted that the language in §361.39(a) disadvantages local drainage and small-scale projects because often the level of service for storm sewer systems are much smaller than the 1% annual chance flood event. Harris County Engineering Department added that Region 6 is data rich meaning best available data results in more stringent criteria than other neighboring regions. Harris County Engineering Department further explained that with the adoption of MAAPNext, the future 1% will take tremendous effort and skyrocket project costs.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that the existing "where feasible" rule language remains in the rules. Smaller storm events will be considered for inclusion in guidance documents. For statewide level, there are many communities who may not have information on the smaller storm events. However, RFPGs can always choose to include more information than minimum requirement. No change has been made in response to this comment.

Freese and Nichols requested clarification in §361.39(b) as to whether FMEs and FMSs are intended to be ranked in the state flood plan.

Response: TWDB appreciates and agrees with the comment. The rule has been modified to provide clarity.

Section 361.40. Impacts of Regional Flood Plan

In relation to the requirement added in §361.40(3), San Jacinto River Authority stated the Regional Flood Plan should not require duplicate work of developing water supply sources, if this is done in the Regional Water Plan. San Jacinto River Authority further stated that fundamentally water planning and flood planning are very different, and as such would place a burden on regional flood planning groups when trying to incorporate flood resiliency projects. San Jacinto River Authority also stated that proving water supply benefits would impose additional financial expenses on project sponsors.

Response: TWDB acknowledges and appreciates the comment. Consideration of potential contributions to water supply from flood projects is statutorily required as part of Texas' regional flood planning process. It is required that the Board find that regional flood plans have adequately provided for the development of water supply sources where applicable per Texas Water Code Section 16.062(h)(2) and therefore this requirement has been included in rule. No change has been made in response to this comment.

Freese and Nichols suggested that §361.40 include a requirement for RFPGs to summarize how recommended actions meet the needs identified during the needs analysis task as well as adopted goals.

Response: TWDB appreciates and agrees with the comment. The rule has been modified to include this requirement.

Section 361.42. Flood Response Information and Activities.

Freese and Nichols stated that the language in §361.42 was somewhat confusing and did not seem to support or tie into the other elements of the plan.

Response: TWDB acknowledges and appreciates the comment. This comment will be considered for guidance enhancement and future rulemaking. No change has been made in response to this comment.

Section 361.50. Adoption, Submittal, Notifications, and Approval of Regional Flood Plans.

Freese and Nichols suggested removing "separate vote" which required additional clarification by the TWDB during the first cycle because some interpreted to mean that groups needed to vote on each action individually.

Similarly, Harris County Engineering Department noted that the RFPGs should vote on groups of FMEs, FMPs, and FMSs rather than individually.

Response: TWDB acknowledges and agrees with the comments. The rule has been revised.

Section 361.51. Amendments to Regional Flood Plans.

Harris County Engineering Department noted that the 90-day requirement in §361.51(b)(2) is a very aggressive turnaround time to amend a full regional flood plan. HCED recommended re-evaluating this turnaround time, especially if the amendment is requested during a very active planning period.

Response: TWDB acknowledges and appreciates the comment. The 90-day requirement in §361.51(b)(2) applies when a political subdivision files a petition with the EA to request review of an RFPG decision and the EA agrees, requesting the RFPG to consider making the change. TWDB notes that in addition to this being a very specific scenario, the current rules allow significant flexibility and opportunity for communication by only requiring a written explanation if the RFP has not yet been amended within 90 days. This timeframe is also in line with a similar requirement in the TWDB water planning process. No change has been made in response to this comment.

Section 361.70. Planning Group Sponsor Request for Funding.

Freese and Nichols noted its appreciation for the TWDB's efforts to simplify §361.70 and §361.71 to reduce the administrative burden on TWDB and Sponsors as much as possible, given that recipients of the grant funds (Sponsors) are pre-determined by the RFPG.

Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.

Section 361.72. Use of Funds.

Freese and Nichols suggested the addition of language that clarifies that not only should there be considerations for spatial overlap and timing in obtaining existing model data, but also whether the level of detail or model methodologies are appropriate to be utilized to address the RFPG's Needs in §361.72(a)(1)(A).

Response: TWDB appreciates and agrees with the comment. The rule has been modified in accordance with the comment. TWDB notes that the intention of this language is to avoid duplication of work.

San Jacinto River Authority requested clarification of §361.72(a)(3)(C) related to reimbursement for Planning Group Sponsor staff time. Additionally, Freese and Nichols suggested the removal of §361.72(a)(3)(C) and stated the subsection prohibits Sponsors from obtaining reimbursement for time and expenses attending RFPG meetings which is in conflict with allowances in §361.72(b)(5).

Response: TWDB appreciates and agrees with the comment. Section 361.72(a)(3)(C) has been removed.

Freese and Nichols stated that 361.72(a)(3)(F) prohibits Sponsors from obtaining reimbursement for time spent administering the grant and associated contracts. Freese and Nichols explained that in the first cycle of planning, some Sponsors observed that these activities, such as efforts to amend contracts, execute budget memorandums, prepare invoices, etc., ended up being a considerable time commitment and were critical components of the work required for Sponsors.

Response: TWDB appreciates and agrees with the comment. Section 361.72(a)(3)(F) has been removed in accordance with the comment.

Freese and Nichols suggested removing the certification requirement in §361.72(b). Freese and Nichols stated that it is inconsistent to require RFPG approval of Sponsor expenses but not for consultant invoices. Freese and Nichols suggested that if removing certification is not possible, the TWDB should consider removing the requirement that certification be during a public meeting and allow Chair to certify expenses in writing outside of a public meeting.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that the published proposed changes had already replaced the certification requirement with an approval requirement by the RFPG or chairperson. No change has been made in response to this comment.

SUBCHAPTER A. GENERAL INFORMATION

31 TAC §§361.10 - 361.13

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.10. Definitions and Acronyms.

(a) 1% Annual Chance Flood Event--Flood event having a 1% chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood.

(b) 0.2% Annual Chance Flood Event--Flood event having a 0.2% chance of being equaled or exceeded in any given year, also referred to as the 500-year flood.

(c) Board--The governing body of the Texas Water Development Board.

(d) Critical Facilities--Facilities and infrastructure that are critical to the health and welfare of the population and that are especially important following flood hazard events.

(e) Emergency Need--The need for projects and actions to address a flood hazard that is expected to cause the loss of function of critical facilities or to alleviate immediate threat to life and property from flooding such as imminent anticipated failure of infrastructure.

(f) Executive Administrator (EA)--The Executive Administrator of the TWDB or a designated representative.

(g) FEMA--Federal Emergency Management Agency

(h) FIRM--Flood Insurance Rate Map

(i) Flood--A general and temporary condition of partial or complete inundation of normally dry land area from overflow of inland or tidal waters or from the unusual and rapid accumulation or runoff of surface waters from any source.

(j) Flood-prone--Areas with known risk of flooding primarily during storm events either from existing inundation maps, studies, and/or historic knowledge of flood events. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

(k) Floodplain--That area of land subject to periodic inundation by floodwaters.

(l) Floodplain Management--The operation of an overall program of corrective and preventative measures for reducing risk and impact of flooding.

(m) Flood Mitigation--The implementation of actions, including both structural and non- structural solutions, to reduce flood risk to protect against the loss of life and property.

(n) Flood Management Evaluation (FME)--A proposed study to identify and assess and quantify flood risk or identify, evaluate, and recommend flood risk reduction solutions.

(o) Flood Management Strategy (FMS)--Flood risk reduction solution ideas and strategies that do not belong in FME or FMP categories. Examples may include regulatory enhancements, development of entity-wide buyout programs, and public outreach and education.

(p) Flood Mitigation Project (FMP)--A proposed project, both structural and non-structural, that has a non-zero capital costs or other non-recurring cost and that when implemented will reduce flood risk, mitigate flood hazards to life or property.

(q) Flood Planning Region (FPR)--A geographic area designated by the Board pursuant to Texas Water Code §16.062.

(r) Flood Risk--Generally describes the hazard from flood events to life and property, including the likelihood of a hazard occurring; the magnitude of the hazard; the number of people and properties exposed to the hazard; and the vulnerability and resilience of the people and properties exposed to the hazard.

(s) Flood Risk Map--A map that shows flood risk for Texas communities at some level of detail using best available data.

(t) GIS--Geographic Information System

(u) GLO--General Land Office

(v) HUC--Hydrologic Unit Code level (e.g., HUC10) as delineated by the United States Geological Survey.

(w) Hydrologic and Hydraulic Model--Mathematical model created utilizing computer software that simulates rainfall runoff flow to estimate the extent of water levels and flooding and to test potential ways to reduce flood risk.

(x) Nature-based Flood Mitigation--Mitigation approaches involving the use of natural features, materials, and processes to reduce the risk and impacts of flooding.

(y) Neighboring Area--Any area, including but not limited to upstream and downstream areas, potentially affected by the proposed FMP.

(z) Negative Effect--An increase in flood-related risks to life and property, either upstream or downstream of the proposed project. The RFPG may adopt a standard that is more restrictive than the standard provided in TWDB guidance.

(aa) Planning Group Sponsor--A political subdivision designated by the Regional Flood Planning Group as authorized to receive funds for developing or revising regional flood plans. A Planning Group Sponsor must have legal authority to conduct procurement of professional services and enter into the contracts necessary for regional flood planning.

(bb) Political Subdivision--County, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code.

(cc) Potentially Feasible Flood Mitigation Project or Potentially Feasible Flood Management Strategy--An FMP or FMS that is assessed or considered to be permittable, constructible, economically viable, and implementable.

(dd) Regional Flood Plan (RFP)--The plan adopted or amended by a Regional Flood Planning Group pursuant to Texas Water Code §16.062 (relating to Regional Flood Plans) and this chapter.

(ee) Regional Flood Planning Group (RFPG)--A group designated by the Board that develops a Regional Flood Plan, pursuant to Texas Water Code §16.062.

(ff) Residual Risk--The remaining flood risk in an area after the completion of an FMP or FMS or set of FMPs or FMSs that reduce flood risk in that same area.

(gg) State Flood Plan (SFP)--The most recent State Flood Plan adopted or amended by the Board under Texas Water Code §16.061 (relating to State Flood Plan).

(hh) State Flood Planning Database--A database to be developed and maintained by the TWDB that stores data related to Flood Planning. It is used to collect, analyze, and disseminate regional and statewide Flood Planning data.

(ii) State Population Projections--Population projections contained in the most recently adopted State Water Plan as further assembled geographically based on HUC watershed or other appropriate flood-related geographic features determined by the TWDB.

(jj) TWC--Texas Water Code

(kk) TWDB--Texas Water Development Board

§361.11. Designations and Governance of Flood Planning Regions.

(a) Once initially designated, the Board may review and update the boundary designations of FPRs, as necessary, on its own initiative or upon recommendation of the EA.

(b) If upon FPR boundary designation review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RFPs shall be developed, taking into consideration factors such as:

(1) river basin and sub-watershed delineations;

(2) hydraulic features of river basins;

(3) coastal basins and features;

(4) existing FPRs;

(5) development patterns;

(6) public comment; and

(7) other factors the Board deems relevant.

(c) RFPGs shall consider and adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter, Texas Water Code §16.062, and Government Code Chapters 551 and 552. The RFPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RFPG shall at a minimum address the following elements:

(1) methods of formation and governance of executive committee, or subcommittees or subgroups;

(2) definition of a quorum necessary to conduct business;

(3) methods to approve items of business including adoption of RFPs or amendments thereto;

(4) methods to name additional voting and non-voting members;

(5) terms, conditions, and limits of membership including the terms of member removal;

(6) any additional notice provisions that the RFPG chooses to include;

(7) methods to record and preserve minutes;

(8) methods to resolve disputes between RFPG members on matters coming before the RFPG;

(9) procedures for handling confidential information; and

(10) other procedures deemed relevant by the RFPG.

(d) RFPGs shall at all times maintain each of the required positions listed below. However, if an FPR does not have an interest in the category below, then the RFPG shall so advise the Executive Administrator and an individual member designation may not be required.

(1) Public, defined as those persons or entities having no economic or other direct interest in the interests represented by the remaining membership categories;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, such as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and that are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with the production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating for the protection or conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have either fewer than 500 employees and or less than $10 million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority; this category may include a transmission and distribution utility;

(9) River authorities, defined as any districts or authorities created by the legislature that contain areas within their boundaries of one or more counties and that are governed by boards of directors appointed or designated in whole or part by the governor, including without limitation the San Antonio River Authority and the Palo Duro River Authority;

(10) Flood Districts, defined as any districts or authorities, created under authority of either the Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including all Chapter 49 districts, particularly districts with flood management responsibilities, including drainage districts, levee improvement districts, but does not include river authorities;

(11) Water Districts, defined as any districts or authorities, created under authority of either the Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including all Chapter 49 districts, particularly districts with flood management responsibilities, including municipal utility districts, freshwater supply districts, and regional water authorities, but does not include drainage districts, levee improvement districts, river authorities;

(12) Water Utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(13) The RFPGs, at their discretion, may include additional voting positions upon a two-thirds vote of all of the existing voting positions to ensure adequate representation from the interests in the FPR.

(e) The RFPG shall include the following non-voting members, as designated by the head of their agencies for paragraphs (1) - (7) of this subsection and shall receive meeting notifications and information in the same manner as voting members.

(1) Staff member of the TWDB;

(2) Staff member of the Texas Commission on Environmental Quality;

(3) Staff member of the General Land Office;

(4) Staff member of the Texas Parks and Wildlife Department;

(5) Staff member of the Texas Department of Agriculture;

(6) Staff member of the State Soil and Water Conservation Board; and

(7) Staff member of the Texas Division of Emergency Management.

(f) The RFPG shall include the following non-voting members who shall receive meeting notifications and information in the same manner as voting members:

(1) Non-voting member liaisons designated by each RFPG, as necessary, to represent portions of major river basins that have been split into more than one FPR to coordinate between the upstream and downstream FPRs located within that same river basin. This non-voting member liaison may, at the discretion of the RFPG, be met by a voting member that also meets another position requirement under subsection (d) of this section; and

(2) For FPRs that touch the Gulf Coast, member liaisons designated by each RFPG representing coastal portions of FPRs to coordinate with neighboring FPRs along the Gulf Coast. This non- voting position member liaison may, at the discretion of the RFPG, be met by a voting member that also meets another position requirement under subsection (e) of this section.

(g) Each RFPG shall consider including a non-voting position to represent regional or local transportation authorities for example, from the Texas Department of Transportation, who shall receive meeting notifications and information in the same manner as voting members.

(h) Each RFPG shall provide a current list of its voting and non-voting positions to the EA; the list shall identify each position required under subsection (e) as well as any other positions added by the RFPG and the individual member name that fills each position.

(i) Each RFPG, at its discretion, may at any time add additional voting and non-voting positions to serve on the RFPG including any new interest category in accordance with subsection (d)(13) of this section, including any additional state or federal agencies, and additional representatives of those interests already listed in, and as limited by, subsection (e) of this section that the RFPG considers appropriate for development of its RFP. Adding any new voting position that increases the total number of voting positions may only occur upon a two-thirds vote of all voting positions.

(j) Each RFPG, at its discretion, may remove individual voting or non-voting positions, other than those listed under subsection (e)(1) - (7) of this section, or eliminate positions in accordance with the RFPG bylaws as long as minimum requirements of RFPG membership are maintained in accordance with subsections (d) and (f) of this section.

(k) RFPGs may enter into formal and informal agreements to coordinate, avoid affecting neighboring areas, and share information with other RFPGs or any other interests within any FPR for any purpose the RFPGs consider appropriate including expediting or making more efficient planning efforts.

§361.13. Regional Flood Planning Group Deliverables.

(a) Each RFPG is expected to consider a wide variety of available, relevant, best available information and tools when developing the regional flood plan.

(b) Each RFPG shall deliver a draft and final, adopted RFP in accordance with EA guidance. The RFPs must include the following:

(1) written report content including various presentations of data, tables, charts, maps, and written summaries of certain results related to §§361.30 - 361.45 of this title (relating to Regional Flood Plan Requirements) in accordance with EA guidance and the TWDB grant contract;

(2) standardized tables that include lists of all recommended FMEs, FMPs, and FMSs and certain key information associated with each FMP, in accordance with guidance and template provided by the EA. This table will be the basis for prioritizing recommended FMPs in the state flood plan;

(3) Geographic Information System (GIS) database deliverables and other information in accordance with the contract and guidance provided by and in a manner determined by the EA;

(4) associated data organized in a format and manner determined by the EA; and

(5) documentation of the public process in the plan development, including public comments received and responses to public comments on the draft RFP.

(c) The order and chapter content of the published RFPs shall generally follow a standard outline as determined by the EA and based on the scope of the regional flood planning contracts.

(d) The content and format of all associated data deliverables, including the data on which the RFPs are based, shall be in conformance with requirements in guidance documents and data templates to be developed and provided by the EA.

(e) The RFPGs shall, in accordance with their regional flood planning contracts and schedule and TWDB guidance, deliver technical memorandums to the EA prior to the draft RFP and throughout the planning process to demonstrate progress in developing its RFP and to support the concurrent development of the state flood plan. The RFPGs shall approve technical memorandums in accordance with a schedule to be provided by the EA and after notice pursuant to §361.21 of this title (relating to General Notice Requirements). At the discretion of the EA, the technical memorandums shall include:

(1) A list of existing political subdivisions within the FPR that have flood-related authorities or responsibilities;

(2) A list of previous and ongoing flood studies considered by the RFPG to be relevant to development of the RFP;

(3) A geodatabase and associated maps in accordance with EA guidance that the RFPG considers to be best representation of the region-wide 1% annual chance flood event and 0.2% annual chance flood event inundation boundaries, and the type of flooding for each area as applicable, for use in its risk analysis, including indications of locations where such boundaries remain undefined;

(4) A geodatabase and associated maps in accordance with EA guidance that identifies additional flood-prone areas not described in paragraph (3) of this subsection, based on location of hydrologic features, historic flooding, and/or local knowledge;

(5) A list of available flood-related models that the RFPG considers of most value in developing its plan;

(6) A summary and associated maps of locations within the FPR that the RFPG considers to have the greatest flood risk and flood risk reduction needs;

(7) The flood mitigation and floodplain management goals adopted by the RFPG per §361.37 of this title (relating to Flood Mitigation and Floodplain Management Goals);

(8) The documented process used by the RFPG to identify potentially feasible FMEs, FMPs, and FMSs; and

(9) A list of potential FMEs and potentially feasible FMPs and FMSs identified by the RFPG, if any.

(f) The information provided by the RFPG will provide the basis for much of the development and content of the state flood plan.

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

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Ashley Harden
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-9683

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SUBCHAPTER B. GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

31 TAC §361.21

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is adopted under the authority of Texas Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.21. General Notice Requirements.

(a) Each RFPG and any committee, subcommittee, or subgroup of an RFPG are subject to Chapters 551 and 552, Government Code.

(b) Each RFPG shall create and maintain a website that they will use to post public notices of all its full RFPG, subgroup, and subcommittee meetings and make available meeting agendas and related meeting materials for the public, in accordance with the items listed below in subsection (h)(1) - (3) of this section.

(c) Each RFPG shall provide a means by which it will accept written public comments prior to and after meetings. The RFPGs must also allow oral public comments during RFPG meetings.

(d) Confidential materials that fall under protection in accordance with the Homeland Security Act, may not be made available to the general public.

(e) Each RFPG shall solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RFPG activities.

(f) At a minimum, notices of all meetings, meeting materials, and meeting agendas shall be sent electronically, in accordance with the timelines provided in subsection (h)(1) - (3) of this section to all voting and non-voting RFPG members; and any person or entity who has requested notice of RFPG activities.

(g) At a minimum, all notices must be posted to the RFPG website and in the *Texas Register* on the Secretary of State website and must include:

(1) the date, time, and location of the meeting;

(2) a summary of the proposed action(s) to be taken;

(3) the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and

(4) a statement of how and when comments will be received from the members and public.

(h) In addition to subsections (a) - (g) of this section, and the notice requirements of Chapter 551, Government Code, the following requirements apply to any RFPG meetings and any RFPG committee, subcommittee, or subgroup meetings:

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made available online at least three days prior to and seven days following the meeting when the planning group will take the following actions:

(A) regular RFPG meetings and any RFPG committee, subcommittee, or subgroup meetings;

(B) approval of requests for funds from the Board;

(C) amendments to the regional flood planning scope of work or budget;

(D) approval to submit established deliverables to the Board or EA including technical memorandums;

(E) approval of replacement RFPG members to fill voting and non-voting position vacancies;

(F) any other RFPG approvals required by TWDB contract or EA guidance not specifically addressed under paragraph (2) or (3) of this subsection;

(G) holding pre-planning public meetings to obtain input on development of the next RFP per TWC 16.062(d);

(H) determining flood mitigation and floodplain management goals per §361.36 of this title; and

(I) approving process for identifying potential FMEs and potentially feasible FMSs and FMPs per §361.38 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects).

(2) at a minimum, notice must be provided at least seven days prior to the meeting, written comments must be accepted for seven days prior to the meeting and considered by the RFPG members prior to taking the associated action, and meeting materials must be made available online for a minimum of three days prior to and 14 days following the meeting, when the planning group will take the following actions:

(A) adoption of the final RFP per TWC 16.062(h);

(B) approval of amendments to RFPs per §361.51 of this title (relating to Amendments to Regional Flood Plans); and

(C) approval of any changes to the number of and representation make-up of the RFPG membership. This includes the addition or removal of any voting or non-voting interest category or position, any changes to the representation categories of existing voting and non-voting positions, or the removal of any voting or non-voting positions, including for existing interest categories that may have more than one representative position.

(3) for meetings at which the planning group will take public comment related to the RFPG's draft RFP per TWC 16.062(f) - (g), the following additional public notice provisions must be met:

(A) the draft RFP must be made available for public inspection online for 30 days prior to the first meeting, if more than one meeting is held, and 30 days following the first meeting;

(B) at a minimum, notice must be provided at least 30 days prior to the first meeting;

(C) notice must be provided to all adjacent RFPGs;

(D) notice of the meeting must include a summary of the regional flood plan;

(E) notice must include information on how the public may submit comments;

(F) a hard copy of the draft RFP must be made available for public inspection in at least one publicly accessible location within the FPR for at least 30 days prior to the first meeting and 30 days following the first meeting; and

(G) written comment must be accepted for consideration for at least 30 days prior to the first meeting and at least 30 days following the first meeting for consideration and response prior to adoption of the final plan under §361.50 of this title (relating to Adoption, Submittal, Notifications, and Approval of Regional Flood Plans) and oral comments must be accepted during the meeting; and

(H) after the RFPG has prepared a draft RFP, the RFPG shall hold at least one public meeting in a central location in the FPR to accept comments on the draft RFP.

(i) All notice periods given are based on calendar days.

(j) RFPGs shall also provide additional public notice, if any, in accordance with their decision under §361.11(d)(6) of this title (relating to Designations and Governance of Flood Planning Regions), including provision of print notices, if applicable.

(k) Each RFPG shall include a statement in their draft and final adopted regional flood plans regarding the RFPG's conformance with this section.

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

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SUBCHAPTER C. REGIONAL FLOOD PLAN REQUIREMENTS

31 TAC §§361.30 - 361.40, 361.43 - 361.45

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is adopted under the authority of Texas Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.30. Description of the Flood Planning Region.

Regional flood plans shall include brief, general descriptions of the following:

(1) social and economic character of the region such as information on development, population, and economic activity;

(2) the areas in the FPR that are flood-prone and the types of major flood risks to life and property in the region;

(3) key historical flood events within the region including associated fatalities and loss of property, when the information is available;

(4) key political subdivisions with flood-related regulatory authority or political subdivisions that perform flood planning, floodplain management, or flood mitigation activities;

(5) the general extent of local regulation and development codes relevant to existing and future flood risk;

(6) agricultural and natural resources most impacted by flooding; and

(7) existing local and regional flood plans within the FPR.

§361.31. Description of the Existing Natural Flood Mitigation Features and Constructed Major Flood Infrastructure in the Region.

(a) Regional flood plans shall include a general description of the location, condition, adequacy, and functionality of major flood related infrastructure within the FPR including, but not limited to:

(1) natural features, including:

(A) rivers and tributaries;

(B) wetlands;

(C) playa lakes;

(D) parks and preserves; and

(E) natural coastal features.

(2) constructed flood infrastructure, including:

(A) dams and reservoirs that provide flood protection;

(B) levees;

(C) low water crossings;

(D) bridges;

(E) stormwater management systems including storm drains, inlets, tunnels, and pump stations;

(F) detention and retention ponds;

(G) constructed coastal infrastructure; and

(H) any other flood-related infrastructure.

(b) Please provide a general description by general geographic location (e.g., within political subdivisions) of the condition and functionality of key natural flood mitigation features or major flood infrastructure by feature type and provide the name of the owner and operator of the flood infrastructure. For non-functional or deficient natural flood mitigation features or major flood infrastructure, explain in general, the reasons for the features or infrastructure being non-functional or deficient by feature type.

§361.33. Existing Condition Flood Risk Analyses in the Region.

(a) The RFPGs shall perform existing condition flood risk analyses for the region comprised of:

(1) flood hazard analyses that determines location, magnitude, and frequency of flooding;

(2) flood exposure analyses to identify who and what might be harmed within the region; and

(3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

(b) RFPGs shall perform existing condition flood hazard analyses to determine the location and magnitude of both 1% annual chance and 0.2% annual chance flood events as follows:

(1) collect data and conduct analyses sufficient to characterize the existing conditions for the planning area;

(2) identify areas within each FPR where hydrologic and hydraulic model results are already available and summarize the information;

(3) utilize best available data, hydrologic and hydraulic models for each area;

(4) identification of known flood-prone areas based on location of hydrologic features, historic flooding, and local knowledge obtained from outreach activities and public meetings;

(5) existing condition flood hazard analyses may consider and include only those flood mitigation projects with dedicated construction funding and scheduled for completion prior to adoption of the next state flood plan;

(6) all analyses shall consider the location of existing levees that do not meet FEMA accreditation as inundated by flooding without those structures in place. Provisionally accredited structures may be allowed to provide flood protection, unless best available information demonstrates otherwise;

(7) the analyses shall consider existing dams when data is available;

(8) a map showing areas as having an annual likelihood of inundation greater than or equal to 1% and 0.2%, the areal extent of this inundation, and the types of flooding for each area; and

(9) a map showing gaps in inundation boundary mapping and identify known flood-prone areas based on location of hydrologic features, historic flooding and/ or local knowledge.

(c) The RFPGs shall develop existing condition flood exposure analyses, using the information identified in the flood hazard analyses to identify who and what might be harmed within the region for, at a minimum, both 1% annual chance and 0.2% annual chance flood events. The analyses must include:

(1) analyses of existing development within the existing condition floodplain and the associated flood hazard exposure;

(2) all existing condition flood exposure analyses shall consider the population and property located in areas where existing levees do not meet FEMA accreditation as inundated by flooding without the levees in place. Provisionally accredited levees may be allowed to provide flood protection, unless best available information demonstrates otherwise;

(3) in accordance with guidance provided by the EA, the existing condition flood exposure analyses shall consider available datasets to estimate the potential flood hazard exposure including, but not limited to:

(A) the number of residential properties and associated population;

(B) the number of non-residential properties;

(C) other public infrastructure;

(D) major industrial and power generation facilities;

(E) number and types of critical facilities;

(F) number of roadway crossings;

(G) length of roadway segments; and

(H) agricultural area and value of crops exposed.

(4) the existing condition flood exposure analyses shall include a qualitative description of expected loss of function, which is the effect that a flood event could have on the function of inundated structures (residential, commercial, industrial, public, or others) and infrastructure, such as transportation, health and human services, water supply, wastewater treatment, utilities, energy generation, and emergency services.

(d) The RFPGs shall perform existing condition vulnerability analyses to identify vulnerabilities of the communities and critical facilities identified in subparagraphs (b) and (c) above, as follows:

(1) use relevant data and tools to identify the resilience of communities located in flood-prone areas.

(2) consider and identify factors such as proximity to a floodplain to identify vulnerability of critical facilities, in accordance with EA guidance.

(e) All data produced as part of the existing condition flood exposure analysis and the existing condition vulnerability analysis shall be summarized in the RFP in accordance with guidance provided by the EA. The data shall include:

(1) underlying flood event return frequency;

(2) type of flood risk;

(3) county;

(4) existing flood authority boundaries;

(5) social vulnerability indices for counties and census tracts; and

(6) other categories as determined by RFPGs or to be designated by the EA.

(f) The information developed by the RFPG under this section shall be used to assist the RFPG establish priorities in subsequent planning tasks, to identify areas that need FMEs, and to efficiently deploy its resources.

§361.34. Future Condition Flood Risk Analyses in the Region.

(a) RFPGs shall perform potential future condition flood risk analyses for the region comprised of:

(1) flood hazard analyses that determines location, magnitude and frequency of flooding;

(2) flood exposure analyses to identify who and what might be harmed within the region; and

(3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

(b) RFPGs shall perform a future condition flood hazard analysis to determine, at a minimum, the location of 1% both annual chance and 0.2% annual chance flood events as follows:

(1) collect best available data and conduct analyses sufficient to characterize the future conditions for the planning area based on a "no-action" scenario of approximately 30 years of continued development and population growth under current development trends and patterns, and existing flood regulations and policies. RFPGs shall consider the following as available and pertinent in the FPR:

(A) current land use and development trends and practices and associated projected population based on the most recently adopted State Water Plan decade and population nearest the next RFP adoption date plus approximately 30 years or as provided for in guidance;

(B) reasonable assumptions regarding locations of residential development and associated population growth;

(C) anticipated relative sea level change and subsidence based on existing information;

(D) anticipated changes to the functionality of the existing floodplain;

(E) anticipated sedimentation in flood control structures and major geomorphic changes in riverine, playa, or coastal systems based on existing information;

(F) assumed completion of major flood mitigation projects currently under construction or that already have dedicated construction funding; and

(G) other factors deemed relevant by the RFPG.

(2) identify areas within each FPR where future condition hydrologic and hydraulic model results are already available and summarize the information;

(3) utilize best available data, hydrologic and hydraulic models for each area;

(4) where future condition results are not available, but existing condition hydrologic and hydraulic model results are already available, the RFPGs may modify hydraulic models or existing condition flood hazard boundary to identify future conditions flood risk for 1% and 0.2% annual chance storms based on simplified assumptions in accordance with EA guidance.

(5) prepare a map showing areas of 1% and 0.2% annual chance of inundation for future conditions, the areal extent of this inundation, and the types of flooding for each area.

(6) prepare a map showing gaps in inundation boundary mapping and identify known flood-prone areas based on location of hydrologic features, historic flooding, and/ or local knowledge.

(c) The RFPGs shall use the information identified in the potential future condition flood hazard analysis to develop and perform future condition flood exposure analyses to identify who and what might be harmed within the region for the potential future condition 1% annual chance and future condition 0.2% annual chance flood event. At the RFPGs' discretion, the future condition flood exposure analysis may include an analysis of existing and future developments within the future condition floodplain and the associated flood hazard exposure.

(d) Future condition vulnerability analysis.

(1) RFPGs shall identify resilience of communities located in flood-prone areas identified in the future condition flood exposure analysis utilizing relevant data and tools.

(2) RFPGs shall identify vulnerabilities of critical facilities to flooding by looking at factors such as proximity to a floodplain and other factors as included in the EA guidance.

(e) All data produced as part of the future condition flood hazard analysis and future condition flood exposure analysis shall be summarized in the RFP in accordance with guidance provided by the EA and shall include:

(1) underlying flood event return frequency;

(2) type of flood risk;

(3) county;

(4) existing flood authority boundaries;

(5) social vulnerability indices for counties and census tracts; and

(6) other categories to be designated by the EA.

(f) The information developed by the RFPG under this section shall be used to assist the RFPG establish priorities in subsequent planning tasks, to identify areas that need FMEs, and to efficiently deploy its resources.

§361.36. Flood Mitigation Need Analysis.

(a) Based on the analyses developed by the RFPG under §§361.33 - 361.35 of this title and any additional analyses or information developed using available screening-level models or methods, the RFPG shall identify locations within the FPR that the RFPG considers to have the greatest flood mitigation and flood risk study needs by considering:

(1) the areas in the FPR that the RFPG identified as the most prone to flooding that threatens life and property;

(2) the relative locations, extent, and performance of current floodplain management and land use policies and infrastructure located within the FPR, particularly within the locations described in paragraph (1) of this subsection;

(3) areas identified by the RFPG as prone to flooding that don't have adequate inundation maps;

(4) areas identified by the RFPG as prone to flooding that don't have hydrologic and hydraulic models;

(5) areas with an emergency need;

(6) existing modeling analyses and flood risk mitigation plans within the FPR;

(7) flood mitigation projects already identified and evaluated by other flood mitigation plans and studies;

(8) documentation of historic flooding events;

(9) flood mitigation projects already being implemented; and

(10) any other factors that the RFPG deems relevant to identifying the geographic locations where potential FMEs and potentially feasible FMPs and FMSs shall be identified and evaluated under §361.38 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects).

(b) The RFPG shall conduct the analysis in subsection (a) of this section in a manner that will ensure the most effective and efficient use of the resources available to the RFPG.

§361.37. Flood Mitigation and Floodplain Management Goals.

Considering the Guidance Principles under §362.3 of this title (related to Guidance Principles), the existing condition flood risk analyses performed under §361.33 of this title (relating to Existing Condition Flood Risk Analyses in the Region), future condition flood risk analyses identified under §361.34 of this title (relating to Future Condition Flood Risk Analyses in the Region), the consideration of current floodplain management and land use approaches under §361.35 of this title (relating to Evaluation of Previous and Current Floodplain Management Approaches and Recommendations for Changes to Floodplain Management), and needs identified under 361.35 of this title (relating to Flood Mitigation Need Analysis), input from the public, and other relevant information and considerations, RFPGs shall:

(1) Identify specific and achievable flood mitigation and floodplain management goals along with target years by which to meet those goals for the FPR to include, at a minimum, goals specifically addressing risks to life and property.

(2) Recognize and clearly state the levels of residual risk that will remain in the FPR even after the stated flood mitigation goals in paragraph (1) of this section are fully met.

(3) Structure and present the goals and the residual risks in an easily understandable format for the public including in conformance with guidance to be provided by the EA.

(4) Use these goals to guide the RFPG in carrying out the tasks required under §§361.37 - 361.39 of this title.

(5) When appropriate, choose goals that apply to full single HUC8 watershed boundaries or coterminous groups of HUC8 boundaries within the FPR.

(6) Identify both short-term goals (10 years) and long-term goals (30 years).

§361.38. Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects.

(a) Based on analyses and decisions under §§361.33 - 361.37 of this title the RFPG shall identify and evaluate potential FMEs and potentially feasible FMPs and FMSs, including nature-based solutions, some of which may have already been identified by previous evaluations and analyses by others. An FME may eventually result in detailed hydrologic and hydraulic analyses and identification of projects or strategies that could be amended into an RFP as FMPs or FMSs.

(b) When evaluating FMPs and FMSs, the RFPG will, at a minimum, attempt to identify one solution that provides flood mitigation associated a with 1% annual chance flood event. In instances where mitigating for 1% annual chance events is not feasible, the RFPG shall document the reasons for its infeasibility, and at the discretion of the RFPG, other FMPs and FMSs to mitigate more frequent events may also be identified and evaluated based on guidance provided by the EA.

(c) A summary of the RFPG process for identifying potential FMEs and potentially feasible FMPs and FMSs in subsection (a) of this section shall be established and included in the draft and final adopted RFP.

(d) The RFPG shall then identify potentially feasible FMPs and FMSs in accordance with the RFPG process established under subsection (c) of this section.

(e) For areas within the FPR that the RFPG does not yet have sufficient information or resources to identify potentially feasible FMPs and FMSs, the RFPG shall identify areas for potential FMEs that may eventually result in FMPs.

(f) The RFPG shall evaluate potentially feasible FMPs and FMSs understanding that, upon evaluation and further inspection, some FMPs or FMSs initially identified as potentially feasible may, after further inspection, be reclassified as infeasible.

(g) Recommended FMPs will be ranked in the state flood plan and:

(1) shall represent discrete projects;

(2) shall not entail an entire capital program or drainage masterplan; and

(3) may rely on other flood-related projects.

(h) Evaluations of potential FMEs will be at a reconnaissance or screening-level, unsupported by associated detailed hydrologic and hydraulic analyses. These will be identified for areas that the RFPG considers a priority for flood risk evaluation but that do not yet have the required detailed hydrologic and hydraulic modeling or associated project evaluations available to evaluate specific FMPs or FMSs for recommendation in the RFP. These FMEs shall be based on recognition of the need to develop detailed hydrologic models or to perform associated hydraulic analyses and associated project evaluations in certain areas identified by the RFPG. Evaluations of potential FMEs shall include the following analyses:

(1) a reference to the specific flood mitigation or floodplain management goal to be addressed by the potential FME;

(2) an indication of whether the FME may meet an emergency need;

(3) an indication regarding the potential use of federal funds, or other sources of funding as a component of the total funding mechanism;

(4) an equitable comparison and assessment among all FMEs;

(5) an indication of whether hydrologic or hydraulic models are already being developed or are anticipated in the near future and that could be used in the FME;

(6) a quantitative reporting of the estimated flood risk within the FME area, to include, as applicable:

(A) estimated habitable, living unit equivalent and associated population in FME area;

(B) estimated critical facilities in FME area;

(C) estimated number of road closure occurrences in FME area, when available;

(D) estimated acres of active farmland and ranchland in FME area; and

(E) a quantitative reporting of the estimated study cost of the FME and whether the cost includes use of existing or development of new hydrologic or hydraulic models.

(7) For FMEs, RFPGs do not need to demonstrate that an FME will not negatively affect a neighboring area.

(i) Evaluations of potentially feasible FMPs and FMSs, as applicable, will require associated, detailed hydrologic and hydraulic modeling results that quantify the reduced impacts from flood and the associated benefits and costs. Information may be based on previously performed evaluations of projects and related information. Evaluations of potentially feasible FMPs and FMSs shall include the following information and be based on the following analyses:

(1) a reference to the specific flood mitigation or floodplain management goal addressed by the feasible FMP or FMS;

(2) a determination of whether FMP or FMS meets an emergency need;

(3) an indication regarding the potential use of federal funds or other sources of funding as a component of the total funding mechanism;

(4) an indication of any water supply source benefits;

(5) an equitable comparison and assessment among all FMSs and an equitable comparison and assessment among all FMPs that the RFPGs determine to be potentially feasible;

(6) a demonstration that the FMP or FMS will not negatively affect a neighboring area;

(7) a quantitative reporting of the estimated benefits of the FMP or FMS, as applicable. This includes reductions of flood impacts of the 1% annual chance flood event and other storm events identified and evaluated if the project mitigates to more frequent event to include, where applicable, but not limited to:

(A) associated flood events that must, at a minimum, include the 1% annual chance flood event and other storm events identified and evaluated;

(B) reduction in habitable, equivalent living units flood risk;

(C) reduction in residential population flood risk;

(D) reduction in critical facilities flood risk;

(E) reduction in road closure occurrences;

(F) reduction in acres of active farmland and ranchland flood risk;

(G) estimated reduction in fatalities, when available;

(H) estimated reduction in injuries, when available;

(I) reduction in expected annual damages from residential, commercial, and public property;

(J) other benefits as deemed relevant by the RFPG including environmental benefits and other public benefits;

(K) avoidance of future flood risk; and

(L) prevention of creation of future flood risk.

(8) a quantitative reporting of the estimated capital cost of projects in accordance with guidance provided by the EA;

(9) for projects that will contribute to water supply, all relevant evaluations required under §357.34(e) of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects), as determined by the EA based on the type of contribution, and a description of its consistency with the currently adopted State Water Plan;

(10) a description of potential impacts and benefits from the FMP or FMS to the environment, agriculture, recreational resources, navigation, water quality, erosion, sedimentation, and impacts to any other resources deemed relevant by the RFPG;

(11) a description of residual, post-project, and future risks associated with FMPs including the risk of potential catastrophic failure and the potential for future increases to these risks due to lack of maintenance;

(12) implementation issues including those related to right-of-ways, permitting, acquisitions, relocations, utilities and transportation; and

(13) funding sources and options that exist or will be developed to pay for development, operation, and maintenance of the FMP or FMS.

(j) RFPGs shall evaluate and present potential FMEs and potentially feasible FMPs and FMSs with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RFP.

(k) Analyses under this section shall be performed in accordance with guidance requirements to be provided by the EA.

(l) All data produced as part of the analyses under §361.38 of this title (related to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects) shall be organized and summarized in the RFP in accordance with guidance provided by the EA and shall be provided in a format determined by the EA.

(m) Analyses shall clearly designate a representative location of the FME and beneficiaries including a map and designation of HUC level as determined by the EA and county location.

§361.39. Recommended Flood Management Evaluations, Flood Mitigation Projects, and Flood Management Strategies.

(a) RFPGs shall recommend FMPs and FMSs to reduce the potential impacts of flood based on the evaluations under §361.38 of this title (related to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects) and RFPG goals and that must, at a minimum, mitigate for flood events associated with a 1% annual chance (100-yr flood), where feasible. In instances where mitigating for 100-year events are not feasible, FMPs and FMSs to mitigate more frequent events may be recommended based on guidance to be provided by the EA. Recommendations shall be based upon the identification, analysis, and comparison of alternatives that the RFPG determines will provide measurable reductions in flood impacts in support of the RFPG's specific flood mitigation and/or floodplain management goals.

(b) RFPGs shall provide additional information in conformance with guidance provided by the EA which may be used to rank recommended FMEs, FMPs, and FMSs with non-recurring, non-capital costs in the state flood plan.

(c) RFPGs shall provide the benefit-cost ratio for recommended FMPs in accordance with guidance provided by the EA.

(d) RFPGs shall recommend FMEs that the RFPG determines are most likely to result in identification of potentially feasible FMPs and FMSs that would, at a minimum, identify and investigate one solution to mitigate for flood events associated with a 1% annual chance flood event and that support specific RFPG flood mitigation and/or floodplain management goals.

(e) Recommended FMSs or FMPs may not negatively affect a neighboring area or an entity's water supply.

(f) Recommended FMSs or FMPs that will contribute to water supply may not result in an overallocation of a water source based on the water availability allocations in the most recently adopted State Water Plan.

(g) Specific types of FMEs, FMPs, or FMSs that should be included and that should not be included in RFPs must be in accordance with guidance provided by the EA.

§361.40. Impacts of Regional Flood Plan.

Regional flood plans shall include:

(1) a region-wide summary of the relative reduction in flood risk that implementation of the RFP would achieve with regard to life, injuries, property, and other factors such as environment and agriculture;

(2) a statement that the FMPs in the plan, when implemented, will not negatively affect neighboring areas located within or outside of the FPR;

(3) a statement that the plan adequately provides for the preservation of life and property and the development of water supply sources, where applicable;

(4) a general description of the types of potential positive and negative socioeconomic or recreational impacts of the recommended FMPs and FMSs within the FPR;

(5) a general description of the overall impacts of the recommended FMPs and FMSs in the RFP on the environment, agriculture, recreational resources, water quality, erosion, sedimentation, and navigation; and

(6) a summary describing how RFPG recommendations in the RFP meet the needs identified during the needs analysis task as well as adopted goals.

§361.45. Implementation and Comparison to Previous Regional Flood Plan.

Each RFPG shall, in accordance with guidance from the EA:

(1) collect information from local sponsors of FMEs, FMPs and FMSs on implementation of previously recommended FMPs and provide to the EA;

(2) as projects are implemented, incorporate those improvements and associated flood-risk reduction benefits into the plan and reflect in the subsequent RFPs; and

(3) include a general description of how the new RFP differs from the previous plan including with regard to the status of existing flood infrastructure, flood mitigation achieved, goals, and recommended projects.

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

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SUBCHAPTER D. ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL FLOOD PLANS

31 TAC §361.50, §361.51

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is adopted under the authority of Texas Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.50. Adoption, Submittal, Notifications, and Approval of Regional Flood Plans.

(a) The RFPGs shall approve each recommended FME, FMP, and FMS by a vote and shall adopt their draft and final RFPs by a vote and submit their final adopted RFPs to the Board every five years on a date to be determined by the EA, as modified by subsection (d)(2)(D) of this section, for approval and inclusion in the State Flood Plan.

(b) The draft RFP submitted to the EA must be in the electronic and paper format specified by the EA. Each draft RFP must certify that the draft RFP is complete and adopted by the RFPG.

(c) Prior to adopting a final RFP, the RFPGs shall consider the following comments in accordance with §361.21 of this title (relating to General Notice Requirements) to include:

(1) any written or oral comments received from the public on the draft RFP; and

(2) the EA's written comments on the draft RFP.

(d) RFPGs shall submit the draft RFP and the adopted RFPs and any subsequent amendments to approved RFPs to the EA in conformance with this section.

(1) RFPs shall include:

(A) The technical report and data prepared in accordance with this chapter and the EA's specifications;

(B) A list of recommended FMEs, FMPs, and FMSs, with accompanying data to be used by the EA to rank each associated non-zero capital costs or other non-recurring costs in accordance with specifications and guidance to be provided by the EA;

(C) An executive summary that documents key RFP findings and recommendations; and

(D) In the adopted RFP, summaries of all written and oral comments received pursuant to subsection (c) of this section, with a response by the RFPG explaining how the plan was revised or why changes were not warranted in response to written comments received under subsection (c) of this section.

(2) RFPGs shall submit RFPs to the EA according to the following schedule:

(A) Draft RFPs are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the draft RFP, the RFPGs shall provide and or upload data, metadata, and all other relevant digital information supporting the plan to the Board, including to the Board's State Flood Plan Database, when available. All changes and corrections to this information must be entered into or otherwise updated in RFPG's dataset including into the Board's State Flood Plan Database, when available, prior to submittal of a final adopted RFP.

(C) The RFPG shall make publicly available and transfer copies of all data, models, and reports generated by the planning process and used in developing the RFP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RFPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.

(D) Adopted RFPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted by the EA.

(E) Once approved by the Board, RFPs shall be made available on the Board website.

(e) Upon receipt of an RFP adopted by the RFPG, the Board shall consider approval of such plan based on the following criteria:

(1) verified adoption of the RFP by the RFPG;

(2) whether the RFP satisfies the requirements for regional flood plans adopted in the guidance principles at §361.20 of this title (relating to Guidance Principles for State and Regional Flood Planning);

(3) whether the RFP adequately provides for the preservation of life and property and the development of water supply sources, where applicable; and

(4) the RFP does not negatively affect a neighboring area.

(f) The Board may approve an RFP only after it has determined that the RFP complies with statute and rules.

(g) RFPs approved by the Board pursuant to this chapter shall be incorporated into the State Flood Plan as outlined in §362.4 of this title (relating to State Flood Plan Guidelines).

(h) The RFPGs must submit their adopted RFPs to the Board every five years on a date determined by the EA for approval and inclusion in the State Flood Plan.

§361.51. Amendments to Regional Flood Plans.

(a) Local Flood Planning Amendment Requests. A Political Subdivision in the FPR may request an RFPG to consider an amendment to an adopted RFP based on changed conditions or new information. An RFPG must formally consider such request within 180 days after its receipt and shall amend its adopted RFP if it determines an amendment is warranted.

(b) If the Political Subdivision is not satisfied with the RFPG's decision on the issue, it may file a petition with the EA to request review of the RFPG's decision and consider the amendment to the approved RFP. The Political Subdivision shall send the petition to the EA and the chair of the affected RFPG.

(1) The petition must include:

(A) the changed condition or new information that affects the approved RFP;

(B) the specific sections and provisions of the approved RFP that may be affected by the changed condition or new information;

(C) the efforts made by the Political Subdivision to work with the RFPG to obtain an amendment; and

(D) any other information that may be useful to the EA in determining whether an amendment is necessary.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RFP, the EA shall request the RFPG to consider making the appropriate change. If the RFPG does not amend its plan consistent with the request within 90 days, it shall provide a written explanation to the EA explaining the reason for not amending the RFP, after which the EA may present the issue to the Board for consideration at a public meeting. The Board may then direct the RFPG to amend its RFP.

(c) Amendments to RFPs and State Flood Plan. An RFPG may amend an adopted, Board-approved RFP at a regular RFPG meeting. An RFPG must obtain Board approval of all amendments to RFPs under the standards and procedures of this section. The RFPG may initiate an amendment, or an entity may request an RFPG to amend its adopted, Board-approved RFP.

(1) The RFPG shall hold a public meeting at which the RFPG may choose to take action on the amendment. The amendment shall be available for EA and public comment in accordance with §361.21 of this title.

(2) The RFPG amendment materials shall be submitted to the EA and shall:

(A) include the RFPG responses to all comments received on the amendment in associated with notice in §361.21 of this title; and

(B) demonstrate that the amended RFP complies with statute and rules including that it satisfies the requirements in the guidance principles §362.3 of this title (relating to Guidance Principles) and does not negatively affect a neighboring area.

(3) After adoption of the amendment, the RFPG shall submit the amendment and its response to comment to the Board which shall consider approval of the amendment following EA review of the amendment.

(d) All amendments to an RFP must meet all the requirements related to development of an RFP.

(e) Following amendments of RFPs, the Board shall make any necessary amendments to the State Flood Plan as outlined in §362.4(b) of this title (relating to State Flood Plan Guidelines).

(f) RFPGs may adopt errata to the final RFP to correct minor, non-substantive errors identified after adoption of the final RFP but prior to adoption of the corresponding State Flood Plan. Before adopting errata to a final RFP, the RFPG must provide public notice and receive comments in accordance with §361.21 of this title. Upon adoption of the errata, the RFPG shall submit to the EA an errata package containing revised pages of the RFP and public comments received. The EA will notify the RFPG within 60 days whether the errata are acceptable as errata or will need to be made through the amendment process.

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

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SUBCHAPTER E. NEGATIVE EFFECTS ON NEIGHBORING AREAS AND FAILURE TO MEET REQUIREMENTS

31 TAC §361.61

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is adopted under the authority of Texas Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

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SUBCHAPTER F. REGIONAL FLOOD PLANNING GRANTS

31 TAC §§361.70 - 361.72

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is adopted under the authority of Texas Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.72. Use of Funds.

(a) Limitations of funding. The Board has sole discretion in determining which activities are necessary for the development or revision of RFPs. However, no funds provided by the Board may be expended by RFPGs for the following:

(1) activities for which the EA determines existing information, data, or analyses are sufficient for the planning effort including but not limited to:

(A) model development, modeling, or collection of data describing flood hazard exposure or flood risks where information for evaluation of flood hazard exposure or flood risks is currently available from other sources or that will be made available by TWDB or others in sufficient time, with appropriate methodologies and details to be utilized by the RFPG in development of their RFP;

(B) detailed technical evaluations of FMEs or FMSs or FMPs, including regarding feasibility, cost, or impacts, where recent, sufficient information for planning is available, including from the Board or other entity, to evaluate the FMEs or FMPs or FMSs;

(C) evaluations of topics not directly related to the regional flood planning contract scope of work or related flood planning rules for development of regional flood plans; and

(D) revision of the Board-adopted state population projections.

(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;

(3) costs associated with administration of the plan's development by the Planning Group Sponsor or RFPG members, including but not limited to:

(A) compensation for the time or expenses of RFPGs members' service on or for the RFPG;

(B) costs of administering the RFPGs, other than those explicitly allowed under subsection (b) of this section;

(C) costs for training;

(D) costs of developing an application for funding or reviewing materials developed due to this grant; and

(4) analysis or other activities related to planning for disaster response or recovery activities; and

(5) analyses of benefits and costs of FMSs beyond the scope of such analyses that is specifically allowed or required by regional flood planning guidance to be provided by the EA unless the RFPG demonstrates to the satisfaction of the EA that these analyses are needed to determine the selection of the FMS or FMP.

(b) The following administrative costs are eligible for funding if the RFPG or its chairperson approves that the expenses are eligible for reimbursement and are correct and necessary:

(1) travel expenses, as authorized by the General Appropriations Act, are available only for attendance at a posted meeting of the RFPG unless the travel is specifically authorized by the RFPG and EA;

(2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RFPGs and certified by the chairperson;

(3) direct costs, of the Planning Group Sponsor, for placing public notices for the legally required public meetings and of providing copies of information for the public and for members of the RFPGs as needed for the efficient performance of planning work;

(4) the cost of public notice postings including a website and for postage for mailing notices of public meetings;

(5) the Planning Group Sponsor's personnel costs, for the staff hours that are directly spent providing, preparing for, and posting public notice for RFPG meetings, including time and direct expenses for their support of and attendance at such RFPG meetings in accordance with, and as specifically limited by, the flood planning grant contract with the Board;

(6) the reasonable cost of purchase or rental of audio-visual equipment that is necessary to comply with Texas Government Code Chapter 551 related to Open Meetings; and

(7) the cost of rental space to hold RFPG meetings.

(c) Subcontracting. An RFPG through the Planning Group Sponsor's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional flood plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas Government Code Chapter 2254.

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CHAPTER 361. REGIONAL FLOOD PLANNING

The Texas Water Development Board (TWDB or "board") adopts the repeal of 31 Texas Administrative Code (TAC) §§361.22, 361.36, and 361.37. The repeals are adopted without changes as published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2078). The repeals will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE ADOPTED REPEALS.

The TWDB adopts the repeal to these sections of the rules. New rules 31 TAC §361.36 and §361.37 are being adopted elsewhere in this issue of the *Texas Register.*

EFFECTIVE DATE.

These repeals will become effective on November 1, 2023.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the repeal in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the repeal is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the repeal is to facilitate the regional and state flood planning process.

Even if the repeal were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This repeal does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §16.062. Therefore, this repeal does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this repeal and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this repeal is to facilitate the regional and state flood planning process while making the process more efficient for the regional flood planning regions. The repeal will substantially advance this stated purpose by clarifying requirements of the flood plan regions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this repeal because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is responsible for developing the state flood plan.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this repeal would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject repeal does not affect a landowner's rights in private real property because this repeal does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeal. Therefore, the repeal does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.024(a)(7))

No comments were received on the repeal.

SUBCHAPTER B. GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

31 TAC §361.22

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is adopted under the authority of Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund, and §16.453 (Floodplain Management Account for funding planning grants).

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

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

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Ashley Harden
General Counsel
Texas Water Development Board
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Proposal publication date: April 21, 2023
For further information, please call: (512) 463-9683

SUBCHAPTER C. REGIONAL FLOOD PLAN REQUIREMENTS

31 TAC §361.36, §361.37

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is adopted under the authority of Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund, and §16.453 (Floodplain Management Account for funding planning grants).

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.54

The Texas Board of Criminal Justice (board) adopts new rule §151.54, Employee Training and Education - Tuition Reimbursement without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5012). The rule will not be republished.

The purpose of the new rule is to authorize reimbursement of training and education expenses consistent with Subchapters C and D, Chapter 656, Texas Government Code.

No comments were received regarding the new rule.

The new rule is adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and Subchapters C and D, Chapter 656, Texas Government Code, which authorize the board to adopt rules for the training and education of TDCJ administrators and employees.

Cross Reference to Statutes: None.

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

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Kristen Worman
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CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER A. MISSION AND ADMISSIONS

37 TAC §152.3

The Texas Board of Criminal Justice adopts amendments to §152.3, concerning Admissions, with changes to the proposed

text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5013). The rule will be republished.

The adopted amendments conform the rule to legislation from the 88th legislative session, HB 2620, relating to the confinement in a county jail of a person pending transfer to the Texas Department of Criminal Justice (TDCJ) and to compensation to a county for certain costs of confinement.

The Board received joint comments on the proposed amendments from the Texas Conference of Urban Counties (CUC) and the Texas County Judges and Commissioners Association (CJCAT). The Board also received comments from Tarrant County.

General Comments

CUC and CJCAT agreed with the public benefit of the proposed rule. Tarrant County agreed with much of the proposed language and appreciated the opportunity to work with TDCJ to implement the rule.

Section 152.3(b)

Proposed §152.3(b) mirrors the statutory language requiring TDCJ to accept inmates sentenced to prison within 45 days after the TDCJ Classification and Records Office (CRO) certifies the inmate's commitment papers received from the county.

CUC and CJCAT argue that the proposed language does not address TDCJ's obligation to reimburse a county after the 45-day period of holding a state-ready inmate. CUC and CJCAT propose adding language regarding TDCJ's obligation to reimburse the counties and the rate of reimbursement. Tarrant County also commented that the proposed language does not address TDCJ's requirement to reimburse counties who hold inmates beyond 45 days.

TBCJ Response

TBCJ declines to modify the proposed rule as requested by CUC and CJCAT or Tarrant County because the proposed rule language mirrors the statutory language. However, TBCJ agrees that additional language is needed to clarify the obligation to reimburse counties for each day over 45 days that an inmate is held in a county facility and to identify the correct rate of reimbursement. TBCJ modifies the proposed rule accordingly.

Section 152.3(c)(2)

Proposed §152.3(c)(2) describes the action that must be taken by the CRO when the commitment papers submitted by a county require correction.

CUC and CJCAT commented that the proposed language should be clarified to require the CRO to identify the specific corrective actions required by the county. Tarrant County also requested that similar clarifying language be added to the proposed rule.

TBCJ Response

TBCJ modifies the language to clarify that CRO will identify the errors requiring correction as suggested by Tarrant County, CUC and CJCAT.

Timeline and Description of Reimbursement Process

CUC and CJCAT assert that the proposed rule does not contain a timeline or a description of the process to be followed by a county when seeking reimbursement from TDCJ. Tarrant County also claims that the proposed language does not include a process for counties to request reimbursement from TDCJ.

TBCJ Response

TBCJ declines to modify the proposed rule as requested by CUC and CJCAT or Tarrant County because such language is included in the TDCJ policy for reimbursements to counties. However, TBCJ agrees that some additional language is needed to clarify the process to be used when a county seeks reimbursement from TDCJ and the timeline for obtaining such reimbursement and modifies the proposed rule accordingly.

All comments, including any not specifically referenced herein, were fully considered by TBCJ.

The amendments are adopted under Texas Government Code § 492.013, which authorizes the board to adopt rules; § 499.071, which requires the board to adopt a scheduled admissions policy, and § 507.024, which requires the board to adopt rules to provide for the safe transfer of defendants from counties to state jail felony facilities.

Cross Reference to Statutes: None.

§152.3. Admissions.

(a) Counties will send commitment papers on inmates sentenced to the Texas Department of Criminal Justice (TDCJ) to the TDCJ Classification and Records Office (CRO) immediately following completion of the commitment papers. Those counties equipped to do so may send paperwork electronically.

(b) The TDCJ shall accept inmates sentenced to prison within 45 days of the date the commitment papers are certified by the CRO. If TDCJ does not take custody of an inmate within 45 days after the commitment papers are certified, TDCJ shall reimburse the county for each day of confinement within the county over 45 days at the most recent systemwide cost per day published by the Legislative Budget Board on the date the CRO receives the county's request for reimbursement.

(c) No later than the fifth business day after the date the CRO receives commitment papers from the county, the CRO shall:

(1) review and certify the commitment papers if the CRO determines there are no errors or deficiencies requiring corrective action by the county; or

(2) notify the county that the CRO has determined the commitment papers require corrective action by the county and identify the errors needing correction.

(d) Inmates shall be scheduled for admission based on:

(1) their length of confinement in relation to the 45 days from the date the commitment papers are certified; and

(2) transportation routes.

(e) Counties will inform the TDCJ State Ready Office when inmates for whom commitment papers have been sent are transferred to another facility by bench warrants.

(f) The TDCJ shall notify counties via electronic transmission, such as facsimile or email when applicable, of inmates scheduled for intake, the date of intake, the respective reception unit, and transportation arrangements. Inmates shall be sorted by name and State Identification (SID) number, as identified by the court judgment.

(g) Counties will notify the TDCJ admissions coordinator of any inmates who are not available for transfer and the reason they are not available for transfer.

(h) Counties may identify inmates with medical or security issues that may be scheduled for intake out of sequence on a case-by-case basis by contacting the TDCJ admissions coordinator.

(i) After the receipt of an order by a judge for admission of an inmate to a state jail, the placement determination shall be made by the TDCJ Admissions Office. Placement shall be made in the state jail designated as serving the county in which the inmate resides unless:

(1) the inmate has no residence or was a resident of another state at the time of committing an offense;

(2) alternative placement would protect the life or safety of any person;

(3) alternative placement would increase the likelihood of the inmate's successful completion of confinement or supervision;

(4) alternative placement is necessary to efficiently use available state jail capacity, including alternative placement because of gender; or

(5) alternative placement is necessary to provide medical or psychiatric care to the inmate.

(j) If the inmate is described by subsection (h)(1) of this rule, placement shall be made in the state jail designated as serving the county in which the offense was committed, unless a circumstance in subsection (i)(2) - (5) of this rule applies.

(k) The TDCJ Admissions Office shall attempt to have placement determinations made at a regional level that may include one or more regions as designated in 37 Texas Administrative Code § 152.5 relating to the designation of state jail regions.

(l) If a county believes reimbursement is due, the county shall complete and submit the authorized form to the CRO. Upon receipt of the authorized form, TDCJ shall:

(1) review each request for reimbursement received from a county;

(2) verify:

(A) the certification date for all documents required to be submitted under Article 42.09, Code of Criminal Procedure; and

(B) the date the inmate was received into TDCJ custody; and

(3) process all required payments for reimbursement in accordance with the Prompt Payment Act or notify the county and explain why no reimbursement is required.

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

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

SUBCHAPTER E. ADVISORY COMMITTEES

43 TAC §§206.92, 206.93, 206.98

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) §206.92 and §206.93 and adopts new §206.98 concerning advisory committees. The department adopts §§206.92, 206.93, and 206.98 without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4799). The rules will not be republished.

REASONED JUSTIFICATION. The amendments and new section are necessary to implement the Sunset Advisory Commission's adopted recommendation 1.7 in the Staff Report with Final Results, revised June 2019. The Sunset Advisory Commission recommended that the department establish advisory committees to provide expertise for rulemaking and other issues, and to adopt rules regarding standard committee structure and operating criteria.

An amendment to §206.92 is necessary to expand the definition of "advisory committee" by adding Transportation Code, §643.155 as a statute under which an advisory committee may be created, to include the enabling statute for a separate advisory committee for rules involving motor carriers transporting household goods.

Amendments to §206.93 are necessary to allow the advisory committees to report to the department by providing recommendations either to the board or to the executive director. This would create more flexibility in how the committees report and would make the language consistent with the definition of "advisory committee" in §206.92(1) and with Transportation Code, §1001.031(a).

Another amendment to §206.93(a) corrects a grammatical error. Advisory committees are required to meet and carry out their functions upon a request from the department or the board for advice and recommendations on any issues. The request can be on a single issue or multiple issues.

An amendment to §206.93(d) removes the requirement that advisory committee members have an interest or expertise in the subject area of the advisory committee. This language is redundant with the statutory language that is already contained in Transportation Code, §1001.031 and is therefore unnecessary.

An amendment to §206.93(i) removes an unnecessary hyphen to correct a grammatical error.

The new §206.98 is necessary to implement Transportation Code, §643.155, which requires the department to appoint a rules advisory committee pertaining to motor carriers transporting household goods. Section 643.155 requires a department representative to serve on the advisory committee. In contrast, Transportation Code, §1001.031 does not require department representatives to serve on the advisory committee that considers other consumer protection and customer service issues. Therefore, dividing the advisory committees so that the committee on which department employees serve considers only rules involving motor carriers transporting household goods allows the most efficient use of department employees' time. It also avoids diluting the influence of perspectives from outside the department on other consumer protection and customer service issues, for which statute does not require the perspective of department representatives on the advisory committee. New

§206.98 sets in rule the purpose, tasks, reporting requirements, and expiration of the HGRAC, as is required for advisory committees under Government Code, §2110.005. New §206.98 has an expiration date for the HGRAC of July 7, 2027, to match the expiration date of the other department advisory committees.

SUMMARY OF COMMENTS.

No comments on the proposed amendments or new section were received.

STATUTORY AUTHORITY. The department adopts amendments to §206.92 and §206.93 and adopts new §206.98 under Transportation Code, §643.155, which authorizes the department to adopt rules to create a rules advisory committee consisting of the public, the department, and representatives of motor carriers transporting household goods using small, medium, and large equipment; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2110.005, which requires state agencies establishing advisory committees to make rules stating the purpose and tasks of the committee and describing the manner in which the committee will report to the agency; and Government Code, §2110.008, which allows state agencies establishing advisory committees make rules designating the date an advisory committee will be abolished.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 643 and 1001; Government Code, Chapter 2110.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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CHAPTER 211. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE

SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE

43 TAC §211.6

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) §211.6 concerning fingerprint requirements for license applicants and holders. The department adopts §211.6 without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4801). The rule will not be republished.

REASONED JUSTIFICATION. The amendments to §211.6 are necessary to prevent application fraud in two important ways--by verifying identify and by allowing the department to obtain a complete and comprehensive criminal background check from both the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI) prior to issuing a license. The current rule references only General Distinguishing Numbers issued under Transportation Code Chapter 503, so this rule amends §211.6 to make it possible for the department to require fingerprinting for all license types in the future, if the department chooses to subsequently propose amendments to Chapter 215 or 221 of this title to add fingerprint requirements for a specific license type.

The amended title of §211.6 reflects that the fingerprint requirements of this section will apply to all license types designated in Chapters 215 and 221 of this title as requiring fingerprinting for licensure. This may include licenses other than general distinguishing numbers if the department amends Chapters 215 or 221 of this title in the future. This amendment is necessary to describe more accurately the department's authority under Texas Government Code, §411.122 and §411.12511 to implement fingerprint requirements.

The amendments to subsections (a) and (b) delete references to a General Distinguishing Number under Transportation Code, Chapter 503. These amendments are necessary to reflect more accurately the department's authority to implement fingerprint requirements for additional license types through rulemaking.

The other amendments in subsection (a) specify that the rule will apply to license types designated in Chapter 215 or Chapter 221 of this title as requiring fingerprints for licensure. These amendments are necessary to reflect more accurately the department's authority to implement fingerprint requirements for additional license types through rulemaking and clarify for ease of reference which chapters may contain fingerprint requirements for specific license types.

The amendments to subsection (b) combine language currently in subsections (b) and (c) into amended (b), make clarifying changes to remove unnecessary language, and identify the persons that may be subject to a fingerprint requirement. These amendments are necessary to add clarity and for ease of understanding.

The amendments to subsection (c) replace the existing language consolidated into subsection (b) with new language clarifying that the department will review each license application, determine which persons need to be fingerprinted, and notify the applicant or license holder. This amendment is necessary to inform the public, including applicants and license holders, that the department must first review the application and department licensing records to determine which persons are required to be fingerprinted, before notifying the applicant regarding which individuals must submit fingerprints.

SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

STATUTORY AUTHORITY. The department adopts the amendments to §211.6 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 or 2302;

Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code and other laws of this state.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 503 and 1002.

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

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General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.52

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) §217.52 concerning the marketing of specialty license plates through a private vendor. The department adopts amendments to §217.52 with a change to correct a point of grammar that was in the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4803). The amendments will be republished.

The amendments are necessary to implement Senate Bill (SB) 702 enacted during the 88th Texas Legislature, Regular Session (2023). SB 702 amended Transportation Code, §504.851, to require a contract entered into by the department and a private vendor for the marketing and sale of specialty license plates to allow the private vendor to establish a range of premium embossed specialty license plates to be sourced, marketed, and sold by the private vendor. The department amends the following subsections of §217.52: §217.52(h)(5), to establish fees required for embossed background-only license plates; §217.52(h)(7), to clarify that the fees for an auction pattern apply to an embossed license plate design and that the owner of an auction pattern may move the auction pattern to an embossed license plate design under subsection (n); §217.52(h)(8), to establish embossed personalized specialty license plates and the corresponding fees required; renumbered §217.52(h)(9), to expressly retain the grandfathered fees if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design; and §217.52(n), to define "restyled license plate," to include embossed specialty license plates, and to set fees for restyling a plate from non-embossed to embossed.

REASONED JUSTIFICATION.

The amendments to §217.52 are necessary to implement SB 702.

The amendments allow vehicle owners the option to purchase embossed specialty license plates if they choose to do so. No person would be required to purchase an embossed license plate and the standard default option would still be a printed plate.

The amendments also allow classic car collectors to fully restore cars with historically accurate embossed license plates.

Amendments to §217.52(h) clarify the rule by using the term "vendor specialty license plates" that is defined in §217.52(a) to provide consistent meaning throughout §217.52.

An amendment to §217.52(h)(5) implements SB 702 by adding an embossed option for background-only, non-personalized license plates. The amendment clarifies that background-only, non-personalized license plates are available as either embossed or non-embossed.

An amendment to §217.52(h)(5) creates fees for issuance of embossed, background-only license plates; however, the amendment would expressly retain the grandfathered fees under re-numbered subsection (h)(9)(C) if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design. These fees are sufficient to cover the department's direct, indirect, and administrative costs associated with the department's contract with its specialty license plates vendor and were determined through discussions with the vendor.

Amendments to §217.52(h)(5) add subparagraphs (A) and (B) to separate the fees for non-embossed, background-only specialty license plates from the fees for embossed, background-only specialty license plates.

In addition, amendments to §217.52(h)(5) add a hyphen between the words "background" and "only" because they are compound modifiers for the term "license plates."

Amendments to §217.52(h)(7) clarify that the fees for an auction pattern apply to an embossed license plate design and that the owner of an auction pattern may move the auction pattern to an embossed license plate design under subsection (n) regarding a restyled vendor specialty plate design.

New §217.52(h)(8) implements SB 702 by creating personalized, embossed specialty license plates. New §217.52(h)(8) allows the department's vendor to source, market, and sell a range of embossed, personalized specialty license plates with board-approved background and color combinations. New §217.52(h)(8) also sets fees for issuance of embossed, personalized specialty license plates. New §217.52(h)(8) clarifies that the fees under subsection (h)(7), regarding auction plate patterns, are grandfathered for embossed plate designs. New §217.52(h)(8) also clarifies that the personalization and specialty plate fees under renumbered subsection (h)(9) do not apply to an embossed, personalized specialty plate because the fees under §217.52(h)(8) already include the personalization fees; however, there is an exception under re-numbered subsection (h)(9)(C) if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design. These fees are sufficient to cover the department's direct, indirect, and administrative costs associated with the department's contract with its specialty license plates vendor and were determined through discussions with the vendor.

Amendments also renumber current §217.52(h)(8) to §217.52(h)(9). Amendments to renumbered §217.52(h)(9) expressly retain the grandfathered fees if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design.

Amendments to §217.52(n) implement SB 702 by adding embossed specialty license plate styles to the provision on restyled vendor specialty license plates to allow people who currently have non-embossed specialty license plates to restyle their plates into an embossed specialty license plate.

New §217.52(n)(2)(B) sets a fee of $75 for restyling a non-embossed specialty license plate into an embossed specialty license plate. This fee is sufficient to cover the department's direct, indirect, and administrative costs associated with the department's contract with its specialty license plates vendor and were determined through discussions with the vendor. The amendments also re-letter subparagraphs within §217.52(n) for clarity and ease of reference.

SUMMARY OF COMMENTS.

Comment: Sean Kennedy, Vice President of MyPlates, supported the Board's adoption of amendments to 43 TAC §217.52. Mr. Kennedy stated that MyPlates had conducted a poll and found that the public was interested in having embossed plates as an option for specialty plates. Mr. Kennedy noted that the amendment would make the rule consistent with SB 702. Mr. Kennedy stated that the rule amendments will allow citizens of Texas a license plate that was previously available to the public and would increase public interest in the specialty plate program generally.

Response: The department agrees with the comment.

STATUTORY AUTHORITY.

The department adopts amendments to §217.52 under Transportation Code, §504.0011, which grants the board authority to adopt rules to implement Transportation Code, Chapter 504; Transportation Code, §504.0051, which gives the department authority to issue personalized license plates and forbids the department from issuing replacement personalized license plates unless the vehicle owner pays the statutory fee required under Transportation Code, §504.007; Transportation Code, §504.007, which states that replacement license plates can only be issued if the vehicle owner pays the statutory fee; Transportation Code, §504.6011, which authorizes the sponsor of a specialty license plate to reestablish its specialty license plate under Subchapter J of Transportation Code, Chapter 504, and for the board to establish the fees under Transportation Code, §504.851; Transportation Code, §504.851(a), which allows the department to contract with a private vendor to provide specialty and personalized license plates; Transportation Code, §504.851(b) - (d), which authorize the board to establish fees by rule for the issuance or renewal of personalized license plates that are marketed and sold by the vendor as long as the fees are reasonable and not less than the amounts necessary to allow the department to recover all reasonable costs associated with the procurement, implementation, and enforcement of the vendor's contract; Transportation Code, §504.851(i), as amended by SB 702, 88th Legislature, Regular Session (2023), which requires a contract entered into by the department and a private vendor for the marketing and sale of specialty license plates to allow the vendor to establish a range of premium embossed specialty license plates to be sourced, marketed, and sold by the private vendor; and Transportation Code, §1002.001 which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code and other laws of this state.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 504 and 1002.

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

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43 TAC §217.54

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) §217.54 concerning registration of fleet vehicles. The department adopts §217.54 with changes to the proposed text to correct punctuation as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4807). The rule will be republished. The amendments are necessary to implement House Bill (HB) 433 enacted during the 88th Legislature, Regular Session (2023). HB 433 amended the definition of "commercial fleet" in Transportation Code, §502.001(6) by reducing from 25 to 12 the minimum number of non-apportioned motor vehicles, semitrailers, or trailers owned, operated, or leased by a business entity necessary to constitute a commercial fleet.

REASONED JUSTIFICATION. The amendments to §217.54 are necessary to implement HB 433 by changing the eligibility requirements for fleet registration and fleet composition. Amendments to §217.54(b)(1) replace the number "25" with "12" for fleet eligibility requirements. Amendments to §217.54(f)(3) replace the number "25" with "12" for fleet composition as it relates to the status of an account holder's registration when the account falls below the minimum number of vehicles for a commercial fleet.

SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

STATUTORY AUTHORITY. The department adopts amendments to §217.54 under Transportation Code, §502.001(6), as amended by HB 433, which defines "commercial fleet" for purposes of Transportation Code, Chapter 502; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.0023, which sets out the requirements for extended vehicle registration of commercial fleets and requires the department to adopt rules to implement those requirements; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department as provided in the Texas Transportation Code and other laws of this state.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 502 and 1002.

§217.54. Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles in a fleet instead of registering each vehicle separately. A fleet may include trailers and semitrailers. Except as provided by §217.55 of this title (relating to Exempt and Alias Vehicle Registration), to consolidate registration, a registration must meet the requirements of this section.

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

(1) No fewer than 12 vehicles will be registered as a fleet;

(2) Vehicles may be registered in annual increments for up to eight years;

(3) All vehicles in a fleet must be owned by or leased to the same business entity;

(4) All vehicles must be vehicles that are not registered under the International Registration Plan; and

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, which may include the vehicle's model year, make, model, vehicle identification number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.046, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax;

(F) the state's portion of the vehicle inspection fee; and

(G) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Registration receipt and fleet license plates.

(1) As evidence of registration, the department will issue a registration receipt and one or two metal fleet license plates for each vehicle in a fleet.

(2) The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel upon request.

(3) A registration receipt or fleet license plate may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued one or two metal fleet license plates and a registration receipt.

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. After a vehicle is removed from the fleet, the fleet registrant shall either return the metal fleet license plates for that vehicle to the department or provide the department with acceptable proof that the metal fleet license plates for that vehicle have been destroyed. Credit for any vehicle removed from the fleet for the remaining full year increments can be applied to any vehicle added to the fleet or at the time of renewal. No refunds will be given if credit is not used or the account is closed.

(3) If the number of vehicles in an account falls below 12 during the registration period, fleet registration will remain in effect. If the number of vehicles in an account is below 12 at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant

shall immediately either return all metal fleet license plates to the department or provide the department with acceptable proof that the metal fleet license plates have been destroyed.

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(4) In addition to the registration fees prescribed by Transportation Code, Chapter 502, an owner registering a fleet under this section must pay a one-time fee of $10 per motor vehicle, semitrailer, or trailer in the fleet. This fee is also due as follows:

(A) for each vehicle added to the owner's existing fleet; and

(B) for each vehicle that a buyer registers as a fleet, even though the seller previously registered some or all of the vehicles as a fleet under this section.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation.

(1) The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

(2) The department may cancel registration on any fleet vehicle on the anniversary date of the registration if the fleet vehicle is not in compliance with the inspection requirements under Transportation Code, Chapter 548 or the inspection requirements in the rules of the Texas Department of Public Safety.

(3) A vehicle with a canceled registration may not be operated on a public highway.

(4) If the department cancels the registration of a vehicle under this subsection, the registrant can request the department to reinstate the registration by doing the following:

(A) complying with the requirements for which the department canceled the registration;

(B) providing the department with notice of compliance on a form prescribed by the department; and

(C) for a registration canceled under paragraph (2) of this subsection, paying an administrative fee in the amount of $10.

(5) A registrant is eligible for reinstatement of the registration only within 90 calendar days of the department's notice of cancellation.

(6) If a registrant fails to timely reinstate the registration of a canceled vehicle registration under this section, the registrant:

(A) is not entitled to a credit or refund of any registration fees for the vehicle; and

(B) must immediately either return the metal fleet license plates to the department or provide the department with acceptable proof that the metal fleet license plates have been destroyed.

(j) Inspection fee. The registrant must pay the department by the deadline listed in the department's invoice for the state's portion of the vehicle inspection fee.

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

Filed with the Office of the Secretary of State on October 13, 2023.

TRD-202303803
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Effective date: November 2, 2023
Proposal publication date: September 1, 2023
For further information, please call: (512) 465-4160

Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission (Commission) files this notice of intent to review, and to consider for readoption, amendment, or repeal, the Commission's rules at Title 16 Texas Administrative Code Chapter 401, relating to Administration of State Lottery Act. The names and numbers of the rules contained in Chapter 401 are set forth below. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules):

Subchapter A - Procurement

§401.101 - Lottery Procurement Procedures

§401.102 - Protests of the Terms of a Formal Competitive Solicitation

§401.103 - Protests of Contract Award

§401.104 - Contract Monitoring Roles and Responsibilities

§401.105 - Major Procurement Approval Authority, Responsibilities and Reporting

Subchapter B - Licensing of Sales Agents

§401.152 - Application for License

§401.153 - Qualifications for License

§401.155 - Expiration of License

§401.156 - Renewal of License

§401.157 - Provisional License

§401.158 - Suspension or Revocation of License

§401.159 - Summary Suspension of License

§401.160 - Standard Penalty Chart

Subchapter C - Practice and Procedure

§401.201 - Intent and Scope of Rules

§401.202 - Construction of Rules

§401.203 - Contested Cases

§401.205 - Initiation of a Hearing

§401.207 - Written Answer; Default Proceedings

§401.211 - Law Governing Contested Cases

§401.216 - Subpoenas, Depositions, and Orders to Allow Entry

§401.220 - Motion for Rehearing

§401.227 - Definitions

Subchapter D - Lottery Game Rules

§401.301 - General Definitions

§401.302 - Scratch Ticket Game Rules

§401.303 - Grand Prize Drawing Rule

§401.304 - Draw Game Rules (General)

§401.305 - "Lotto Texas" Draw Game Rule

§401.306 - Video Lottery Games

§401.307 - "Pick 3" Draw Game Rule

§401.308 - "Cash Five" Draw Game Rule

§401.309 - Assignability of Prizes

§401.310 - Payment of Prize Payments Upon Death of Prize Winner

§401.312 - "Texas Two Step" Draw Game Rule

§401.313 - Promotional Drawings

§401.314 - Retailer Bonus Programs

§401.315 - "Mega Millions" Draw Game Rule

§401.316 - "Daily 4" Draw Game Rule

§401.317 - "Powerball" Draw Game Rule

§401.318 - Withholding of Delinquent Child-Support Payments from Lump-sum and Periodic Installment Payments of Lottery Winnings in Excess of Six Hundred Dollars

§401.319 - Withholding of Child-Support Payments from Periodic Installment Payments of Lottery Winnings

§401.320 - "All or Nothing" Draw Game Rule

§401.321 - Scratch Tickets Containing Non-English Words

§401.324 - Prize Winner Election to Remain Anonymous

Subchapter E - Retailer Rules

§401.351 - Proceeds from Ticket Sales

§401.352 - Settlement Procedures

§401.353 - Retailer Settlements, Financial Obligations, and Commissions

§401.355 - Restricted Sales

§401.357 - Texas Lottery as Retailer

§401.360 - Payment of Prizes

§401.361 - Required Purchases of Lottery Tickets

§401.362 - Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property

§401.363 - Retailer Record

§401.364 - Training

§401.366 - Compliance with All Applicable Laws

§401.368 - Lottery Ticket Vending Machines

§401.370 - Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost

§401.371 - Collection of Delinquent Obligations for Lottery Retailer Related Accounts

§401.372 - Display of License

Subchapter F - ADA Requirements

§401.401 - Definitions

§401.402 - General Requirements

§401.403 - Readily Achievable Barrier Removal

§401.404 - Priority of ADA Compliance by Lottery Licensees

§401.405 - Alternatives to Barrier Removal

§401.406 - Future Alterations to a Lottery Licensed Facility

§401.407 - Complaints Relating to Non-accessibility

§401.408 - Requests for Hearings

Subchapter G - Lottery Security

§401.501 - Lottery Security

The Commission will assess whether the reasons for initially adopting each of these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations, and whether it reflects current procedures of the Commission.

Written comments pertaining to this rule review may be submitted by mail to Deanne Rienstra, Special Counsel, at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.*

The deadline for comments is 30 days after publication of this notice in the *Texas Register.* Proposed changes to any of these rules as a result of the rule review will be published as separate rulemaking proceedings in the Proposed Rules section of the *Texas Register* at a later date. Any proposed rule changes will be open for public comment prior to final adoption or repeal by the Commission, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202303810
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 13, 2023

The Texas Lottery Commission (Commission) files this notice of intent to review, and to consider for readoption, amendment, or repeal, the Commission's rules at Title 16 Texas Administrative Code Chapter 402 relating to Charitable Bingo Operations Division. The names and numbers of the rules contained in Chapter 402 are set forth below. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules):

Subchapter A - Administration

§402.100 - Definitions

§402.101 - Advisory Opinions

§402.102 - Bingo Advisory Committee

§402.103 - Training Program

§402.104 - Delinquent Obligations

Subchapter B - Conduct of Bingo

§402.200 - General Restrictions on the Conduct of Bingo

§402.201 - Prohibited Bingo Occasion

§402.202 - Transfer of Funds

§402.203 - Unit Accounting

§402.204 - Prohibited Price Fixing

§402.205 - Unit Agreements

§402.210 - House Rules

§402.211 - Other Games of Chance

§402.212 - Promotional Bingo

Subchapter C - Bingo Games and Equipment

§402.300 - Pull-Tab Bingo

§402.301 - Bingo Card/Paper

§402.303 - Pull-tab or Instant Bingo Dispensers

§402.321 - Card-Minding Systems--Definitions

§402.322 - Card-Minding Systems--Site System Standards

§402.323 - Card-Minding Systems--Device Standards

§402.324 - Card-Minding Systems--Approval of Card-Minding Systems

§402.325 - Card-Minding Systems--Licensed Authorized Organizations Requirements

§402.326 - Card-Minding Systems--Distributor Requirements

§402.327 - Card-Minding Systems--Security Standards

§402.328 - Card-Minding Systems--Inspections and Restrictions

§402.331 - Shutter Card Bingo Systems - Definitions

§402.332 - Shutter Card Bingo Systems - Site System Standards

§402.333 - Shutter Card Bingo Systems - Shutter Card Station and Customer Account Standards

§402.334 - Shutter Card Bingo Systems - Approval of Shutter Card Bingo Systems

§402.335 - Shutter Card Bingo Systems - Licensed Authorized Organization Requirements

§402.336 - Shutter Card Bingo Systems - Distributor Requirements

§402.337 - Shutter Card Bingo Systems - Security Standards

§402.338 - Shutter Card Bingo Systems - Inspections and Restrictions

Subchapter D - Licensing Requirements

§402.400 - General Licensing Provisions

§402.401 - Temporary License

§402.402 - Registry of Bingo Workers

§402.403 - Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises

§402.404 - License Classes and Fees

§402.405 - Temporary Authorization

§402.406 - Bingo Chairperson

§402.407 - Unit Manager

§402.408 - Designation of Members

§402.409 - Amendment for Change of Premises or Occasions Due to Lease Termination or Abandonment

§402.410 - Amendment of a License - General Provisions

§402.411 - License Renewal

§402.412 - Signature Requirements

§402.413 - Military Service Members, Military Veterans, and Military Spouses

§402.420 - Qualifications and Requirements for Conductor's License

§402.422 - Amendment to a Regular License to Conduct Charitable Bingo

§402.424 - Amendment of a License by Electronic Mail, Telephone or Facsimile

§402.442 - Amendment to a Commercial Lessor License

§402.443 - Transfer of a Grandfathered Lessor's Commercial Lessor License

§402.450 - Request for Waiver

§402.451 - Operating Capital

§402.452 - Net Proceeds

§402.453 - Request for Operating Capital Increase

Subchapter E - Books and Records

§402.500 - General Records Requirements

§402.501 - Charitable Use of Net Proceeds

§402.502 - Charitable Use of Net Proceeds Recordkeeping

§402.503 - Bingo Gift Certificates

§402.504 - Debit Card Transactions

§402.505 - Permissible Expense

§402.506 - Disbursement Records Requirements

§402.511 - Required Inventory Records

§402.514 - Electronic Fund Transfers

Subchapter F - Payment of Taxes, Prize Fees and Bonds

§402.600 - Bingo Reports and Payments

§402.601 - Interest on Delinquent Tax

§402.602 - Waiver of Penalty, Settlement of Prize Fees, Penalty and/or Interest

§402.603 - Bond or Other Security

§402.604 - Delinquent Purchaser

Subchapter G - Compliance and Enforcement

§402.700 - Denials; Suspensions; Revocations; Hearings

§402.701 - Investigation of Applicants for Licenses

§402.702 - Disqualifying Convictions

§402.703 - Audit Policy

§402.705 - Inspection of Premises

§402.706 - Schedule of Sanctions

§402.707 - Expedited Administrative Penalty Guideline

§402.708 - Dispute Resolution

§402.709 - Corrective Action

The Commission will assess whether the reasons for initially adopting each of these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations, and whether it reflects current procedures of the Commission.

Written comments pertaining to this rule review may be submitted by mail to Deanne Rienstra, Special Counsel, at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.*

The deadline for comments is 30 days after publication of this notice in the *Texas Register.* Proposed changes to any of these rules as a result of the rule review will be published as separate rulemaking proceedings in the Proposed Rules section of the *Texas Register* at a later date. Any proposed rule changes will be open for public comment prior to final adoption or repeal by the Commission, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202303811
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 13, 2023

The Texas Lottery Commission (Commission) files this notice of intent to review, and to consider for readoption, amendment, or repeal, the Commission's rules at Title 16 Texas Administrative Code Chapter 403, relating to General Administration. The names and numbers of the rules contained in Chapter 403 are set forth below. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules):

§403.101 - Public Information

§403.102 - Items Mailed to the Commission

§403.110 - Petition for Adoption of Rule Changes

§403.115 - Negotiated Rulemaking and Alternative Dispute Resolution

§403.201 - Definitions

§403.202 - Prerequisites to Suit

§403.203 - Sovereign Immunity

§403.204 - Notice of Claim of Breach of Contract

§403.205 - Agency Counterclaim

§403.206 - Request for Voluntary Disclosure of Additional Information

§403.207 - Duty to Negotiate

§403.208 - Timetable

§403.209 - Conduct of Negotiation

§403.210 - Settlement Approval Procedures

§403.211 - Settlement Agreement

§403.212 - Costs of Negotiation

§403.213 - Request for Contested Case Hearing

§403.214 - Mediation Timetable

§403.215 - Conduct of Mediation

§403.216 - Qualifications and Immunity of the Mediator

§403.217 - Confidentiality of Mediation and Final Settlement Agreement

§403.218 - Costs of Mediation

§403.219 - Settlement Approval Procedures

§403.220 - Initial Settlement Agreement

§403.221 - Final Settlement Agreement

§403.222 - Referral to the State Office of Administrative Hearings

§403.223 - Use of Assisted Negotiation Processes

§403.301 - Historically Underutilized Businesses

§403.401 - Use of Commission Motor Vehicles

§403.501 - Custody and Use of Criminal History Record Information

§403.600 - Complaint Review Process

§403.700 - Employee Tuition Reimbursement

§403.701 - Family Leave Pool

§403.800 - Savings Incentive Program

The Commission will assess whether the reasons for initially adopting each of these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations, and whether it reflects current procedures of the Commission.

Written comments pertaining to this rule review may be submitted by mail to Deanne Rienstra, Special Counsel, at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.*

The deadline for comments is 30 days after publication of this notice in the *Texas Register.* Proposed changes to any of these rules as a result of the rule review will be published as separate rulemaking proceedings in the Proposed Rules section of the *Texas Register* at a later date. Any proposed rule changes will be open for public comment prior to final adoption or repeal by the Commission, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202303812
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 13, 2023

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 104, Children Participating in Rodeos

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 104, Children Participating in Rodeos, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 104" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202303852
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: October 17, 2023

Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 87, Ombudsman Services

Subchapter A Office of The Ombudsman

Subchapter B Ombudsman Managed Care Assistance

Subchapter C Ombudsman for Children and Youth in Foster Care

Subchapter D Ombudsman for Behavioral Health

Subchapter E Intellectual or Developmental Disability Ombudsman

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 87, Ombudsman Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 87" in the subject line. The deadline for comments is on or before 5:00 p.m. central time

on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202303851
Jessica Miller
Director, Rules Coordination Office
Health and Human Services Commission
Filed: October 17, 2023

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 331, LIDDA Service Coordination

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 331, LIDDA Service Coordination, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 331" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202303850
Jessica Miller
Director, Rules Coordination Office
Health and Human Services Commission
Filed: October 17, 2023

Adopted Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 3, Definitions, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1157); and an extension of the public comment period was published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1875).

The review assessed whether the initial reasons for adopting the rules continue to exist, and TCEQ has determined that those reasons exist. The rules in Chapter 3 are required to ensure various terms used in TCEQ's rules are consistently used.

Public Comment

The public comment period closed on April 14, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 3 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202303809
Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 13, 2023

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 118, Control of Air Pollution Episodes, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intention to Review these rules in the May 19, 2023, issue of the *Texas Register* (48 TexReg 2581).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 118 were developed to implement state law regarding air pollution episodes. Specifically, the chapter establishes the actions and corresponding procedures necessary for the commission to take in response to generalized or localized air pollution episodes for the protection of human health or safety. Chapter 118 requires owners or operators of major stationary sources in El Paso, Galveston, Harris, Jefferson, and Orange Counties that emit 100 tons or more of any specified pollutant to prepare and maintain an emission reduction plan. In addition, the chapter requires TCEQ to prepare an air pollution episode contingency plan with detailed procedures for notification to the public and public officials, actions required by TCEQ and local air pollution control personnel, and transmission of information to contiguous states as may be necessary.

In addition to implementing state law, the rules in Chapter 118 are needed for compliance with federal law, specifically federal Clean Air Act §110(a)(2)(G) and 40 Code of Federal Regulations Part 51, Subpart H, relating to the requirements for a contingency plan regarding air pollution emergency episodes.

Public Comment

The public comment period closed on June 20, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 118 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202303829
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 13, 2023

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code Chapter 292, Special Requirements for Certain Districts and Authorities, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the May 19, 2023, issue of the *Texas Register* (48 TexReg 2581).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 292 are required because they contain general policy for receipt of independent management audits by districts and authorities specified in Chapter 292, Subchapter A. These rules are needed to implement state law including the Texas Constitution, Article III, §52 and Article XVI, §59 and Texas Water Code (TWC), Chapter 12, which provides for a continuing right of supervision of districts and authorities, and TWC, Chapter 49, which specifies that districts must adopt specific policies.

Public Comment

The public comment period closed on June 20, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 292 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202303808
Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 13, 2023

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 336, Radioactive Substance Rules, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the May 19, 2023, issue of the *Texas Register* (48 TexReg 2582).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 336 are required to fulfill the duties placed on TCEQ by Texas Health and Safety Code, Chapter 401 and to enable Texas to maintain Agreement State status under the Atomic Energy Act of 1954. TCEQ identified changes that may be addressed during future rulemakings.

Public Comment

The public comment period closed on June 20, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 336 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202303827
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 13, 2023

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §21.52(a)(2)(C)

TEXAS FIRST EARLY HIGH SCHOOL COMPLETION PROGRAM
Subject Area Assessments and Benchmarks

ASSESSMENT INSTRUMENT	**ENGLISH SUBJECT AREA**	MS	**MATH SUBJECT AREA**	MS	**SCIENCE SUBJECT AREA** Biology, Physics, Chemistry, or other science	MS	**SOCIAL STUDIES SUBJECT AREA** History, Government, Economics, Psychology, or other social studies	MS	**LANGUAGE OTHER THAN ENGLISH SUBJECT AREA** World language or Computer Science	MS
SAT	EBRW	480	Math	530	SAT ST	700	SAT ST	690	SAT ST	730
ACT	English	18	Math	22	Science	23	Reading	22	--	--
PSAT/NMSQT	EBRW	460	Math	510	--	--	--	--	--	--
ACT – Plan	English	19	Math	19	Science	20	Reading	18	--	--
AP	English	3	Math	3	AP ST	3	AP ST	3	AP ST	3
CLEP	English	50	Math	50	CLEP ST	50	CLEP ST	50	CLEP ST	50
IB	Language/ Literature	4	Math	4	Sciences ST	4	Individuals and Societies ST	4	Language Acquisition ST	4
TSIA	Reading	351 +4E	Math	450	--	--	--	--	--	--
TSIA2 GED	ELAR English	945 ± 5E 165	Math Math	950 165	-- Science	-- 165	-- Social Studies	-- 165	-- --	-- --
FLATS										P (Pass) 101, 102, or 201

Gray Column indicates **minimum score (MS)**
ST = Subject Test
E= Essay

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§ 303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/23/23 - 10/29/23 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/23/23 - 10/29/23 is 18.00% for commercial[2] credit.

The postjudgment interest rate as prescribed by §304.003 for the period of 11/01/23 - 11/30/23 is 8.50%.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202303855
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 18, 2023

♦ ♦ ♦

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Priority Postal Credit Union (Pasadena) seeking approval to merge with Essential Credit Union (Baton Rouge, LA), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202303861
Michael S. Riepen
Commissioner
Credit Union Department
Filed: October 18, 2023

♦ ♦ ♦

Application to Expand Field of Membership

Notice is given that the following application have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Southwest 66 Credit Union, Odessa, Texas, to expand its field of membership. The proposal would permit members of the Cornerstone Credit Union Foundation, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202303860
Michael S. Riepen
Commissioner
Credit Union Department
Filed: October 18, 2023

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 30, 2023.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **November 30, 2023.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, pro-

vides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 4JC PARTNERS, LP; DOCKET NUMBER: 2023-0134-WQ-E; IDENTIFIER: RN110597747; LOCATION: Copperas Cove, Lampasas County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR15931T, Part III, Section F.2(a)ii, by failing to properly select, install, and maintain control measures according to the manufacturer's or designer's specifications; and 30 TAC §305.125(1), TWC, §26.121(a), and TPDES General Permit Number TXR15931T, Part III, Section F.6(d), by failing to remove accumulations of sediment at a frequency that minimizes off-site impacts; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Shane Glantz, (325) 698-6124; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Big Sky Municipal Utility District; DOCKET NUMBER: 2023-0358-MWD-E; IDENTIFIER: RN109222414; LOCATION: Krum, Denton County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015479001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0015479001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at intervals specified in the permit; PENALTY: $4,800; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,840; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: CELANESE LTD.; DOCKET NUMBER: 2021-0113-AIR-E; IDENTIFIER: RN100227016; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(G) and (H) and §122.143(4), Federal Operating Permit (FOP) Number O1893, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; 30 TAC §101.201(c) and §122.143(4), FOP Number O1893, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 52041, 53313, and 55046, Special Conditions Number 1, FOP Numbers O1893 and O1986, GTC and STC Numbers 20 and 29, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $57,641; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $27,309; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Austin; DOCKET NUMBER: 2021-1043-MWD-E; IDENTIFIER: RN101607901; LOCATION: Austin, Travis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), Texas Pollutant Discharge Elimination System Permit Number WQ0010543011, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; and Texas Health and Safety Code, §361.603(b)(2) and TWC, §5.702, by failing to pay outstanding Voluntary Cleanup Program fees for TCEQ Financial Administration Account Number 0901057 for Fiscal Year 2021; PENALTY: $13,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $13,125; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: City of Sinton; DOCKET NUMBER: 2021-1301-MWD-E; IDENTIFIER: RN101916740; LOCATION: Sinton, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010055001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $73,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $58,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78412-5839, (361) 881-6900.

(6) COMPANY: DOUBLE DIAMOND, INCORPORATED; DOCKET NUMBER: 2023-0046-WR-E; IDENTIFIER: RN110900651; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: golf course and residential home site; RULES VIOLATED: 30 TAC §297.11 and §304.15(a) and (b), and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, impounding, storing, taking, or using state water; PENALTY: $4,550; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Halawa View Apartments Gp; DOCKET NUMBER: 2022-0539-PWS-E; IDENTIFIER: RN111472874; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher groundwater license; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $5,440; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Joe Bland Construction, L.P.; DOCKET NUMBER: 2022-0995-EAQ-E; IDENTIFIER: RN111447017; LOCATION: Florence, Williamson County; TYPE OF FACILITY: quarry; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to gain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(9) COMPANY: North Dallas Honey Company, L.P.; DOCKET NUMBER: 2022-0020-WQ-E; IDENTIFIER: RN111348561; LOCATION: McKinney, Collin County; TYPE OF FACILITY: honey processing facility; RULE VIOLATED: TWC, §26.121(a)(1) and (d), by failing to prevent an unauthorized discharge of industrial waste into or adjancent to any water in the state; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Rick Hartcraft; DOCKET NUMBER: 2021-1512-AIR-E; IDENTIFIER: RN109129221; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

TRD-202303815
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 13, 2023

Amended Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 173955

APPLICATION. Holcim-SOR Inc, 15900 Dooley Road, Addison, Texas 75001-4243 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 173955 to authorize the operation of a permanent concrete batch plant with enhanced controls. The facility is proposed to be located at the following driving directions: from the intersection of Texas State Highway 289 and Main Street travel approximately 2.5 miles west to the intersection of West Main Street and Wall Street Road and turn right. The site will be located approximately one mile north on the west side of Wall Street Road, Gunter, Grayson County, Texas 75058. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-96.78201,33.46951&level=13. This application was submitted to the TCEQ on September 14, 2023. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on October 4, 2023.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Wednesday, November 15, 2023, at 6:00 p.m.

Van Alstyne Senior Center

148 South Main Drive

Van Alstyne, Texas 75495

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Holcim - SOR, Inc., 15900 Dooley Road, Addison, Texas 75001-4243, or by calling Ms. Riley Kirby, Environmental Manager at (469) 260-8561.

Amended Notice Issuance Date: October 13, 2023

TRD-202303867
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2023

Combined Notice of Public Meeting and Application and Preliminary Decision for Air Quality Permits Proposed Air Quality Permit Numbers 170854, PSDTX1614, HAP81, and GHGPSDTX227

APPLICATION AND PRELIMINARY DECISION. Energy Transfer Petrochemical Holdings, LLC, 8111 Westchester Dr. Suite 600, Dallas, Texas 75225, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of proposed State Air Quality Permit 170854, issuance of Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX1614, issuance of Hazardous Air Pollutant Major Source [FCAA §112(g)] Permit HAP81, and issuance of Greenhouse Gas (GHG) PSD Air Quality Permit GHGPSDTX227 for emissions of GHGs, which would authorize construction of the Energy Transfer Petrochemicals Facility located at 2300 North Twin City Highway, Nederland, Jefferson County,

Texas 77627. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/air/newsourcereview/airpermits- pendingpermit-apps. The proposed facility will emit the following air contaminants in a significant amount: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfur dioxide, sulfuric acid mist, and greenhouse gases. The proposed facility will emit the following air contaminants which are significant for the FCAA § 112(g) action: hazardous air pollutants. In addition, the facility will emit the following air contaminants: hydrogen sulfide and ammonia.

The degree of PSD increment predicted to be consumed by the proposed facility and other increment-consuming sources in the area is as follows:

Sulfur Dioxide

Maximum Averaging Time	Maximum Increment Consumed (µg/m³)	Allowable Increment (µg/m³)
3-hour	181	512
24-hour	81	91
Annual	5	20

PM10

Maximum Averaging Time	Maximum Increment Consumed (µg/m³)	Allowable Increment (µg/m³)
24-hour	8	30

Nitrogen Dioxide

Maximum Averaging Time	Maximum Increment Consumed (µg/m³)	Allowable Increment (µg/m³)
Annual	22	25

PM2.5

Maximum Averaging Time	Maximum Increment Consumed (µg/m³)	Allowable Increment (µg/m³)
24-hour	8.65	9
Annual	2.73	4

This application was submitted to the TCEQ on October 28, 2022. The executive director has determined that the emissions of air contaminants from the proposed facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Beaumont regional office, and at Marion and Ed Hughes Public Library, 2712 Nederland Avenue, Nederland, Jefferson County, Texas, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas.

INFORMATION AVAILABLE ONLINE. These documents are accessible through the Commission's Web site at www.tceq.texas.gov/goto/cid: the executive director's preliminary decision which includes the draft permit, the executive director's preliminary determination summary, air quality analysis, and, once available, the executive director's response to comments and the final decision on this application. Access the Commissioners' Integrated Database (CID) using the above link and enter the permit number for this application. The public location mentioned above provides public access to the internet. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-93.999496,29.993133&level=13.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case

hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, November 30, 2023 at 7:00 p.m.

Nederland Performing Arts Center at Nederland High School

2101 N 18th Street

Nederland, Texas 77627

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

OPPORTUNITY FOR A CONTESTED CASE HEARING. You may request a contested case hearing regarding the portions of the application for State Air Quality Permit Number 170854, for PSD Air Quality Permit Number PSDTX1614, and for Hazardous Air Pollutant Major Source [FCAA §112(g)] Permit HAP81. There is no opportunity to request a contested case hearing regarding the portion of the application for GHG PSD Air Quality Permit Number GHGPSDTX227. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A person who may be affected by emissions of air contaminants, other than GHGs, from the facility is entitled to request a hearing. A contested case hearing request must include the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" (4) a specific description of how you would be adversely affected by the application and air emissions from the facility in a way not common to the general public; (5) the location and distance of your property relative to the facility; (6) a description of how you use the property which may be impacted by the facility; and (7) a list of all disputed issues of fact that you submit during the comment period. If the request is made by a group or association, one or more members who have standing to request a hearing must be identified by name and physical address. The interests the group or association seeks to protect must also be identified. You may also submit your proposed adjustments to the application/permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing within 30 days following this notice to the Office of the Chief Clerk, at the address provided in the information section below.

A contested case hearing will only be granted based on disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decisions on the application. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. Issues that are not submitted in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application for the portion of the application for GHG PSD Air Quality Permit GHGPSDTX227. If a timely contested case hearing request is not received or if all timely contested case hearing requests are withdrawn regarding State Air Quality Permit Number 170854, for PSD Air Quality Permit Number PSDTX1614, and for Hazardous Air Pollutant Major Source [FCAA §112(g)] Permit HAP81 the executive director may issue final approval of the application. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application and will be posted electronically to the CID. If any timely hearing requests are received and not withdrawn, the executive director will not issue final approval of the State Air Quality Permit Number 170854, for PSD Air Quality Permit Number PSDTX1614, Hazardous Air Pollutant Major Source [FCAA §112(g)] Permit HAP81 and will forward the application and requests to the Commissioners for their consideration at a scheduled commission meeting.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Energy Transfer Petrochemical Holdings LLC at the address stated above or by calling Ms. Celia Chu, Project Manager, Environmental at (713) 989-6428.

Notice Issuance Date: October 12, 2023

TRD-202303872
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2023

Combined Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) for TPDES Permit for Municipal Wastewater Renewal with Substantial Modification of Pretreatment Program

Notice Issued October 16, 2023

APPLICATION AND PRELIMINARY DECISION. City of Round Rock, City of Cedar Park, and City of Austin, 212 East Main Street, Round Rock, Texas 78664, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010264002, which authorizes the discharge of treated domestic wastewater at an

annual average flow not to exceed 40,000,000 gallons per day. A substantial modification to the approved pretreatment program has been included. TCEQ received this application on November 14, 2022.

This combined notice is being issued because the NORI did not include mention of the substantial modification to the approved pretreatment program. The correction is noted in bold.

The facility is located at 3939 East Palm Valley Boulevard, Round Rock, in Williamson County, Texas 78665. The treated effluent is discharged directly to Brushy Creek in Segment No. 1244 of the Brazos River Basin. The designated uses for Segment No. 1244 are primary contact recreation, public water supply (PWS), aquifer protection, and high aquatic life use. Aquifer protection use applies to the contributing, recharge, and transition zones of the Edwards Aquifer; however, this facility's discharge is not located in any of the listed zones. Portions of Segment No. 1244 that are outside of the contributing, recharge, and transition zones of the Edwards Aquifer no longer have the PWS designation in TCEQ's 2022 TSWQS. The EPA accepted this change in a letter to TCEQ dated April 26, 2023. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.620833,30.526666&level=18

The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The request for approval complies with both federal and state requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication. Approval of the request for modification to the approved pretreatment program will allow the applicant to revise their technically based local limits and ordinances which incorporate such revisions. The following treatment work facilities will be subject to the requirements of the pretreatment program: TPDES Permit Nos. WQ0010264001 and WQ0010264002.

The TCEQ Executive Director has completed the technical review of the application and the pretreatment program substantial modification and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The Executive Director has also made a preliminary decision that the requested substantial modification to the approved pretreatment program, if approved, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, draft permit, and pretreatment program substantial modification are available for viewing and copying at the Utilities and Environmental Services Building, 3400 Sunrise Road, Round Rock, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application or the substantial modification of the pretreatment program. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application or the application for the substantial modification of the pretreatment program. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or the application for substantial modification of the pretreatment program, or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. There is no opportunity to request a contested case hearing on the application for substantial modification of the pretreatment program. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period. TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days from the date of newspaper publication of this notice.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application, the application for substantial modification of the pretreatment program, or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from the City of Round Rock, City of Cedar Park, and City of Austin at the address stated above or by calling Mr. Michael Thane, P.E., Director, Utilities and Environmental Services, City of Round Rock, at (512) 218-3236.

TRD-202303868
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2023

Notice of District Petition

Notice issued October 16, 2023

TCEQ Internal Control No. D-08252023-054; 05 Ranch Investments, LLC, a Texas limited liability company, (Petitioner) filed a petition for creation of Burford Ranch Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 232.00 acres located within Williamson County, Texas; and (4) a portion of the land within the proposed District is within the extraterritorial jurisdiction of the City of Coupland. The remainder of the land to be included within the proposed District is within the unincorporated area of Williamson County and is not within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) design, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) design, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of waters; (4) design, acquire, construct, finance, issue bonds for, operate, maintain, and convey to the state, county, or a municipality for operation and maintenance, roads or any improvement in aid of the roads; and (5) acquire, own, develop, construct, improve, manage, maintain, and operate parks and recreational facilities, and to accomplish the design, construction, acquisition, improvement, maintenance, and operation of such additional facilities, systems, and plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $8,090,000 ($2,850,000 for water and drainage, $3,640,000 for roads, and $1,600,000 for recreational).

The Property is located partially within the extraterritorial jurisdiction of the City of Coupland, Williamson County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petition states that the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. The Petition states that after more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the proposed District. The information provided indicates that the 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the proposed District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202303866
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2023

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 30, 2023.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 30, 2023.** The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Gerardo Castaneda; DOCKET NUMBER: 2021-0983-MSW-E; TCEQ ID NUMBER: RN111277158; LOCATION: north of United States Highway 62, 21.1 miles west of the intersection with United States Highway 385 in Seminole, Gaines County; TYPE OF FACILITY: municipal solid waste disposal site; RULES VIOLATED: Texas Health and Safety Code, §371.041, 30 TAC §324.4(2)(B) and (C), and 40 Code of Federal Regulations (CFR) §279.43(a), by failing to prevent an unauthorized discharge of used oil; 30 TAC §§324.1, 324.4(1), and 324.15, and 40 CFR §279.22(d), by failing to clean up and manage properly a release of used oil; and 30 TAC §324.11(2), by failing to register with the commission and the United States Environmental Protection Agency prior to conducting used oil and used oil filter activities; PENALTY: $6,203; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Midland Regional Office, 9900 West Interstate Highway 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(2) COMPANY: SRC Water Supply Inc; DOCKET NUMBER: 2020-1072-PWS-E; TCEQ ID NUMBER: RN101174894; LOCATION: 22 Christi Lane, Krum, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of cyanide sampling to the executive director (ED) for the January 1, 2018 - December 31, 2018 monitoring period; 30 TAC §290.108(e), by failing to provide the results of radionuclides sampling to the ED for the January 1, 2013 - December 31, 2018 monitoring period; 30 TAC §290.106(e), by failing to provide the results of nitrite sampling to the ED for the January 1, 2019 - December 31, 2019 monitoring period; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report to the ED by the tenth day of the month following the end of each quarter for the third quarter of 2019 through the first quarter of 2020; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 90610016 for Fiscal Years 2017 - 2019; PENALTY: $1,388; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: SRC Water Supply Inc; DOCKET NUMBER: 2021-0327-PWS-E; TCEQ ID NUMBER: RN101240331; LOCATION: the dead end of Silver Ridge Drive, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 91010877 for Fiscal Years 2017 - 2019; PENALTY: $250; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: SRC Water Supply Inc; DOCKET NUMBER: 2021-0331-PWS-E; TCEQ ID NUMBER: RN102676764; LOCATION: 21318 Binford Circle near Waller, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 91011551 for Fiscal Years 2018 - 2020; PENALTY: $300; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: SRC Water Supply Inc; DOCKET NUMBER: 2021-1047-PWS-E; TCEQ ID NUMBER: RN101225753; LOCATION: 0.8 miles south of the intersection of Wolf Lane and State Highway 6 near Valley Mills, McLennan County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(q)(1), by failing to provide a copy of the boil water notice (BWN) to the executive director (ED) within 24 hours after issuance by the facility and a signed Certificate of Delivery to the ED within ten days after issuance of the BWN; 30 TAC §290.44(d) and §290.46(r) and TCEQ Agreed Order Docket Number 2020-0968-PWS-E, Ordering Provision Number 3.a.i., by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as firefighting; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 91550139 for Fiscal Years 2018 - 2021; and TWC, §5.702 and 30 TAC §291.76, by failing to

pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12258 for calendar years 2017 - 2021; PENALTY: $5,400; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-202303847
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 17, 2023

Notice of Request for Public Comment and Notice of a Public Meeting on One Draft Total Maximum Daily Load for Indicator Bacteria in Cotton Bayou Tidal

The Texas Commission on Environmental Quality (TCEQ) has made available for public comment one draft Total Maximum Daily Load (TMDL) for indicator bacteria in Cotton Bayou Tidal, of the Trinity River Basin, within Chambers County.

The purpose of the meeting is to provide the public an opportunity to comment on the draft TMDL in one assessment unit: Cotton Bayou Tidal 0801C_01.

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, linkage analysis, margin of safety, pollutant load allocation, seasonal variation, public participation, and implementation and reasonable assurance.

After the public comment period, TCEQ may revise the draft TMDL if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption, the final TMDL and a response to all comments received will be made available on TCEQ's website. The TMDL will then be submitted to the United States Environmental Protection Agency (EPA) Region 6 office for final action. Upon approval by EPA, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

Public Meeting and Testimony. The public meeting for the draft TMDL will be held at the **Sam & Carmena Goss Memorial Branch Library, 1 John Hall Dr., Mont Belvieu, Texas 77580,** on **November 14, 2023, at 6:00 p.m.**

Please periodically check *https://www.tceq.texas.gov/waterquality/tmdl/nav/124-cottonbayou-bacteria* before the meeting date for meeting related updates.

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft TMDL may be submitted to Wyatt Eason, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted to https://tceq.commentinput.com/. File size restrictions may apply to comments submitted via the TCEQ Public Comments system. All written comments must be received at TCEQ by midnight on November 30, 2023 and should reference *One Total Maximum Daily Load for Indicator Bacteria in Cotton Bayou Tidal.*

For further information regarding the draft TMDL, please contact Wyatt Eason at *Wyatt.Eason@tceq.texas.gov.* The draft TMDL can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/nav/124-cottonbayou-bacteria.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Wyatt Eason at *Wyatt.Eason@tceq.texas.gov.* Requests should be made as far in advance as possible.

TRD-202303830
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 13, 2023

Notice of Request for Public Comment and Notice of a Public Meeting on Two Draft Total Maximum Daily Loads for Indicator Bacteria in Chocolate Bayou

The Texas Commission on Environmental Quality (TCEQ) has made available for public comment two draft Total Maximum Daily Loads (TMDLs) for indicator bacteria in Chocolate Bayou, of the San Jacinto-Brazos Coastal Basin within Brazoria and Fort Bend counties.

The purpose of the meeting is to provide the public an opportunity to comment on the draft TMDLs in two assessment units: Chocolate Bayou Tidal 1107_01 and Chocolate Bayou Above Tidal 1108_01.

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, linkage analysis, margin of safety, pollutant load allocation, seasonal variation, public participation, and implementation and reasonable assurance.

After the public comment period, TCEQ may revise the draft TMDLs if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption, the final TMDLs and a response to all comments received will be made available on TCEQ's website. The TMDLs will then be submitted to the United States Environmental Protection Agency (EPA) Region 6 office for final action. Upon approval by EPA, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

Public Meeting and Testimony. The public meeting for the draft TMDLs will be held at the **Alvin Public Library, 105 S Gordon St., Alvin, Texas 77511,** on **November 13, 2023, at 6:30 p.m.**

Please periodically check *https://www.tceq.texas.gov/waterquality/tmdl/nav/chocolate-bayou* before the meeting date for meeting related updates.

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft TMDLs may be submitted to Jazmyn Milford, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted to https://tceq.commentin-

put.com/. File size restrictions may apply to comments submitted via the TCEQ Public Comments system. All written comments must be received at TCEQ by midnight on November 30, 2023 and should reference *Two Total Maximum Daily Loads for Indicator Bacteria in Chocolate Bayou.*

For further information regarding the draft TMDLs, please contact Jazmyn Milford at *Jazmyn.Milford@tceq.texas.gov.* The draft TMDLs can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/nav/chocolate-bayou.*

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Jazmyn Milford at *Jazmyn.Milford@tceq.texas.gov.* Requests should be made as far in advance as possible.

TRD-202303831
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 13, 2023

Notice of Water Quality Application

The following notice was issued on October 12, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS MAILED.

INFORMATION SECTION

Air Liquide Large Industries U.S. LP, which operates Air Liquide - Nederland Air Separation Unit, an air separation facility, has applied for a minor amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001595000 to relocate Outfall 002 to the other side of the receiving water body. The draft permit authorizes the discharge of treated cooling tower blowdown, water treatment wastes, floor drain wastewater (i.e., incidental oil/water from equipment within the compressor building and stormwater from the process equipment near the compressor building), and miscellaneous equipment cooling water at a daily average flow not to exceed 175,000 gallons per day via Outfall 002. The facility is located at 5100 North Twin City Highway, near the City of Nederland, Jefferson County, Texas 77627.

TRD-202303865
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2023

Notice of Water Quality Application

The following notice was issued on October 17, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (10) DAYS FROM THE DATE THIS NOTICE IS MAILED.

INFORMATION SECTION

Travis County Municipal Utility District No. 22 has applied for a minor amendment to the Texas Commission on Environmental Quality permit No. WQ0015201001, to authorize a decrease in the daily average flow from 150,000 gallons per day to 100,000 gallons per day in the Interim II phase. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day via public access subsurface area drip dispersal system with a minimum total surface area of 104.79 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 3.2 miles west of the intersection of State Highway 71 and Hamilton Pool Road, in Travis County, Texas 78738.

TRD-202303869
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2023

Notice of Water Quality Application

The following notice was issued on October 17, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS MAILED.

INFORMATION SECTION

Tabor Ranch, LLC, and Beall Legacy Partners, L.P. has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0016134001 to authorize the revision of the permitted flow in the Interim I and Interim II phases. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located approximately 460 feet southwest of the intersection of George Owens Road and U.S. Highway 380, in Denton County, Texas 76259.

TRD-202303870
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2023

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 11, 2023, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Ursula Retail, LLC dba Pump N Shop 12; SOAH Docket No. 582-23-13319; TCEQ Docket No. 2021-1579-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Ursula Retail, LLC dba Pump N Shop 12 on a date and time to be determined by the Office of the Chief Clerk. The agenda meeting may be held in person in Room 201S of Building E at the Commission's offices located at 12100 Park 35 Circle in Austin, Texas, virtually, or both in person and virtually. To confirm where and how the meeting will be held, please visit the Commissioners' Agenda webpage at https://www.tceq.texas.gov/goto/agendas eight days before the Agenda. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be

submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-202303871
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 18, 2023

Texas Superfund Registry 2023

BACKGROUND

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361, to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). Pursuant to THSC, §361.181, the commission must update the state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC, §361.184(a) or listed in accordance with THSC, §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to remove facilities that have been deleted in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

SITES LISTED ON THE STATE SUPERFUND REGISTRY

The state Superfund registry identifying those facilities that are *listed* and have been determined to pose an imminent and substantial endangerment are set out in descending order of Hazard Ranking System (HRS) scores as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (United States Highway 80) in Colorado City, Mitchell County: tank farm and refinery.

2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

3. Camtraco Enterprises, Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County: fuel storage/fuel blending/distillation.

4. Pioneer Oil Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

5. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

6. Voda Petroleum Inc. Located approximately 1.25 miles west of the intersection of Farm-to-Market Road (FM) 2275 (George Richey Road) and FM 3272 (North White Oak Road), 2.6 miles north-northeast of Clarksville City, Gregg County: waste oil recycling.

7. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

8. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

9. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

10. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

11. McBay Oil and Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

12. Materials Recovery Enterprises (MRE). Located about four miles southwest of Ovalo, near United States Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.

13. Hu-Mar Chemicals. Located north of McGlothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

14. American Zinc. Located approximately 3.5 miles north of Dumas on United States Highway 287 and five miles east of Dumas on Farm Road 119, Moore County: zinc smelter.

15. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating and municipal waste.

16. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

17. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

18. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

19. Ballard Pits. Located at the end of Ballard Road (also known as Ballard Lane), west of its intersection with County Road 73, northwest of Robstown, Nueces County: disposal of oil field drilling muds and petroleum wastes.

20. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

21. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

22. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

23. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

24. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

25. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

26. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

27. Bailey Metal Processors, Inc. Located at 509 San Angelo Highway (United States Highway 87), in Brady, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

28. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

29. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

SITES PROPOSED FOR LISTING ON THE STATE SUPERFUND REGISTRY

Those facilities that may pose an imminent and substantial endangerment and that have been *proposed* to the state Superfund registry are set out in descending order of HRS scores as follows.

1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of FM Road 1431 in the community of Kingsland, Llano County: former coin-operated dry cleaning facility.

2. Angus Road Groundwater Site. Located beneath the 4300 block of Angus Road, west of Odessa, Ector County: groundwater plume of unknown source.

3. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

4. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of United States Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

5. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of FM 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

6. Process Instrumentation and Electrical (PIE). Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.

7. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

8. Avinger Development Company (ADCO). Located on the south side of State Highway 155, approximately 0.25 mile east of the intersection with State Highway 49, Avinger, Cass County: wood treatment.

9. Wigginsville Road Groundwater Plume. Located on the eastern edge of the Conroe Oilfield, southeast of Conroe, Montgomery County: groundwater plume of an unknown origin.

10. Moss Lake Road Groundwater Site. Located approximately 0.25 mile north of the intersection of North Moss Lake Road and Interstate Highway 20, approximately four miles east of Big Spring, Howard County: groundwater plume of an unknown source.

11. Cass County Treating Company. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

12. Tucker Oil Refinery/Clinton Manges Oil Refinery. Located on the east side of United States Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

13. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

14. Scrub-A-Dubb Barrel Company. Located at 1102 North Ash Avenue, and at 1209 North Ash Avenue, Lubbock, Lubbock County: former drum cleaning and reconditioning business.

CHANGES SINCE THE OCTOBER 2022 SUPERFUND REGISTRY PUBLICATION

The commission listed Bailey Metal Processors, Inc. to the state Superfund registry. There were no sites proposed to or deleted from the state Superfund registry since its last publication, in the *Texas Register* on October 28, 2022 (47 TexReg 7338).

SITES DELETED FROM THE STATE SUPERFUND REGISTRY

The commission has *deleted* 57 sites from the state Superfund registry.

Aluminum Finishing Company, Harris County;

Archem Company/Thames Chelsea, Harris County;

Aztec Ceramics, Bexar County;

Aztec Mercury, Brazoria County;

Barlow's Wills Point Plating, Van Zandt County;

Bestplate, Inc., Dallas County;

Butler Ranch, Karnes County;

Cox Road Dump Site, Liberty County;

Crim-Hammett, Rusk County;

Dorchester Refining Company, Titus County;

Double R Plating Company, Cass County;

El Paso Plating Works, El Paso County;

EmChem Corporation, Brazoria County;

Force Road Oil, Brazoria County;

Gulf Metals Industries, Harris County;

Hagerson Road Drum, Fort Bend County;

Harkey Road, Brazoria County;

Hart Creosoting, Jasper County;

Harvey Industries, Inc., Henderson County;

Hicks Field Sewer Corp., Tarrant County;

Higgins Wood Preserving, Angelina County;

Hi-Yield, Hunt County;

Houston Lead, Harris County;

Houston Scrap, Harris County;

J.C. Pennco Waste Oil Service, Bexar County;

James Barr Facility, Brazoria County;

Kingsbury Metal Finishing, Guadalupe County;

LaPata Oil Company, Harris County;

Lyon Property, Kimble County;

McNabb Flying Service, Brazoria County;

Melton Kelly Property, Navarro County;

Munoz Borrow Pits, Hidalgo County;

Newton Wood Preserving, Newton County;

Niagara Chemical, Cameron County;

Old Lufkin Creosoting, Angelina County;

Permian Chemical, Ector County;

Phipps Plating, Bexar County;

PIP Minerals, Liberty County;

Poly-Cycle Industries, Ellis County;

Poly-Cycle Industries, Jacksonville, Cherokee County;

Rio Grande Refinery I, Hardin County;

Rio Grande Refinery II, Hardin County;

Rogers Delinted Cottonseed-Colorado City, Mitchell County;

Rogers Delinted Cottonseed-Farmersville, Collin County;

Sampson Horrice, Dallas County;

SESCO, Tom Green County;

Shelby Wood Specialty, Inc., Shelby County;

Sherman Foundry, Grayson County;

Solvent Recovery Services, Fort Bend County;

South Texas Solvents, Nueces County;

State Marine, Jefferson County;

Stoller Chemical Company, Hale County;

Texas American Oil, Ellis County;

Thompson Hayward Chemical, Knox County;

Waste Oil Tank Services, Harris County;

Woodward Industries, Inc., Nacogdoches County; and

Wortham Lead Salvage, Henderson County.

REMOVAL FROM INCLUSION

The Lindsay Post Company Site, located in Alto, Cherokee County, was removed from inclusion on the registry as a site that was proposed for listing in the January 22, 1988, issue of the *Texas Register* (13 TexReg 427).

How to Access Agency Records

Agency records for these sites may be accessible for viewing or copying by contacting the TCEQ Central File Room (CFR) Customer Service Center, Building E, North Entrance, at 12100 Park 35 Circle, Austin, Texas 78753, phone number (512) 239-2900, fax (512) 239-1850, or e-mail cfrreq@tceq.texas.gov. CFR Customer Service Center staff will assist with providing program area contacts for records not maintained in the CFR. Accessible parking is available on the east side of Building D, located near building ramps, between Buildings D and E. There is no charge for viewing the files, however, copying of file information is subject to payment of a fee.

Inquiries concerning the agency Superfund program records may also be directed to Superfund staff at the Superfund toll-free line (800) 633-9363 or e-mail *superfnd@tceq.texas.gov.*

TRD-202303816
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 13, 2023

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Payment Rates for Medicaid Community Hospice and Physician Services

Notice of Public Hearing on Proposed Payment Rates for Medicaid Community Hospice and Physician Services, Effective Retroactive to October 1, 2023; and Rate Actions for Emergency Response Services (ERS) rates under STAR+PLUS non-Home and Community-Based Services (HCBS), STAR+PLUS HCBS, Community First Choice (CFC), and Title XX programs, and STAR Kids/STAR Health Medically Dependent Children Program (MDCP) Out-of-Home Respite rates, effective January 1, 2024.

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 14, 2023, at 9:00 a.m. (Central Standard Time or CST) to receive public comments on proposed Medicaid and Non-Medicaid payment rates.

This hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL: https://attendee.gotowebinar.com/register/44179910691418972

After registering, you will receive a confirmation email containing information about joining the webinar.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 1.401 in the North Austin Complex Building, 4601 W. Guadalupe St., Austin, Texas 78751, or they may access a live stream of the meeting at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. For the live stream, select the "North Austin Complex Live" tab. A recording of the hearing will be archived and accessible on demand at the same website under the "Archived" tab. The hearing will be held in compliance with Texas Human Resources Code Section 32.0282, which requires public notice of and hearings on proposed reimbursements.

Proposal. HHSC proposes rate actions for the following services:

Effective October 1, 2023

Payment Rates for Medicaid Community Hospice and Physician Services

Effective January 1, 2024

ERS rates under STAR+PLUS non-HCBS, STAR+PLUS HCBS, CFC, and Title XX programs

STAR Kids/STAR Health MDCP Out-of-Home Respite

Methodology and Justification. The proposed payment rates for hospice care are authorized by Section 1814(i)(1)(C)(ii) of the Social Security Act, which outlines annual increases in payment rates for hospice care services. Federal fiscal year 2024 payment rates for Medicaid Community Hospice for routine home care, continuous home care, inpatient respite care, general inpatient care services, service intensity add-on, and physician services under the Medicaid Hospice Program, will follow the federal hospice payment regulations in Title 42 of the Code of Federal Regulations (CFR), Part 418, Subpart G, effective retroactive to October 1, 2023.

Payment for Physician Services under the Medicaid Hospice Program is aligned with Medicaid hospice rates calculated using the Medicare hospice methodology. Medicaid contractors pay the hospice an amount equivalent to 100 percent of the physician fee schedule for those Physician Services provided in settings other than Medicaid Community Hospice (42 CFR 418.304(b)).

The Provider Finance Department (PFD) proposes revising ERS rates following rate evaluation for these services and the available methodological documentation as part of the biennial fee review. ERS rates have not been updated since September 1, 2008. The current reimbursement methodology established in Title 1 of the Texas Administrative Code (TAC) §355.510, concerning Reimbursement Methodology for Emergency Response Services (ERS), is not supported by current

cost reports. PFD Long-term Services and Supports (LTSS) staff performed an informal market study to evaluate current fees for ERS services and reviewed ERS provider's billing information for two recent state fiscal years.

PFD proposes revising STAR Kids/STAR Health MDCP Out-of-Home Respite rates to accommodate changes to the bill code structure effective December 1, 2022, while also maintaining the current methodology of using 77 percent of Resource Utilization Group (RUG) rates, as required by 1 TAC §355.507. STAR Kids/STAR Health MDCP Out-of-Home Respite rates have not been updated since September 1, 2014. The proposed rates were calculated based on the weighted average methodological RUG III rate for Nursing Facilities (NF) and the methodological rates for ventilator and tracheostomy add-ons. The weighted average methodological RUG III rate was calculated using 2018 NF cost report data inflated to the 2024-2025 biennium. Methodological ventilator and tracheostomy add-ons were calculated using the methodology outlined in 1 TAC §355.307 and 2018 NF cost report data inflated to the 2024-2025 biennium.

Briefing Package. A briefing package describing the proposed payment rates will be available at https://pfd.hhs.texas.gov/rate-packets no later than October 27, 2023. Interested parties may obtain a copy of the briefing package before the hearing by contacting HHSC PFD by telephone at (737) 867-7817; by fax at (512) 730-7475; or by email at PFD LTSS@hhs.texas.gov. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to PFD LTSS@hhs.texas.gov. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact HHSC PFD by calling (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202303846
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 16, 2023

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Texas Higher Education Coordinating Board

Meeting of Negotiated Rulemaking Committee on Dual Credit

Date of Meeting: November 3, 2023

Start Time of Meeting: 9:30 a.m.

Location: Meeting will be held via video conference. A link to the video conference will be available at https://www.highered.texas.gov/

Additional Information Obtained From: Laurie Frederick, Convener, Laurie.Frederick@highered.texas.gov

Agenda:

1. Introductions

2. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not

3. Brief Overview of Roles and Responsibilities

a) Role of Facilitator

b) Role of Sponsor Agency

c) Role of Committee Members

4. Consideration and Possible Action to Approve Facilitator

5. Procedural Issues

a) Consideration and Possible Action to Approve Ground Rules

b) Consideration and Possible Action to Approve Definition of Consensus

6. Discussion of Draft Rule Language on Dual Credit

7. Consideration and Possible Action to Approve Proposed Rule Language on Dual Credit

Individuals who may require auxiliary aids or services for this meeting should contact Glenn Tramel, ADA Coordinator, at (512) 427-6193 at least five days before the meeting so that appropriate arrangements can be made.

All persons requesting to address the Committee regarding an item on this agenda should do so in writing at least 24 hours before the start of the meeting at Laurie.Frederick@highered.texas.gov. A toll-free telephone number, free-of-charge video conference link, or other means will be provided by which to do so.

TRD-202303857
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: October 18, 2023

♦ ♦ ♦

Meeting of Negotiated Rulemaking Committee on Texas Innovative Adult Career Education (ACE) Grant Program (Texas Education Code Chapter 136)

Date of Meeting: November 6, 2023

Start Time of Meeting: 9:30 a.m.

Location: Meeting will be held via video conference. A link to the video conference will be available at https://www.highered.texas.gov/

Additional Information Obtained From: Laurie Frederick, Convener, Laurie.Frederick@highered.texas.gov

Agenda:

1. Introductions

2. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not

3. Brief Overview of Roles and Responsibilities

a) Role of Facilitator

b) Role of Sponsor Agency

c) Role of Committee Members

4. Consideration and Possible Action to Approve Facilitator

5. Procedural Issues

a) Consideration and Possible Action to Approve Ground Rules

b) Consideration and Possible Action to Approve Definition of Consensus

6. Discussion of Draft Rule Language on Texas Innovative Adult Career Education Grant Program

7. Consideration and Possible Action to Approve Proposed Rule Language on Texas Innovative Adult Career Education Grant Program

Individuals who may require auxiliary aids or services for this meeting should contact Glenn Tramel, ADA Coordinator, at (512) 427-6193 at least five days before the meeting so that appropriate arrangements can be made.

All persons requesting to address the Committee regarding an item on this agenda should do so in writing at least 24 hours before the start of the meeting at Laurie.Frederick@highered.texas.gov. A toll-free telephone number, free-of-charge video conference link, or other means will be provided by which to do so.

TRD-202303856
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: October 18, 2023

Texas Department of Housing and Community Affairs

Announcement of the Public Comment Period for the Draft 2023 State of Texas Consolidated Plan Annual Performance Report - Reporting on Program Year 2022

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of a 15-day public comment period for the *State of Texas Draft 2023 Consolidated Plan Annual Performance Report - Reporting on Program Year 2022 (the Report)* as required by the U.S. Department of Housing and Urban Development (HUD). The Report is required, as part of the overall requirements, governing the State's consolidated planning process. The Report is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The 15-day public comment period begins Wednesday, November 1, 2022, and continues until 5:00 p.m. Austin Local Time on Wednesday, November 15, 2022.

The Report gives the public an opportunity to evaluate the performance of the past program year for five HUD programs: the Community Development Block Grant Program (CDBG) administered by the Texas Department of Agriculture (TDA), the Housing Opportunities for Persons with AIDS Program (HOPWA) administered by the Texas Department of State Health Services (DSHS), and the Emergency Solutions Grants (ESG), HOME Investment Partnerships, and National Housing Trust Fund programs, administered by TDHCA. The following information is provided for each of the programs covered in the Report: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting program goals and objectives.

In addition, the report provides a summary and analysis of four new HUD funded programs created in response to and to recover from the COVID-19 Pandemic. These new programs are CDBG-CV, ESG-CV, and HOME-ARP administered by TDHCA and HOPWA-CV administered by DSHS.

Beginning November 1, 2023, the Report will be available on the Department's website at http://www.tdhca.state.tx.us/public-comment.htm. A hard copy can be requested by contacting the Housing Resource Center at P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 475-3976.

Written comment should be sent by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, or by email to info@tdhca.state.tx.us.

TRD-202303849
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 17, 2023

Public Notice of Demolition/Reconstruction of Woodcrest Apartments

Woodcrest Apartments is an 80-unit affordable multifamily complex located at 2550 W 8th Street, Odessa, Texas 79763. The site consists of a five residential structures constructed in 1972. The new property - to be known as Woodcrest Apartments - will be 5 residential buildings consisting of twelve 1-bedroom, forty-eight 2-bedroom, and twenty 3-bedroom units for a total of 80 units. Demolition will be completed in February 2024, and all units are anticipated to be reconstructed by October 2025. It is anticipated that all residents will not be permanently displaced as a result of reconstruction occurring over a 24-month period and temporary housing will not exceed 12-months. Funding is provided through Low Income Housing Tax Credit (LIHTC) equity from 42equity Partners with a potential award of HOME American Rescue Plan (HOME-ARP) funding provided by the Texas Department of Housing and Community Affairs, and deferred developer fee and contractor loyalty contribution. All 80 units will remain lower income dwelling units for 45 years from the date of initial occupancy as recorded in the Development's HOME-ARP and LIHTC Land Use Restriction Agreements.

Public Comment Period

Starts at 8:00 a.m. Austin local time on October 27, 2023.

Ends at 5:00 p.m. Austin local time on November 13, 2023.

Comments received after 5:00 p.m. Austin local time on November 13, 2023, will not be accepted.

Written comments may be submitted to:

Texas Department of Housing and Community Affairs

Attn: Carmen Roldan, Woodcrest Apartments

P.O. Box 13941, Austin, Texas 78711-3941

Email: carmen.roldan@tdhca.state.tx.us

Written comments may be submitted in hard copy or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific rule, policy, or plan related to their comment, as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

Las personas que no pueden hablar, leer, escribir o entender el idioma inglés pueden llamar al (512) 475-3800 o al número de llamada gratuita 800-525-0657 para solicitar asistencia con la traducción de doc-

umentos, eventos u otra información del Departamento de Vivienda y Asuntos Comunitarios de Texas (Texas Department of Housing and Community Affairs).

Quédese en la línea y permanezca en silencio durante nuestras indicaciones automatizadas de voz en inglés hasta que un representante responda. El representante lo pondrá en espera y le comunicará con un intérprete para ayudarle con su llamada.

Texas Department of Housing and Community Affairs

Street Address: 221 East 11th Street, Austin, Texas 78701

Mailing Address: P.O. Box 13941, Austin, Texas 78711-3941

Main Number: (512) 475-3800

Toll Free: 1-800-525-0657

Email: info@tdhca.state.tx.us

Web: www.tdhca.state.tx.us

Location of lower-income dwelling units that will be demolished

TRD-202303873
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 18, 2023

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Dorchester Insurance Company, Ltd, an alien fire and/or casualty company. The home office is in St. Thomas, Virgin Islands.

Application to do business in the state of Texas for Independence Pet Insurance Company, a foreign fire and/or casualty company. The home office is in Wilmington, Delaware.

Application for Attorneys' Title Guaranty Fund, Inc., a foreign title company, to change its name to Advocus National Title Insurance Company. The home office is in Chicago, Illinois.

Any objections must be filed with the Texas Department of Insurance within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202303858
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: October 18, 2023

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Correction of Error

The Texas Department of Insurance published proposed amendments to 28 TAC §5.9970 and §5.9771 in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5953). Due to an error by the Texas Register, the figures included in 28 TAC §5.9770(b) were incorrectly identified. The correct text for subsection (b) is as follows:

(b) The Texas Department of Insurance adopts the 2024 [~~2021~~] version of the Consumer Bill of Rights - Personal Automobile Insurance (Auto Bill of Rights), and the Spanish language translation, as developed and submitted by the Office of Public Insurance Counsel:

Figure 1: 28 TAC §5.9970(b)

[~~Figure 1: 28 TAC §5.9970(b)~~]

Figure 2: 28 TAC §5.9970(b)

[~~Figure 2: 28 TAC §5.9970(b)~~]

Additionally, the text of Figure 1 included in 28 TAC §5.9971(b) was incorrect due to an error by the agency. The correct text of Figure 1 is as follows:

Figure 1: 28 TAC §5.9971(b)

CONSUMER BILL OF RIGHTS

Homeowners, Dwelling, and Renters Insurance

What is the Bill of Rights?

It is a basic outline of important rights you have under Texas law. Insurance companies must give you this Bill of Rights with your policy. It is important to read and understand your policy.

The Bill of Rights is not:

- A complete list of all your rights,
- Part of your policy, or
- A list of everything that you are responsible for.

Questions about these rights?

- If you are not sure about anything in your policy, ask your agent or insurance company.
- If you have questions or a complaint, contact the Texas Department of Insurance (TDI) at:

  Call with a question: 1-800-252-3439
  Email with a question: ConsumerProtection@tdi.texas.gov
  File a complaint through the website:
  www.tdi.texas.gov/consumer/get-help-with-an-insurance-complaint.html

- To learn more about insurance, visit www.opic.texas.gov or call the Office of Public Insurance Counsel (OPIC) at 1-877-611-6742.

AVISO: Este documento es un resumen de sus derechos como asegurado. Tiene derecho a llamar a su compañía de seguros y obtener una copia de estos derechos en español. Además, puede ser que su compañía de seguros tenga disponible una versión de su póliza en español.

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Where to Get Information

1. **Your insurance company.** When you get a copy of your policy you will also get an "Important Notice" from the company. The notice explains how to contact your company and how to file a complaint. You may request a complete copy of your policy from your company at any time.

2. **Your declarations page.** The declarations page, also called the "dec page," shows: (a) the name and address of your insurance company, (b) the location of the insured property, (c) the dates your policy is in effect, and (d) the amounts and types of coverage.

   Your company must list the exact dollar amount of each deductible in your policy. The declarations page, or a separate page, must also list any part of your policy that changes any deductible amount.

3. **The Texas Department of Insurance (TDI).** You have the right to call TDI for free at 1-800-252-3439 for information and help with a complaint against an insurer. You can also find information on the TDI website at www.tdi.texas.gov.

4. **Resources for shopping for insurance.** The Office of Public Insurance Counsel (OPIC) and TDI developed www.HelpInsure.com to help you compare rates and coverages for different insurance companies. OPIC also has an online tool to help you compare policies. You can find this policy comparison tool at www.opic.texas.gov.

What You Should Know When You File a Claim

5. **Deadlines for processing claims and payments.** You should file your claim with your insurance company as soon as possible. When you file a claim on your own policy, the insurance company must meet these deadlines:

   - **Within 15 days after you file a claim:** The company must let you know they received your claim. The company must also start their investigation and ask you for any other information they need.
   - **Within 15 business days after they get all the information they need:** The company must approve or deny your claim in writing. They can extend this deadline up to **45 days** from the date they: (a) let you know they need more time and (b) tell you why.
   - **Within 5 business days after they let you know your claim is approved**: The company must pay the claim.

   Note: TDI can extend these deadlines by 15 more days if there is a weather-related catastrophe.

   If your company fails to meet these deadlines, you may be able to collect the claim amount, interest, and attorney's fees.

6. **Written explanation of claim denial.** Your insurance company must tell you in writing why your claim or part of your claim was denied.

7. **Reasonable investigation.** Your insurance company cannot refuse to pay your claim without a reasonable investigation of the claim. You should keep records of all claim communications (including notes from phone calls) and other claim documentation (including damage estimates and receipts).

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8. **Information not required for processing your claim.** Your insurance company can only ask for information reasonably needed for their claim investigation. However, they cannot ask for your federal income tax returns unless: (a) they get a court order or (b) your claim involves a fire loss, loss of profits, or lost income.
9. **Right to contract with a public insurance adjuster.** Your insurer cannot include a provision in your policy that prohibits you from contracting with a licensed public insurance adjuster to act on your behalf in negotiating for or effecting the settlement of a claim.
10. **Release of claim payments from lenders.** Often an insurance company will make a claim payment to you and your lender. If your lender gets the payment:

    - **No later than 10 days after receiving it they must:** (a) notify you and (b) tell you what you must do so the money can be released.
    - **No later than 10 days after you ask for the money, they must:** (a) send the money to you, or (b) tell you how to get the money released.

    If your lender does not: (a) provide the notices mentioned above or (b) pay the money after all the requirements have been met, the lender must pay you interest on the money.

11. **Notice of liability claim settlement.** Liability means you are responsible for other people's injuries or damage to their property. Your insurance company must let you know in writing:

    - About the first offer to settle a claim against you within **10 days** after the offer is made.
    - About any claim settled against you within **30 days** after the date of the settlement.

Who to Contact for Claim Disagreements

12. **Claim disagreements.** You can dispute the amount of your claim payment or what is covered under your policy. You can:

    - Contact your insurance company.
    - Contact an attorney to advise you of your rights under the law. The State Bar of Texas can help you find an attorney.
    - Pay a licensed public adjuster to review the damage and handle the claim.
    - File a complaint with TDI.

What You Should Know about Renewal, Cancellation and Nonrenewal

Renewal means that your insurance company is extending your policy for another term.

Cancellation means that, **before the end of the policy period**, the insurance company:

- Terminates the policy;
- Gives you less coverage or limits your coverage; or
- Refuses to give additional coverage that you are entitled to under the policy.

"**Refusal to renew**" and "**nonrenewal**" are terms that mean your coverage ends **at the end of the policy period**. The policy period is shown on the declarations page of your policy.

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13. **Notice of premium increase.** If your insurance company plans to increase your premium by 10 percent or more on renewal, your company must send you notice of the rate increase at least 6**0 days** before your renewal date.

14. **Insurance company cancellation of homeowners policies.** If your homeowners policy has been in effect for **60 days or more**, your company can only cancel your policy if:

    - You don't pay your premium when it is due;
    - You file a fraudulent claim.
    - There is an increase in the risk covered by the policy that is: (a) within your control and (b) would make your premium go up; or
    - TDI decides that keeping the policy violates the law.

    If your policy has been in effect for **less than 60 days**, your company can only cancel your policy if:

    - One of the reasons listed above applies;
    - They reject a required inspection report within **10 days** after getting the report. The report must be done by a licensed or authorized inspector and cannot be more than 90 days old; or
    - They find something that creates an increase in risk that you did not include in your application and is not related to a prior claim.

15. **Insurance company cancellation of other residential property policies.** After your policy has been in effect for **90 days**, your company can only cancel your policy if:

    - You don't pay your premium when it is due;
    - You file a fraudulent claim;
    - There is an increase in the risk covered by the policy that is: (a) within your control and (b) would make your premium go up; or
    - TDI decides that keeping the policy violates the law.

16. **Notice of cancellation.** If your insurance company cancels your policy, they must let you know by mail at least **10 days** before the effective date of the cancellation. Check your policy because your company may give you more than 10 days' notice.

17. **Right to cancel.** You can cancel your policy at any time and get a refund of the unused premium.

18. **Refund of premium.** If you or your insurance company cancel your policy, the company must refund any unused premium within 15 business days from:

    - the date the company receives notice of the cancellation or
    - the date of cancellation, whichever is later.

    You must let your company know you want the refund sent to you. If not, they may refund the remaining premium by giving you a premium credit on the same policy.

19. **Limits on using claims history for nonrenewal.** Your insurance company cannot refuse to renew your policy based on claims for damage from natural causes, including weather-related damage; or claims that are filed but not paid or payable under the policy.

    Appliance-related water damage claims. Your insurance company cannot refuse to renew your policy based on an appliance-related water damage claim if:

    - The damage has been properly repaired or remediated; and

- The repair or remediation was inspected and certified.

However, your insurance company may refuse to renew your policy based on appliance-related water damage claims if:

- Three or more claims were filed and paid (including a claim filed by a prior owner on your property); or

  You: (a) file 2 claims within a three-year period; and (b) after the second claim, your company gives you written notice that filing a third appliance-related claim could result in your policy not being renewed; and

- You file a third claim.

Claims other than appliance-related water damage claims. Your insurance company cannot refuse to renew your policy based on other claims unless:

- You: (a) file 2 claims within a three-year period; and (b) after the second claim, your company gives you written notice that filing a third claim could result in your policy not being renewed; and
- You file a third claim.

20. **Limits on using claims history to increase premium.** Your insurance company cannot increase your premium based on claims for damage from natural causes, including weather-related damage; or claims that are filed but not paid or payable under your policy.

    Appliance-related water damage claims. Your company cannot increase your premium based on a prior appliance-related water damage claim if:

    - The damage has been properly repaired or remediated; and
    - The repair or remediation was inspected and certified.

However, your insurance company may increase your premium based on prior appliance-related water damage claims if:

- Three or more claims were filed and paid (including a claim filed by a prior owner on your property)

Claims other than appliance-related water damage claims. Your insurance company cannot increase your premium based on other claims unless:

- You file 2 or more claims within a three-year period.

21. **Right to ask questions.** You can ask your insurance company a question about your policy. They cannot use your questions to deny, nonrenew, or cancel your coverage. Your questions also cannot be used to determine your premium.

    For example, you may ask:

    - General questions about your policy;
    - Questions about the company's claims filing process; and
    - Questions about whether the policy will cover a loss, unless the question is about damage: (a) that occurred and (b) that results in an investigation or claim.

22. **Limit on using credit information to nonrenew your policy.** An insurance company cannot refuse to renew your policy solely because of your credit.

23. **Protections from discrimination.** An insurance company cannot refuse to insure you; limit the coverage you buy; refuse to renew your policy; or charge you a different rate based on your race, color, creed,

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country of origin, or religion.

24. **Protection for low-value property.** An insurance company cannot refuse to renew your policy because the property value is low.

25. **Protection for older houses.** An insurance company cannot refuse to renew your policy based on the age of your property. However, they can refuse to renew your policy based on the condition of your property, including your plumbing, heating, air conditioning, wiring, or roof.

26. **Notice of nonrenewal.** Your insurance company must send you a notice that they are not renewing your policy. They must let you know at least **60 days** before your policy expires, or you can require them to renew your policy.

27. **Notice of a "material change" to your policy.** If your insurance company does not want to cancel or nonrenew your policy, but wants to make certain material changes, then they must explain the changes in writing at least **30 days** before the renewal date**.** Material changes include:

    - Giving you less coverage;
    - Changing a condition of coverage; or
    - Changing what you are required to do.

    Instead of a notice of "material change" a company may choose to not renew your existing policy. If so, the company has to send a nonrenewal letter, but may still offer you a different policy.

    Note: A company cannot reduce coverage during the policy period unless you ask for the change. If you ask for the change, the company does not have to send you a notice.

28. **Written explanation of cancellation or nonrenewal.** You can ask your insurance company to tell you in writing the reasons for their decision to cancel or not renew your policy. The company must explain in detail why they cancelled or nonrenewed your policy.

TRD-202303863

Texas Lottery Commission

Notice of Public Comment Hearing

A public hearing to receive comments regarding proposed amendments to 16 TAC §402.200 (General Restrictions on the Conduct of Bingo), §402.203 (Unit Accounting), §402.400 (General Licensing Provisions), §402.401 (Temporary License), §402.404 (License Classes and Fees), §402.405 (Temporary Authorization), §402.413 (Military Service Members, Military Veterans, and Military Spouses), §402.420 (Qualifications and Requirements for Conductor's License), §402.451 (Operating Capital), §402.452 (Net Proceeds), §402.503 (Bingo Gift Certificates), §402.600 (Bingo Reports and Payments), §402.706 (Schedule of Sanctions), and §402.707 (Expedited Administrative Penalty Guideline) will be held on Monday, November 13, 2023 at 10:00 a.m., at 1700 N. Congress Ave., Austin, Texas 78701, Stephen F. Austin State Office Building, Room 170.

Persons requiring any accommodation for disability should notify Dorota Bienkowska at (512) 344-5392 or dorota.bienkowska@lottery.state.tx.us at least 72 hours prior to the public hearing.

TRD-202303837
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 16, 2023

Scratch Ticket Game Number 2540 "HIGH ROLLER"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2540 is "HIGH ROLLER". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2540 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2540.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, MONEY BAG SYMBOL, DOLLAR BILL SYMBOL, $5.00, $10.00, $20.00, $50.00, $100, $200, $500, $1,000, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2540 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX

57	FFSV
58	FFET
59	FFNI
60	SXTY
MONEY BAG SYMBOL	DBL
DOLLAR BILL SYMBOL	WINX5
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2540), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2540-0000001-001.

H. Pack - A Pack of the "HIGH ROLLER" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HIGH ROLLER" Scratch Ticket Game No. 2540.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "HIGH ROLLER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-seven (67) Play Symbols. GAME 1: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "DOLLAR BILL" Play Symbol, the player wins 5 TIMES the prize for that symbol. GAME 2: If the player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-seven (67) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-seven (67) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty-seven (67) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-seven (67) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GAME 1 (Ticket Front) - Key Number Match: A non-winning Prize Symbol will never match a winning Prize Symbol.

D. GAME 1 (Ticket Front) - Key Number Match: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

E. GAME 1 (Ticket Front) - Key Number Match: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. GAME 1 (Ticket Front) - Key Number Match: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

G. GAME 1 (Ticket Front) - Key Number Match: The "MONEY BAG" (DBL) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

H. GAME 1 (Ticket Front) - Key Number Match: The "DOLLAR BILL" (WINX5) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

I. GAME 1 (Ticket Front) - Key Number Match: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and $5).

J. GAME 2 (Ticket Back) - Key Number Match: A non-winning Prize Symbol will never match a winning Prize Symbol.

K. GAME 2 (Ticket Back) - Key Number Match: A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, playaction or prize structure.

L. GAME 2 (Ticket Back) - Key Number Match: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

M. GAME 2 (Ticket Back) - Key Number Match: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

N. GAME 2 (Ticket Back) - Key Number Match: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 50 and $50).

O. GAME 2 (Ticket Back) - Key Number Match: No win(s) will appear in GAME 2 on the Ticket back, unless there is at least one (1) win in GAME 1 on the Ticket front.

2.3 Procedure for Claiming Prizes.

A. To claim a "HIGH ROLLER" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $200 or $500 Scratch Ticket Game. In

the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HIGH ROLLER" Scratch Ticket Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HIGH ROLLER" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "HIGH ROLLER" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "HIGH ROLLER" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2540. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2540 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	660,800	10.71
$10.00	755,200	9.38
$20.00	188,800	37.50
$50.00	94,400	75.00
$100	23,600	300.00
$200	4,130	1,714.29
$500	1,534	4,615.38
$1,000	120	59,000.00
$5,000	10	708,000.00
$100,000	6	1,180,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.10. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2540 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2540, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202303848
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 17, 2023

North Central Texas Council of Governments

Request for Proposals for North Central Texas Regional Transit 2.0 Planning for Year 2050

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms for the North Central Texas Regional Transit 2.0 Planning for Year 2050 project. NCTCOG is working with transportation authorities in the North Texas region to increase communication and collaboration among agencies to address expanding transit services to areas with transit needs. A comprehensive transportation partnership study, "Regional Transit 2.0", is being sought to promote communication on a more aggressive transit legislative program, increasing membership in a transportation authority, collaboration between transportation authority systems, as well as other efforts to better understand and address long-term transit needs in the region.

Proposals must be received in-hand no later than **5:00 p.m., Central Time,** on **Friday, December 1, 2023,** to Michael Morris, P.E., Director of Transportation, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on **Friday, October 27, 2023.**

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202303864
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: October 18, 2023

Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

The H. E. Butt Foundation has applied to the Texas Parks and Wildlife Department (TPWD) for an Individual Permit pursuant to Parks and Wildlife Code, Chapter 86, to remove or disturb 1,130 cubic yards of sedimentary material within the East Frio River in Real County. The purpose is to remove eroded sediment within a recreational impoundment. The location is 12.8 miles upstream of the "First Crossing" at Ranch Road 337 E at coordinates 29.846903, -99.675244. Notice is being published and mailed pursuant to 31 TAC §69.105(b).

TPWD will hold a public comment hearing regarding the application at 1:00 p.m. on Friday, November 17, 2023, at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Beth Bendik at (512) 389-8521 or at *beth.bendik@tpwd.texas.gov* for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register.* A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to the TPWD Sand and Gravel Program by mail: Attn: Beth Bendik, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; or e-mail *sand.gravel@tpwd.texas.gov.*

TRD-202303802
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: October 12, 2023

Public Utility Commission of Texas

Notice of Application to Relinquish Designations as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 13, 2023, to relinquish designations as an eligible telecommunications carrier and eligible telecommunications provider under 16 Texas Administrative Code §26.417 and §26.418.

Docket Title and Number: Application of Brazos Telecommunications, Inc. to Relinquish its Eligible Telecommunications Carrier and Eligible Telecommunications Provider Designations, Docket Number 55686.

The Application: On December 31, 2013, Brazos Telecommunications, Inc., a wholly owned subsidiary of Brazos Telephone Cooperative, Inc. was merged into the cooperative with the cooperative being the remaining entity. On January 31, 2014, Brazos Telecommunications, Inc. and Brazos Telephone Cooperative, Inc. filed a joint application to relinquish Brazos Telecommunications, Inc.'s certificate of convenience and necessity and to amend Brazos Telephone Cooperative, Inc.'s certificate to include the exchanges formerly under Brazos Telecommunications, Inc. On July 11, 2014, the Commission approved *Joint Application of Brazos Telephone Cooperative, Inc. and Brazos Telecommunications, Inc. for Approval of Sale, Transfer, or Merger and for Amendment to Certificate of Convenience and Necessity,* Docket No. 42210. Brazos Telecommunications, Inc. has not had any customers since the merger and seeks relinquishment of its designations as an eligible telecommunications carrier and eligible telecommunications provider, effective July 11, 2014.

Persons who wish to file a motion to intervene or comments on the application should contact the commission as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55686.

TRD-202303859
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2023

Texas Department of Transportation

Public Transportation Division - Notice of Call for Projects

The Texas Department of Transportation (department) announces a Call for Projects for:

1. Statewide Planning Assistance - 49 U.S.C. §5304, 43 Texas Administrative Code (TAC) §31.22

2. Rural Transportation Assistance - 49 U.S.C. §5311(b)(3), 43 TAC §31.37

3. Rural Discretionary Program - 49 U.S.C. §5311, 43 TAC §31.36

4. Intercity Bus - 49 U.S.C. §5311(f), 43 TAC §31.36

These public transportation projects will be funded through the Federal Transit Administration (FTA) §5304, §5311(b)(3), §5311, and §5311(f) programs. It is anticipated that multiple projects from multiple funding programs will be selected for State Fiscal Years 2025 and 2026. Project selection will be administered by the Public Transportation Division. Selected projects will be awarded in the form of grants with payments made for allowable reimbursable expenses or for defined deliverables. Successful applicants will become subrecipients of the department.

Information and instructions regarding the call for projects will be posted on the Public Transportation Division website at https://www.txdot.gov/inside-txdot/division/public-transportation/local-assistance.html

Purpose: The Call for Projects invites applications for services to develop, promote, coordinate, or support public transportation. Applications submitted for funding should reflect projects that will:

-assist small urban and rural transit agencies to develop projects and strategies to further meet the transportation needs of local residents using current program resources;

-design and implement training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in rural areas;

-assist public transportation providers in rural areas to provide passenger transportation services to the general public using the most efficient combination of knowledge, materials, resources, and technology; or

-support connections, services, and infrastructure to meet the intercity mobility needs of residents in rural areas.

Eligible Applicants: Eligible applicants may include state agencies, local public bodies and agencies thereof, private nonprofit organizations, operators of public transportation services, state transit associations, transit districts, and private for-profit operators, dependent on federal program. Eligible applicants for each program are defined in the applicable Texas Administrative Code provision listed above.

Key Dates and Deadlines:

October 27, 2023: Opportunity opens in IGX

December 15, 2023: Deadline for submitting written questions

January 19, 2024: Deadline for receipt of applications

June 27, 2024: Target date for presentation of project selection recommendations to the Texas Transportation Commission for action

September 1, 2024: Target date for most year 1 project grant agreements to be executed

Questions: Individuals with questions relating to the Call for Projects should email PTN_ProgramMgmt@txdot.gov.

TRD-202303789
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: October 11, 2023

TEX

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "48 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 48 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1……..950 *(P)*

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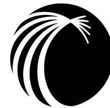

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