

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 4. AGRICULTURE

PART 12. TEXAS A&M FOREST SERVICE

CHAPTER 216. RURAL VOLUNTEER FIRE DEPARTMENT ASSISTANCE PROGRAM

4 TAC §§216.1, 216.2, 216.4 - 216.6, 216.9

Texas A&M Forest Service (TFS) proposes an amendment to §§216.1, 216.2, 216.4 - 216.6, and 216.9 relating to grants for emergency assistance under the Rural Volunteer Fire Department Assistance Program. The proposed amendment adds language to provide clarity, provide the addition of the agency's online grant application system, provide more specifications to award criteria, change how grant applications are ranked, remove requested funding as a factor in application ratings, and divide funds by branch instead of region for other equipment.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT. Robby DeWitt, Associate Director for Finance and Administration has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments.

PUBLIC BENEFIT/COST NOTE. Mr. DeWitt has also determined that for the first five-year period the amended rules are in effect, the public benefit will be a more clearly defined process for providing grants to volunteer fire departments.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis or economic impact statement, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. For each year of the first five years the proposed amendments will be in effect, Texas A&M Forest Service has determined that these amendments: (1) will not create or eliminate a government program; (2) will not result in the addition or reduction of employees; (3) will not require an increase or decrease in future

legislative appropriations; (4) will not lead to an increase or decrease in fees paid to a state agency; (5) will not create a new regulation; (6) will not repeal an existing regulation; and (7) will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

PUBLIC COMMENTS: Comments on the proposal may be submitted to Jason Keiningham, Office of the Associate Director, Forest Resource Protection Division, Texas A&M Forest Service, 200 Technology Way, Suite 1162, College Station, Texas 77845-3424, (979) 458-7341. Comments must be received no later than thirty days from the date of publication of this proposal.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §614.102, which authorizes the agency director to adopt rules considered necessary for the administration of the program and Texas Government Code, §614.106, which mandates that the agency adopt rules to administer the program.

Texas Government Code, §§614.101, 614.102, 614.103, 614.104, 614.105 and 614.106 are affected by this proposal.

§216.1. Purpose and Scope.

(a) Purpose. This chapter establishes procedures for the administration of the Rural Volunteer Fire Department Assistance Program ~~[program]~~ as authorized by §614.106 of the Texas Government Code.

(b) Scope.

(1) This chapter shall govern the agency's award of available grant funds to eligible fire department recipients.

(2) This chapter shall not be construed to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the Texas A&M Forest Service, or the substantive rights of any person.

(3) To the extent any provision of this chapter is in conflict with any statute, the statute shall control.

§216.2. Definitions.

The following terms, when used in this chapter, shall have the following meanings unless the context or specific language of a section clearly indicates otherwise.

(1) Agency--The Texas A&M Forest Service, a member of The Texas A&M University System and an agency of the State of Texas.

(2) Recognized Fire Department--A fire department chartered by the Texas Secretary of State as a not-for-profit entity or a fire department operating under a local government entity.

(3) Part-Paid Fire Department--Defined in §614.101(5) of the Texas Government Code.

(4) Program--The Rural Volunteer Fire Department Assistance Program, Texas Government Code, Chapter 614, Subchapter G.

(5) TIFMAS Grants--Grants for firefighter training and equipment for fire departments not eligible for VFD Assistance grants. [participating in the Texas Intrastate Fire Mutual Assistance System (TIFMAS).]

(6) VFD Assistance Grants--Grants for firefighter training and equipment for volunteer fire departments (VFDs).

(7) Volunteer Fire Department--Defined in §614.101(6) of the Texas Government Code.

(8) Operating--A recognized fire department providing fire protection to a designated primary protection area as assigned by the county.

§216.4. Application Requirements.

The following requirements must be met before the agency will consider an application under the program.

(1) TIFMAS Grants.

(A) Applications for assistance must be for equipment or training that complies with agency-published standards, specifications, and limitations.

(B) All applications for assistance must be submitted on the required grant application form published by the agency or on the agency's online application system.

(C) Applications must be complete, and all required information must be provided to the agency by the published due date. Incomplete applications are not considered.

(D) An applicant must provide any supplemental information requested by the agency on or before the requested due date. An application is not complete until the requested information is received by the agency.

(2) VFD Assistance Grants.

(A) Applications for assistance must be for equipment or training that complies with agency-published standards, specifications, and limitations.

(B) All applications for assistance must be submitted on the required grant application form published by the agency or on the agency's online application system.

(C) Applications must be complete, and all required information must be provided to the agency by the published due date. Incomplete applications are not considered.

(D) An applicant must provide any supplemental information requested by the agency on or before the requested due date. An application is not complete until the requested information is received by the agency.

§216.5. Award Criteria.

The following criteria are used by the agency to determine eligibility for grant awards.

(1) TIFMAS Grants.

(A) When determining eligibility for a part-paid fire department, a part-time paid position is counted as one-half of a full-time paid position.

(B) Applications for assistance for trucks and other equipment are rated based upon a standardized numeric system that

considers the following factors: total number of TIFMAS qualified personnel, past statewide deployments, department reporting to TX-FIRS and FireConnect, and number of firefighters holding Strike Team Engine (STEN), Engine Boss (ENGB), and Firefighter Type 1/Incident Commander Type 5 (FF1/ICT5) qualifications. [participation in TIFMAS and ability to provide TIFMAS resources to state deployments.]

(C) The agency may limit the maximum amount of grant funds a fire department can receive per year to ensure a wider distribution of the funds.

(2) VFD Assistance Grants.

(A) When determining eligibility for a part-paid fire department:

(i) A paid position includes any combination of paid fire, EMS, administrative and support staff employed by a fire department or other entity of local government to fulfill an emergency service or supporting function.

(ii) A part-time paid position is counted as one-half of a full-time paid position.

(B) Applications for assistance are rated based upon a standardized numeric system that considers the following factors: years in existence, size of the primary protection area, population of the primary protection area, distance to the nearest viable mutual aid department, age of the application and wildfire risk. For apparatus grants, the current age of apparatus to be replaced with grant funded apparatus will be considered.

(C) The agency may award vehicle and equipment grants to eligible fire departments to assist in meeting matching requirements for federal grants. Applications for federal grant matching assistance are rated upon a standardized numeric system that considers the following factors: size of the department, annual budget and source of revenue and the amount the department would benefit from the grant.

(D) The agency may limit the maximum amount of grant funds a fire department can receive per year to ensure a wider distribution of the funds.

§216.6. Award Process.

The following procedures are used by the agency to award available grant funds.

(1) TIFMAS Grants.

(A) Available grant funding is allocated to each grant category annually by the agency.

(B) Training grants are funded upon receipt of complete applications until available funding is exhausted.

(C) Truck grants are handled as follows.

(i) Applications are assigned a numeric rating and sorted in numerical order. [by region.]

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are based upon the application ratings and the date the applications were received, [made to the top applications as sorted by region based upon the numeric ratings.] subject to funding limitations.

(iv) Fire departments that have outstanding issues with the State of Texas or the agency will not be considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications, and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

(vi) Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(D) Other equipment grants are handled as follows.

(i) Funds are divided by geographic ~~branch,~~ branch, based upon the number of fire departments per ~~branch~~ branch, to establish target fund allocations. Allocations by ~~branch~~ branch may be adjusted by the agency based on the applications received.

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are based upon the application ratings, ~~[the amounts requested,]~~ the date each application was received, the number and type of unfunded applications on file and the amount of funds available.

(iv) Fire departments that have outstanding issues with the State of Texas or the agency are not considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications, and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

(vi) Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(2) VFD Assistance Grants.

(A) Available grant funding is allocated to each grant category annually by the agency.

(B) Training grants are funded upon receipt of complete applications until available funding is exhausted.

(C) Firefighter Property Program slip-on units are awarded in conjunction with 1-2 ton, 2.5 ton cargo, 5 ton cargo, and tractor style apparatus awards.

(D) [(C)] Equipment grants are handled as follows.

(i) Funds are divided by geographic region, based upon the number of fire departments per region, to establish target fund allocations. Allocations by region may be adjusted by the agency based on the applications received.

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are based upon the application ratings, ~~[the amounts requested,]~~ the dates the applications were received, the number and type of unfunded applications on file and the amount of funds available. Ratings shall take into consideration the frequency, size and severity of past wildfires in the department's jurisdiction; the potential for loss or damage to property resulting from future wildfires in the department's jurisdiction; and the department's need for emergency assistance under Texas Government Code §614.103(a-1).

(iv) Fire departments that have outstanding issues with the State of Texas or the agency are not considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications, and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

(vi) Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(ix) The agency may award emergency grants, based on availability of program funds, to eligible fire departments who apply for the grant and whose equipment is damaged or lost in responding to a declared state of disaster under Texas Government Code §418.014 in an area subject to the declaration for:

(I) The replacement or repair of damaged or lost personal protective equipment or other firefighting equipment; and

(II) The purchase of a machine to clean personal protective equipment.

~~[(III) Emergency grant awards are based on a department's application and availability of program funds.]~~

§216.9. *Program Forms and Procedures.*

Application forms and procedures are published on the agency's website or on the agency's online application system.

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

Filed with the Office of the Secretary of State on January 6, 2023.

TRD-202300049

Robby DeWitt

Associate Director for Finance and Administration

Texas A&M Forest Service

Earliest possible date of adoption: February 19, 2023

For further information, please call: (979) 458-7341



TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 35. A GUIDE TO PROGRAMS AND SERVICES

13 TAC §35.1

The Texas Commission on the Arts (Commission) proposes an amendment to §35.1, concerning a Guide to Programs and Services.

Background

In December 2021, the Commission updated its grant guidelines to address the change at the federal level from requiring a DUNS number (a unique entity identifier issued by Dun & Bradstreet) to requiring a System of Award Management - Unique Entity Identifier number (SAM-UEI). This requirement is part of the Commission's Terms and Conditions from the National Endowment for the Arts (NEA) block grant for Texas.

April 4, 2022, the new federal requirement of having a SAM-UEI went into effect.

In July 2022, the NEA provided new clarification around the SAM-UEI requirement. This clarification specified:

"For subawards that are made with funds other than the NEA funds + Cost Share/Match for the Partnership award, it is a best practice to assign a unique entity identifier. It is strongly recommended you require all subrecipients to provide a SAM UEI."

The Commission's constituents have found the process of obtaining a SAM-UEI to be burdensome and time consuming. It has proven to be a barrier to participation for smaller and rural organizations seeking support to bring Commission artists to their schools and libraries. The agency has the flexibility to allocate the federal funds by grant program. By omitting federal funds from the one noncompetitive grant program that funds these activities, the Commission proposes to update its guidelines and lift this requirement for this group of underserved constituents.

Fiscal impact on State and Local Government

Gary Gibbs, Executive Director of the Commission, has determined that for the first five years the amendment is in effect, there is no foreseeable economic implications relating to costs or rev-

enues of the state or local governments as a result of enforcing or administering the proposed amendment.

Public Benefit

Gary Gibbs, Executive Director, has determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amendment is to eliminate a bureaucratic barrier for small and rural organizations seeking support to bring Commission artists to their schools and libraries.

Probable Economic Costs to Persons Required to Comply with the Rule

The Executive Director has further determined that for the first five years the amended rule is in effect, there are no substantial costs anticipated as a result of the proposed rule.

One-for-One Rule Analysis

Because the Commission does not regulate persons, it asserts proposal and adoption of the amended rule is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rule is in effect, the agency has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the amended rule does not require an increase or decrease in fees paid to the agency, (5) the amended rule does not create a new regulation; (6) the amended rule does not expand existing regulations; (7) the amended rule does not increase the number of individuals subject to it and (8) the amended rule does not adversely affect this state's economy.

Local Employment Impact Statement

The Executive Director has determined that no local economies are substantially affected by the amended rule, and, as such, the Commission is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The Executive Director has determined that the proposed rule will not have an adverse effect on small or micro-businesses, or rural communities. The Commission is not a regulatory agency. As a result, the Commission asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

The Commission has determined that there are no private real property interests affected by the amended rule; thus, the Commission asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis

The Commission has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

As a result, the Commission asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments

Written comments on the proposal may be submitted to Dana Swann, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406, or by email to dana.swann@arts.texas.gov with the subject line "Guideline Amendment." All comments will be accepted for 30 days upon publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees, and §444.024, which authorizes the Commission to award grants.

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

§35.1. *A Guide to Programs and Services.*

The Commission adopts by reference a Guide to Programs and Services (revised December 2022 [2021]). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at www.arts.texas.gov.

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

Filed with the Office of the Secretary of State on January 4, 2023.

TRD-202300047

Gary Gibbs

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: February 19, 2023

For further information, please call: (512) 936-6580



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER MM. COMMISSIONER'S

RULES CONCERNING SUPPLEMENTAL

SPECIAL EDUCATION SERVICES PROGRAM

19 TAC §102.1601

The Texas Education Agency (TEA) proposes an amendment to §102.1601, concerning supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services. The proposed amendment would reflect a grant source change and provide clarification.

BACKGROUND INFORMATION AND JUSTIFICATION: Senate Bill (SB) 1716, 87th Texas Legislature, Regular Session, 2021, added Texas Education Code (TEC), Chapter 29, Subchapter A-1, which established the SSES program. The program is designed to address concerns that have arisen as a result of the

coronavirus pandemic for students receiving special education services. It provides additional funds for eligible students who are served in special education to use for supplemental services and materials. These supplemental services and materials are not and cannot be considered as part of the provision of a free appropriate public education as set out in a student's individualized education program. The SSES program expires September 1, 2024.

Under SB 1716, the commissioner was required to establish rules to implement and administer the SSES program, and §102.1601 was adopted to establish the parameters to allow eligible students to be provided with funds that may be used for goods and services with TEA-approved providers and vendors. In accordance with statute, certain eligible students are given priority based on enrollment in a school district or open-enrollment charter school that is eligible for a compensatory education allotment. In addition, TEA prioritizes applicants with economic need based on qualification for the National School Lunch Program. The proposed amendment would update the rule as follows.

Subsection (b)(2) would be amended to remove reference to the federally funded SSES grant and instead refer to any SSES grant, including the state-funded SSES grant. This change would reflect that grant funds may have multiple sources.

Subsections (c)(1), (e)(3)(C), and (f)(1) would be amended to reflect an award amount of up to \$1500 in state funds with the possibility of additional federal funds depending on eligibility and availability. This change would reflect the use of state grant funds under TEC, §29.042, as well as the potential use of additional federal grant funds, subject to eligibility and availability of such federal funds, for a grant program addressing the needs of medically fragile children.

Subsection (c) would also be amended to move information related to the use of the National School Lunch Program for need-based qualification from subsection (c)(1) to new subsection (c)(3). To align with current agency practice, new subsection (c)(2) would be added to reflect that TEA uses Public Education Information Management System (PEIMS) codes to verify award eligibility.

New subsection (f)(4) would be added to specify that parents and guardians who receive an award notification but whose student no longer qualifies for the SSES program must notify TEA of the student's change in eligibility status. This change would ensure that grant funds are provided only to eligible students.

Subsection (g)(6) would be amended to include a reference to guardians when referencing parents. This change would ensure references to parents and guardians are consistent throughout the rule.

Subsection (h) would be amended to remove the provision that SSES accounts are suspended when account holders do not begin spending funds from their accounts within six months after account creation. This change would allow for spending period fluctuations and ensure flexibility based on appropriations, waiting lists, and programmatic need.

FISCAL IMPACT: Jennifer Alexander, deputy commissioner for special populations, has determined that there are no additional costs to state or local government, including school districts and open-enrollment charter schools, 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, §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 Texas Government Code, §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 Texas Government Code, §2001.0045.

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation. The proposed amendment would clarify SSES program requirements, clarify the eligibility and verification process, and set the award minimum.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Alexander has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be clarification to members of the public and school districts regarding the SSES program. The SSES program provides a benefit of additional services and instructional materials to eligible students and prioritizes students with financial need. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA 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 January 20, 2023, and ends February 21, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Public hearings to solicit testimony and input on the proposal will be held at 9:00 a.m. on January 24 and 26, 2023, via Zoom. The public may participate in either hearing virtually by linking to the hearing at <https://zoom.us/j/7366629670> or joining by SIP at 7366629670@zoomcrc.com. The public may attend one or both hearings. Anyone wishing to testify at one of the hearings must sign in between 8:30 a.m. and 9:00 a.m. on

the day of the respective hearing. Each hearing will conclude once all who have signed in have been given the opportunity to comment. Each individual's comments are limited to three minutes, and each individual may comment only once. Both hearings will be recorded and made available publicly.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §29.041, which establishes requirements for providing a supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services and requires the commissioner by rule to determine, in accordance with TEC, Chapter 29, Subchapter A-1, the criteria for providing a program to provide supplemental special education services and instructional materials for eligible public school students; TEC, §29.042, which requires the commissioner to determine requirements related to the establishment and administration of the SSES program; TEC, §29.043, which requires the commissioner to establish an application process for the SSES program; TEC, §29.044, which requires the commissioner to determine eligibility criteria for the approval of an application submitted under TEC, §29.043; TEC, §29.045, which requires the commissioner to determine requirements for students meeting eligibility criteria and requirements for assigning and maintaining accounts under TEC, §29.042(b); TEC, §29.046, which requires the commissioner to determine requirements and restrictions related to account use for accounts assigned to students under TEC, §29.045; TEC, §29.047, which requires the commissioner to determine requirements related to criteria and application for agency-approved providers and vendors; TEC, §29.048, which requires the commissioner to determine responsibilities for the admission, review, and dismissal (ARD) committee; and TEC, §29.049, which requires that the commissioner adopt rules as necessary to establish and administer the SSES and instructional materials program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§29.041-29.049.

§102.1601. Supplemental Special Education Services and Instructional Materials Program for Certain Public School Students Receiving Special Education Services.

(a) Definitions. For the purposes of this section, the following definitions apply.

(1) Eligible student--A student who meets all program eligibility criteria under Texas Education Code (TEC), §29.044, and this section.

(2) Management system--The online system provided by the marketplace vendor to allow for account creation, management of funds, and access to the marketplace.

(3) Marketplace--The virtual platform where parents and guardians with Supplemental Special Education Services (SSES) program funds may purchase goods and services.

(4) Marketplace vendor--The vendor chosen by the Texas Education Agency (TEA) to create an online marketplace for the use of SSES program funds.

(5) Supplemental special education instructional materials--This term has the meaning defined in TEC, §29.041, and specifically excludes materials that are provided as compensatory services or as a means of providing a student with a free appropriate public education.

(6) Supplemental special education services--This term has the meaning defined in TEC, §29.041, and specifically excludes ser-

vices that are provided as compensatory services or as a means of providing a student with a free appropriate public education.

(b) Eligibility criteria. All students currently enrolled in a Texas public school district or open-enrollment charter school who are served in a special education program during the 2021-2022 or 2022-2023 school year, including, but not limited to, students in early childhood special education, prekindergarten, Kindergarten-Grade 12, and 18-and-over transition programs, are eligible for the SSES program with the following exclusions:

(1) students who do not reside in Texas or move out of the state, not including military-connected students entitled to enroll or remain enrolled while outside the state; or

(2) students who previously received an [a federally funded] SSES grant.

(c) Awards.

(1) Parents and guardians of eligible students may receive grants as long as funds are available of up to \$1,500 in state funds and may receive additional federal funds, depending on eligibility and availability, for use in the purchasing of supplemental special education instructional materials and supplemental special education services through the curated marketplace of educational goods and services. Parents and guardians may receive only one grant for each eligible student. Students enrolled in a school district or open-enrollment charter school that is eligible for a compensatory education allotment under TEC, §48.104, will be prioritized to receive a grant award.

(2) TEA will use Public Education Information Management System (PEIMS) codes to verify eligibility in order to award accounts for the SSES program.

(3) TEA will prioritize, as necessary, the awarding of applicant accounts based on applicants qualifying for the National School Lunch Program and available funds.

(d) Establishment of the marketplace.

(1) In accordance with TEC, §29.042(d), TEA shall award an education service center (ESC) with an operational and school district support grant, which may include, but is not limited to, the following operational requirements:

(A) writing and administering a contract for a vendor for the SSES marketplace that curates the content in its marketplace for educational relevancy. In accordance with the Family Educational Rights and Privacy Act, the contract must require the vendor for the marketplace to protect and keep confidential students' personally identifiable information, which may not be sold or monetized;

(B) providing technical assistance to parents and guardians throughout the SSES program process;

(C) serving as the main point of contact for the selected marketplace vendor to ensure eligible student accounts are appropriately spent down;

(D) approving or denying all purchases from the SSES marketplace, including communication with parents and guardians about purchase order requests;

(E) increasing the number of qualified service providers in the marketplace; and

(F) approving or denying all potential service providers.

(2) Providers of supplemental special education instructional materials and services may apply to be listed in the marketplace. To become an approved marketplace service provider, an applicant

must sign a service provider agreement and comply with licensing, safety, and employee background checks.

(A) Organization service providers are required to provide their Texas Tax ID for TEA to verify the validity of the organization.

(B) Individual service providers are required to provide proof of credentials and licensing in accordance with the individual service provider categories established by TEA.

(3) TEA shall provide a process for the application and approval of vendors to the marketplace.

(4) TEA and the marketplace vendor shall provide a curated list of vendors through which parents and guardians can purchase educationally relevant supplemental special education instructional materials. The established marketplace vendor shall be responsible for ensuring the vendors comply with SSES program parameters as they relate to the marketplace and be responsible for all communications with marketplace vendors.

(e) Application process for grant on behalf of a student.

(1) TEA is responsible for the application process and the determination of which applicants are approved for SSES program grants.

(2) Parents and guardians who would like to apply on behalf of their eligible students must complete the online application.

(3) Upon approval of the application:

(A) TEA shall send contact information for parents and guardians of eligible students in a secure manner to the online marketplace vendor for account creation and distribution;

(B) parents and guardians of eligible students will receive an email to the same email address provided during application from the marketplace vendor with information on how to access their accounts; and

(C) parents and guardians will be awarded an account of not more than \$1,500 in state funds and may be awarded in the account additional federal funds, depending on eligibility and availability, per eligible student to be used to purchase supplemental special education services and supplemental special education instructional materials.

(4) Parents and guardians of students who are deemed not eligible or who are determined to have violated account use restrictions under subsection (h) of this section will receive notification from TEA and be provided an opportunity to appeal the denial or account use determination. TEA shall exercise its discretion to determine the validity of any such appeal.

(5) If necessary, eligible students will be placed on a waitlist and parents and guardians will be notified. Should additional funds become available, priority will be given in the order established by the waitlist and in accordance with subsection (c) of this section.

(6) TEA shall maintain confidentiality of students' personally identifiable information in accordance with the Family Educational Rights and Privacy Act and, to the extent applicable, the Health Insurance Portability and Accountability Act.

(f) Approval of application; assignment of account.

(1) TEA shall set aside funds for a pre-determined number of accounts of up to \$1,500 in state funds with additional federal funds set aside, depending on eligibility and availability, per account to be awarded to parents and guardians of eligible students.

(2) Parents and guardians with more than one eligible student may apply and receive a grant for each eligible student.

(3) Approved parents and guardians will receive an award notification email from the marketplace vendor and may begin spending account funds upon completion of account setup.

(4) Parents and guardians who receive an award notification but whose student no longer qualifies under subsection (b) of this section shall notify TEA of their student's change in eligibility status.

(5) [(4)] Within 30 calendar days from receiving an award notification email, parents and guardians must:

(A) access or log in to their account or the account may be subject to reclamation; and

(B) agree to and sign the SSES parental acknowledgment affidavit.

(g) Use of funds. Use of SSES program funds provided to parents and guardians are limited as follows.

(1) Only supplemental special education instructional materials and supplemental special education services available through the marketplace of approved providers and vendors may be purchased with SSES program funds.

(2) Supplemental special education instructional materials and services must directly benefit the eligible student's educational needs.

(3) Supplemental special education instructional materials shall be used in compliance with TEA purchasing guidelines.

(4) If TEA approves vendors for a category of instructional material under subsection (d) of this section, supplemental special education instructional materials must be purchased from the TEA-approved vendor for that category of supplemental special education instructional material. If TEA does not establish criteria for a category of supplemental special education instructional materials, funds in a student's account may be used to purchase the supplemental special education instructional materials from any vendor.

(5) The contracted ESC has full authority to reject or deny any purchase.

(6) Parents and guardians may not use SSES program funds for reimbursement of goods or services obtained outside of the marketplace. SSES program funds shall not be paid directly to parents or guardians of eligible students.

(h) Account use restrictions. TEA may, subject to the appeal process referenced in subsection (e)(4) of this section, close or suspend accounts and reclaim a portion or all of the funds from accounts in the marketplace if:

(1) the supplemental special education materials or services that parents or guardians attempt to purchase are not educational in nature or are deemed to be in violation of the purchasing guidelines set forth by TEA;

(2) it is determined that the supplemental special education materials or services purchased do not meet the definitions in subsection (a)(5) and (6) of this section;

(3) the SSES program parental acknowledgement affidavit is not signed within 30 calendar days of receipt of account email from the marketplace vendor; or

~~[(4) account holders do not begin spending funds from their accounts within six months after account creation; or]~~

(4) [(5)] a student no longer meets the eligibility criteria set out in subsection (b) of this section.

(i) Requirements to provide information.

(1) School districts and open-enrollment charter schools shall notify parents and guardians of students served by special education of the SSES program and how to apply.

(2) At the student's next admission, review, and dismissal (ARD) committee meeting, the ARD committee shall determine if a student has been awarded an SSES account. At this meeting, upon learning that a student has been awarded an account, the ARD committee shall provide:

(A) information about types of goods and services that are available to the eligible student; and

(B) instructions and resources on accessing the online accounts.

(j) Restrictions. A student's ARD committee may not consider a student's current or anticipated eligibility for any supplemental special education instructional materials or services that may be provided under this section when developing or revising a student's individualized education program, when determining a student's educational setting, or in the provision of a free appropriate public education.

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

Filed with the Office of the Secretary of State on January 9, 2023.

TRD-202300055

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 19, 2023

For further information, please call: (512) 475-1497



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 165. REJECTED RISK: INJURY PREVENTION SERVICES

28 TAC §165.1

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §165.1, concerning Identification and Notification of Certain Policyholders Insured by the Texas Mutual Insurance Company Acting as the Insurer of Last Resort. Section 165.1 implements Texas Insurance Code §§2054.354, 2054.504, and 2054.507.

EXPLANATION. Amending §165.1 is necessary to add Texas Mutual Insurance Company's (Texas Mutual) physical address, update obsolete Insurance Code references, and make updates for plain language and agency style. Section 165.1 requires Texas Mutual to give DWC a list of policyholders that need accident prevention services, including policyholders they insure as the insurer of last resort. It also requires policyholders who must

get a safety consultation and are located outside of Texas to give information to Texas Mutual.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Health & Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Landrum expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Insurance Code §§2054.354, 2054.504, and 2054.507 and are current and accurate, which promotes transparent and efficient regulation.

Ms. Landrum expects that the proposed amendments will not increase the cost to comply with Insurance Code §§2054.354, 2054.504, and 2054.507 because they do not impose requirements beyond those in the statute or that exist in the current rule.

Section 2054.354 provides that Texas Mutual must develop statistical and other information to allow it to distinguish between its writings in the voluntary market and as the insurer of last resort. Section 2054.504 requires certain policyholders insured under Subchapter H to get a safety consultation. Section 2054.507 states that, if a safety consultant identifies a hazardous condition or practice, an accident plan must be developed for the policyholder. Therefore, these policyholders must submit information to Texas Mutual, and Texas Mutual must submit information to DWC to establish data for Texas Mutual acting as the insurer of last resort.

The amendments add Texas Mutual's physical address, so policyholders required to get a safety consultation and whose offices are outside of Texas know where to send information. The amendments also update Insurance Code references, so the public can find the applicable laws. As a result, the cost associated with the requirement that Texas Mutual, acting as the insurer of last resort, identify and notify DWC of certain policyholders requiring accident prevention services, or the requirement that policyholders subject to a safety consultation must send Texas Mutual information, does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments make editorial changes, changes to update obsolete references, and updates for plain language and agency style only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

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

DWC made these determinations because the proposed amendments make editorial changes, changes to update obsolete references, and updates for plain language and agency style only. They do not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on February 21, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes §165.1 under Insurance Code §§2054.354, 2054.504, and 2054.507 and Labor Code §§402.00111, 402.00116, and 402.061.

Insurance Code §2054.354 provides that Texas Mutual must develop statistical and other information to allow Texas Mutual to distinguish between their writings in the voluntary market and as the insurer of last resort.

Insurance Code §2054.504 requires certain policyholders insured under Subchapter H to get a safety consultation.

Insurance Code §2054.507 requires that, if a safety consultant identifies a hazardous condition or practice, an accident plan will be developed for the policyholder.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 165.1 implements Insurance Code §§2054.354, 2054.504, and 2054.507, which were amended to apply to Texas Mutual by HB 3458, 77th Legislature, Regular Session (2001) and recodified by HB 2017, 79th Legislature, Regular Session (2005).

§165.1. *Identification and Notification of Certain Policyholders Insured by the Texas Mutual Insurance Company Acting as the Insurer of Last Resort.*

(a) The Texas Mutual Insurance Company must [shall] provide the division a list [a listing] of the policyholders requiring accident prevention services (rejected risk employers) [~~(Rejected Risk employers)~~ to the Texas Workers' Compensation Commission's Division of Worker's Health and Safety (the division). This list must [shall] include rejected risk employers that meet the criteria in Texas Insurance Code Chapter 2054, Subchapters H and K [those employers identified by the Texas Mutual Insurance Company through application of the criteria found in the Texas Insurance Code, art. 5.76-3, §8, and art. 5.76-4].

(b) A policyholder subject to Texas Insurance Code §2054.504 [the Texas Insurance Code, art. 5.76-3, §8(e) or §8(d)], whose corporate office is located outside [the state] of Texas must, on [shall, upon] receipt of notification by the Texas Mutual Insurance Company of the requirement to get [obtain] a safety consultation as a condition of insurance, provide the Texas Mutual Insurance Company the following information:

- (1) the name and title of the senior official in Texas with the authority to commit funds and to establish policy, procedures, and actions required to implement the accident prevention plan and address the exposures identified in the hazard exposure survey;
- (2) the official's mailing address; and
- (3) the official's business telephone number.

(c) Information required by subsection (b) of this section must [shall] be mailed to the Texas Mutual Insurance Company at 2200 Aldrich Street, Austin, Texas 78723-3474 [the appropriate address].

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

Filed with the Office of the Secretary of State on January 2, 2023.
TRD-202300011
Kara Mace
Deputy Commissioner for Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: February 19, 2023
For further information, please call: (512) 804-4703

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.591

The Comptroller of Public Accounts proposes amendments to §3.591, concerning margin: apportionment. The amendments are in response to the Texas Supreme Court opinion in *Sirius XM Radio, Inc. v. Hegar*, No. 20-0462 (Tex. March 25, 2022).

In its opinion, the Supreme Court stated: "We see no reason for the 'receipt-producing, end-product act' test to play any role in our decision." Accordingly, the comptroller deletes the receipt-producing, end-product act discussion and examples in subsection (e)(26)(A) and removes references to the deleted examples throughout the section.

The comptroller also amends subsection (e)(26)(A) to incorporate the Supreme Court decision that the most natural reading of 'service performed in this state' supports locating the performance of the service at the place where the taxpayer's personnel or equipment is physically doing useful work for the customer." The proposed rule interprets the Court's phrase "useful work for the customer" to mean "work that the customer hired the taxable entity to perform," and that the phrase does not include "activities that enable the taxable entity to do business in general or are not directly used in the provision of a service to the customer." The proposed rule replaces "equipment" with "property" to recognize that, in some cases, property may be used to perform services, and the property may not be equipment. For example, a beekeeper that offers pollination services to agricultural customers uses honeybees to perform the useful work for the customer. While honeybees are property, it is not clear that they would be considered "equipment."

The comptroller similarly amends subsection (e)(26)(B) to provide additional guidance for determining the fair value of services when they are performed both inside and outside of Texas for a single charge.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the rules: 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 rules' 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 the guidance from the Texas Supreme Court ruling in *Sirius*. 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 amendments would have no fiscal implications for the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

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 amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Tax Code, §171.103 (Determination of Gross Receipts from Business Done in this State for Margin).

§3.591. *Margin: Apportionment.*

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

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

(1) Capital asset--Any asset that is held for use in the production of income, and that is subject to depreciation, depletion or amortization.

(2) Employee retirement plan--A plan or other arrangement that qualifies under Internal Revenue Code (IRC), §401(a) (Qualified pension, profit-sharing, and stock bonus plans), or that satisfies the requirement of IRC, §403 (Taxation of employee annuities), or a government plan described in IRC, §414(d) (Definitions and special rules).

(3) Gross receipts--Revenue as determined under §3.587 of this title (relating to Margin: Total Revenue), except as provided in subsection (e)(2) (concerning capital assets and investments) and subsection (e)(17) (concerning loans and securities) of this section. Non-receipt items excluded from total revenue under §3.587 of this title are not included in the calculation of total revenue under that section and are not deducted from gross receipts. These non-receipt items include the exclusion for uncompensated care, the \$500 exclusion per pro bono services case, the exclusion for the direct cost of providing waterway transportation, the exclusion for the direct cost of providing agricultural aircraft services, and the exclusion for the cost of a vaccine. See subsection (d)(5) of this section for gross receipts that are excluded from the apportionment calculation.

(4) Internal Revenue Code--The Internal Revenue Code of 1986 in effect for the federal tax year beginning on January 1, 2007, not including any changes made by federal law after that date, and any regulations adopted under that code applicable to that period.

(5) Inventory--Property held primarily for sale to customers in the ordinary course of a trade or business. Securities and loans held for investment, hedging, or risk management purposes are not inventory.

(6) Investment--Any non-cash asset that is not a capital asset or inventory.

(7) Legal domicile--The legal domicile of a corporation or limited liability company is its state of formation. The legal domicile of a partnership, trust, or joint venture is the principal place of business of the partnership, trust, or joint venture.

(8) Location of payor--The legal domicile of the payor.

(9) Principal place of business--The place where an entity's management directs, controls, and coordinates the entity's activities.

(10) Regulated investment company--Any domestic corporation defined under IRC, §851(a) (Definition of regulated investment company), including a taxable entity that includes trustees or sponsors of employee benefit plans that have accounts in a regulated investment company.

(11) Security--An instrument defined under IRC, §475(c)(2) (Mark to market accounting method for dealers in securities). This term includes instruments described by §475(e)(2)(B), (C), and (D) of that code.

(12) Tax reporting period--The period upon which the tax is based under Tax Code, §171.1532 (Business on Which Tax on Net Taxable Margin Is Based) or §171.0011 (Additional Tax).

(13) Taxable entity--Any entity upon which tax is imposed under Tax Code, §171.0002(a) (Definition of Taxable Entity) and not specifically excluded under Tax Code, §171.0002(b) or §171.0002(c). See also §3.581 of this title (relating to Margin: Taxable and Nontaxable Entities).

(14) Texas gross receipts--The portion of a taxable entity's gross receipts that is from business done in Texas.

(c) Apportionment formula. Except as provided in paragraphs (1) and (2) of this subsection, a taxable entity's margin is apportioned to Texas to determine the amount of franchise tax due by multiplying the taxable entity's margin by a fraction, the numerator of which is the taxable entity's Texas gross receipts and the denominator of which is the taxable entity's gross receipts from its entire business.

(1) Regulated investment company services. A taxable entity's margin derived, directly or indirectly, from the sale of management, distribution, or administration services to or on behalf of a regulated investment company, is apportioned to Texas by multiplying that portion of the taxable entity's total margin by a fraction:

(A) the numerator of which is the average of the sum of shares owned at the beginning of the year and the sum of the shares owned at the end of the year by the investment company shareholders whose principal place of business is in this state or, if the shareholders are individuals, are residents of this state; and

(B) the denominator of which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by all investment company shareholders.

(2) Employee retirement plan services. A taxable entity's margin derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan is apportioned to Texas by multiplying that portion of the taxable entity's total margin by a fraction:

(A) the numerator of which is the average of the sum of beneficiaries domiciled in Texas at the beginning of the year and the sum of beneficiaries domiciled in Texas at the end of the year; and

(B) the denominator of which is the average of the sum of all beneficiaries at the beginning of the year and the sum of all beneficiaries at the end of the year.

(d) General rules for reporting gross receipts.

(1) A taxable entity that files an annual report must report gross receipts based on the business done by the taxable entity beginning with the day after the date upon which the previous report was based, and ending with the last accounting period ending date for fed-

eral income tax purposes ending in the calendar year before the calendar year in which the report is originally due.

(2) A taxable entity with a beginning date prior to October 4, 2009 that files an initial report must report gross receipts based on its activities commencing with the beginning date, as described in §3.584 of this title (relating to Margin: Reports and Payments), and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report. A taxable entity with a beginning date on or after October 4, 2009 that files a first annual report must report gross receipts based on its activities commencing with the beginning date and ending on the last accounting period ending date for federal income tax purposes in the same calendar year as the beginning date.

(3) Taxable entities that are members of an affiliated group that are part of a unitary business must file a combined franchise tax report. See §3.590 of this title (relating to Margin: Combined Reporting), for determining gross receipts for a combined report.

(4) When a taxable entity computes gross receipts for apportionment, the taxable entity is deemed to have elected to use the same methods that the taxable entity used in filing its federal income tax return.

(5) Any item of revenue that is excluded from total revenue under Texas law or United States law is excluded from gross receipts from an entity's entire business and Texas gross receipts as provided by Tax Code, §171.1055(a) (Exclusion of Certain Receipts for Margin Apportionment). For example, any amount that is excluded from total revenue under the IRC, §78 (Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit) or §951 - 964 (26 U.S. Code Subpart F - Controlled Foreign Corporations), is excluded from gross receipts. Non-receipt items that are excluded from total revenue under §3.587 of this title, such as \$500 per pro bono services case; the actual cost of uncompensated care; the direct cost of providing waterway transportation; the direct cost of providing agricultural aircraft services and the cost of a vaccine, are not deducted from gross receipts under this section. See subsection (b)(3) of this section, concerning definition of gross receipts. For example, under Tax Code, §171.1011(g-3) (Determination of Total Revenue from Entire Business), an attorney may exclude \$500 from total revenue for handling a pro bono case. Since the \$500 is not a receipt, there is no exclusion for pro bono work when calculating gross receipts. Therefore, if a taxable entity starts with its total revenue amount to calculate its gross receipts, the taxable entity must add back the \$500 per pro bono services case.

(6) A taxable entity that uses a 52 - 53 week accounting year end and that has an accounting year that ends during the first four days of January of the year in which the report is originally due may use the preceding December 31 as the date through which margin is computed.

(7) Any item of allocated revenue excluded under §3.587(c)(9) of this title is excluded from Texas gross receipts and gross receipts from an entity's entire business.

(e) Computation and sourcing of gross receipts.

(1) Advertising services. Gross receipts from the dissemination of advertising are sourced to the locations of the advertising audience. The locations of the advertising audience should be determined in good faith using the most reasonable method under the circumstances, considering the information reasonably available. The method should be consistently applied from year to year and supported by records retained by the service provider. Locations that may be reasonable include the physical locations of the advertising, advertising

audience locations recorded in the books and records of the service provider, and locations listed in published rating statistics. If the locations of nationwide advertising audiences cannot otherwise be reasonably determined, then 8.7% of the gross receipts are sourced to Texas. For reports originally due prior to January 1, 2021, advertising receipts attributable to a radio or television station transmitter in Texas may be sourced to Texas.

(2) Capital assets and investments.

(A) Except as provided in subparagraph (C) of this paragraph, only the net gain from the sale of a capital asset or investment is included in gross receipts. A net loss from the sale of a capital asset or investment is not included in gross receipts.

(B) The net gain or net loss from the sale of a capital asset or investment is the amount realized from the sale less the adjusted basis for federal income tax purposes.

(C) For reports originally due prior to January 1, 2021, a taxable entity may add the net gains and losses from sales of investments and capital assets to determine the total gross receipts from such transactions. If both Texas and out-of-state sales have occurred, then a separate calculation of net gains and losses on Texas sales must be made. If the combination of net gains and losses results in a loss, the taxable entity may not net the loss against other receipts.

(D) The net gain from the sale of a capital asset or investments is sourced based on the type of asset or investment sold. The net gain from the sale of an intangible asset is sourced to the location of the payor as provided in paragraph (21)(B) of this subsection, concerning gross receipts from the sale of intangible assets, and paragraph (25) of this subsection, concerning securities, of this subsection. Examples of intangible assets include, but are not limited to, stocks, bonds, commodity contracts, futures contracts, patents, copyrights, licenses, trademarks, franchises, goodwill, and general receivable rights. The net gain from the sale of real property is sourced as provided in paragraph (23) of this subsection, concerning real property. The net gain from the sale of tangible personal property is sourced as provided in paragraph (29) of this subsection, concerning tangible personal property.

(E) Examples.

(i) Example 1. During a report year, a real estate investment company sells two Texas investment properties, reporting a gain on sale of one property and a loss on the sale of the other property. The company should include the net gain on the profitable sale in gross receipts from its entire business but should not include the net loss on the unprofitable sale. The company should not offset the net loss against the net gain. To determine Texas gross receipts, the asset should be sourced based on its nature. Receipts from the sale of real property are sourced to the location of the property, as provided in paragraph (23) of this subsection. The company should include only the net gain on the sale of the Texas investment property in Texas gross receipts and should not include the net loss on the sale of the other Texas investment property.

(ii) Example 2. The facts are the same as in Example 1, except the real estate investment company also had net gains and net losses from the sale of out-of-state properties. For reports originally due prior to January 1, 2021, the real estate investment company may offset all of the net losses from these sales against all of the net gains. If the result is a net gain, the net gain is included in gross receipts from its entire business. If the result is a net loss, the net loss may not be included in gross receipts from its entire business. To determine Texas gross receipts, the company may offset the net loss from the sale of the one Texas property against the net gain from the sale of the other

Texas property. If the result is a net gain, the net gain is included in Texas gross receipts. If the result is a net loss, the net loss may not be included in Texas gross receipts.

(3) Computer hardware and digital property.

(A) Gross receipts from the sale of computer hardware together with any software installed on the hardware are sourced as the sale or lease of tangible personal property under paragraph (29) of this subsection.

(B) Gross receipts from the lease of computer hardware together with any software installed on the hardware are sourced as the leasing of tangible personal property under paragraph (14)(B) of this subsection.

(C) Gross receipts from the sale of digital property (computer programs and any content in digital format that is either protected by copyright law or no longer protected by copyright law solely due to the passage of time) that is transferred by fixed physical media are sourced as the sale of tangible personal property under paragraph (29) of this subsection.

(D) Gross receipts from lease of digital property that is transferred by fixed physical media are sourced as the leasing of tangible personal property under paragraph (14)(B) of this subsection.

(E) Gross receipts from the sale or lease of digital property that is transferred by means other than by fixed physical media are sourced as the sale of intangible property under paragraph (21)(B) of this subsection.

(F) Gross receipts from the delivery of digital property as a service are sourced under paragraph (26) of this subsection, unless otherwise provided in this subsection.

(G) Gross receipts from the delivery of digital property as part of an internet hosting service are sourced as internet hosting receipts under paragraph (13) of this subsection. See paragraph (13)(D) of this subsection for factors distinguishing the purchase of access over the internet to computer services from the purchase or lease of digital property.

(H) Gross receipts from the use (as opposed to the sale or licensing) of digital property are sourced under paragraph (21)(A) of this subsection.

(I) Examples.

(i) Example 1. Movie Studio produces a copyrighted movie in digital format and successively sells the theatrical rights to Movie Theater Chain Company, the broadcast rights to Cable Company, the internet streaming rights to Internet Company A, the internet rental rights to Internet Company B, the digital versatile disc (DVD) sale rights to DVD Company, DVD rental rights to Kiosk Company, and the permanent download sale rights to Download Company. In each instance, Movie Studio's receipts are from the right to use its copyrighted digital property and sourced to where the copyright is used under paragraph (21)(A) of this subsection. Movie Theater Chain Company receipts from ticket sales are from the sale of a service and sourced ~~[to the audience location]~~ under paragraph (26) [(26)(A)(i)] of this subsection. Cable Company subscription receipts from broadcasting the movie are from the sale of a service and sourced ~~[to the audience location]~~ under paragraph (26) [(26)(A)(i)] of this subsection. Internet Company A's subscription receipts for its streaming service using its website are from an internet hosting service and sourced to the location of the customer under paragraph (13) of this subsection. Internet Company B's receipts from the rental (access for a limited time) of the movie using the company's website are from an internet hosting service and sourced to the location of the

customer under paragraph (13) of this subsection. DVD Company's receipts from the sale of DVDs are from the sale of tangible personal property and sourced under paragraph (29) of this subsection. Kiosk Company's receipts from the rental of DVDs are from the rental of property and sourced to the location of the property under paragraph (14) of this subsection. Download Company's receipts from the sale of permanent downloads of the movie are from the sale of intangibles and sourced to the location of payor under paragraph (21)(B) of this subsection.

(ii) Example 2. Software Company designs bookkeeping software for personal use. Software Company licenses the software to Computer Company to include in the software sold with its computers. Software Company sells digital versatile discs (DVDs) of the bookkeeping software to Retail Company for resale to end users. Software Company sells downloads of its bookkeeping software directly to end users. Software Company sells an on-line version of its bookkeeping software in which end users can enter and store data on-line using the Software Company's website for a periodic fee. Software Company receipts from licensing the software to Computer Company are from the use of its digital product and sourced to the location of use under paragraph (21)(A) of this subsection. Computer Company's receipts from the sale of computers with pre-loaded software are from the sale of tangible personal property and sourced under paragraph (29) of this subsection. Software Company's receipts from the sale of DVDs to Retail Company are from the sale of tangible personal property and sourced under paragraph (29) of this subsection. Software Company's receipts from the sale of downloads to end users are from the sale of intangible property and sourced to the location of payor under paragraph (21)(B) of this subsection. Software Company's receipts from the sale of its on-line version are from the sale of an internet hosting service and sourced to the location of the customer under paragraph (13) of this subsection.

(4) Condemnation. Gross receipts from condemnation of property are sourced to the location of the property condemned.

(5) Debt forgiveness. If a creditor releases any part of a debt, then the amount that the creditor forgives is a gross receipt that is sourced to the legal domicile of the creditor.

(6) Debt retirement. Gross receipts from the retirement of a taxable entity's own indebtedness, such as through the taxable entity's purchase of its own bonds at a discount, are sourced to the taxable entity's legal domicile. The indebtedness is treated as an investment in the determination of the amount of gross receipts.

(7) Dividends.

(A) Dividends that are recognized as a reduction of the taxpayer's basis in stock of a taxable entity for federal income tax purposes are not gross receipts. Dividends that exceed the taxpayer's basis for federal income tax purposes that are recognized as a capital gain are treated as dividends for apportionment purposes.

(B) The following are excluded from Texas gross receipts and gross receipts from an entity's entire business:

(i) dividends from a subsidiary, associate, or affiliated taxable entity that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States;

(ii) Form 1120, Schedule C special deductions that are excluded from total revenue; and

(iii) dividends on federal obligations that are excluded from total revenue.

(C) Dividends that are received from a corporation or other sources are sourced to the location of the payor.

(D) Dividends received from a national bank are sourced to Texas if the bank's principal place of business is located in Texas. Dividends received from a bank that is organized under the Texas Banking Code are sourced to Texas.

(8) Exchanges of property. Exchanges of property are included in gross receipts to the extent that the exchange is recognized as a taxable transaction for federal income tax purposes. Such exchange must be included in gross receipts based on the gross exchange value, unless otherwise required under this section.

(9) Federal enclave. Gross receipts from a taxable entity's sales, services, leases, or other business activities that are transacted on a federal enclave that is located in Texas are sourced to Texas, unless otherwise excepted by this section.

(10) Financial derivatives. Gross receipts from the settlement of financial derivatives contracts, including hedges, options, swaps, futures, and forward contracts, and other risk management transactions are sourced to the location of the payor.

(11) Insurance proceeds.

(A) Business interruption insurance proceeds are gross receipts when the proceeds are intended to replace lost profits. Such receipts are Texas gross receipts when the location of the payor is in Texas.

(B) Gross receipts from fire and casualty insurance proceeds are sourced to the location of the damaged or destroyed property.

(12) Interest.

(A) Except as provided in subparagraph (B) of this paragraph, interest received is sourced to the location of the payor.

(B) Interest received from a national bank is a Texas gross receipt if the bank's principal place of business is located in Texas. Interest received from a bank that is organized under the Texas Banking Code is a Texas gross receipt.

(C) The following are excluded from Texas gross receipts and gross receipts from an entity's entire business:

(i) interest on federal obligations that is excluded from total revenue; and

(ii) interest that is exempt from federal income tax.

(D) A banking corporation may exclude from its Texas gross receipts interest that is earned on federal funds and interest that is earned on securities that are sold under an agreement to repurchase and that are held in a correspondent bank that is domiciled in Texas, but the banking corporation must include the interest in its gross receipts from an entity's entire business.

(13) Internet hosting service. For reports originally due on or after January 1, 2014, receipts from internet hosting are Texas gross receipts if the customer is located in Texas.

(A) Internet hosting service means providing to an unrelated user access over the internet to computer services using property that is owned or leased and managed by the provider and on which the user may store or process the user's own data or use software that is owned, licensed, or leased by the user or provider.

(B) Internet hosting includes real-time, nearly real-time, and on-demand access over the internet to computer services such as:

(i) data storage and retrieval;

(ii) video gaming;

(iii) database search services;

(iv) entertainment streaming services;

(v) processing of data; and

(vi) marketplace provider services.

(C) Internet hosting does not include:

(i) telecommunications service;

(ii) cable television service;

(iii) internet connectivity service;

(iv) internet advertising service; or

(v) internet access solely to download digital content for storage and use on the customer's computer or other electronic device.

(D) The purchase of access over the internet to computer services is distinguished from the purchase or lease of computer hardware or digital property (which are sourced under subsection (e)(3) of this section) by taking into account all relevant factors, the relevance of which may vary depending upon the circumstances. Some relevant factors indicating the purchase of access to a computer service rather than the purchase or lease of computer hardware or digital property include:

(i) the customer is not in physical possession of the property;

(ii) the customer does not control the property, beyond the customer's network access and use of the property;

(iii) the provider has the right to determine the specific property used in the transaction and replace such property with comparable property;

(iv) the property is a component of an integrated operation in which the provider has other responsibilities, including ensuring the property is maintained and updated;

(v) the customer does not have a significant economic or possessory interest in the property;

(vi) the provider bears any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract;

(vii) the provider uses the property concurrently to provide significant services to entities unrelated to the customer;

(viii) the provider's fee is primarily based on a measure of work performed or the level of the customer's use rather than the mere passage of time; and

(ix) the total contract price substantially exceeds the rental value of the property for the contract period.

(E) The customer location is determined by the physical location where the purchaser or the purchaser's designee consumes the service. The location should be determined in good faith using the most reasonable method under the circumstances, considering the information reasonably available. Receipts from some services may be sourced to multiple customer locations or to multiple customers. Locations that may be reasonable under the circumstances include the customer's principal place of business, the customer's business unit that is using the computer services, the delivery addresses for individual

units of service provided to the customer, the primary place or places of consumption by the customer, the service address of the customer, the billing address of the customer, or a combination of methods.

(i) Example 1. An individual purchases access to a dating application. The most reasonable customer location for consumption of the service may be the billing address of the individual in the absence of information regarding the individual's physical address.

(ii) Example 2. A benefactor purchases access to a computer service for a charitable organization. The customer is the purchaser's designee for consuming the service - the charitable organization. The most reasonable customer location for consumption of the service may be the physical address of the charitable organization.

(iii) Example 3. An intermediary purchases access to a computer service for resale to a third party. The customer is purchaser's designee for consuming the service - the third party. The most reasonable customer location for consumption of the service may be the physical location of the third party, if known.

(iv) Example 4. A law firm purchases access to a database search program for attorneys in multiple offices. The customers are the purchaser's designees for consuming the service - its attorneys. The most reasonable customer locations for consumption of the service may be physical addresses of each office, with the access fee sourced proportionately based on the number of attorneys in each office.

(v) Example 5. A retailer with multiple sales outlets purchases access to point of sales software that reports to the retailer's central office. The most reasonable customer locations for consumption of the service may be the physical addresses of the central office and each designated point of sale, with the access fee sourced proportionately between the central office and each designated point of sale.

(vi) Example 6. A retailer with multiple sales outlets purchases access to federal income tax preparation software. The most reasonable customer location for consumption of the service may be the principal place of business of the retailer.

(vii) Example 7. An individual pays a fee to an internet ride-sharing service connecting the individual with a driver at a particular location. The most reasonable customer location for consumption of the service may be the physical address of rendezvous point for the ride.

(14) Leases and subleases.

(A) Gross receipts from the lease, sublease, rental, or subrental of real property are sourced to the location of the property.

(B) Gross receipts from the lease, sublease, rental, or subrental of tangible personal property are sourced to the location of the property. If the property is used both inside and outside Texas, then lease payments are sourced based on the number of days that the tangible personal property was used in Texas divided by the number of days that the tangible personal property was used everywhere. If the amount due under the lease is based on mileage, then the lease payments are sourced based on the number of miles in Texas divided by the number of miles everywhere.

(C) If a lump sum is charged for the lease, sublease, rental, or subrental of more than one item of property, and the items are located both inside and outside Texas, the lump-sum is sourced to Texas based on a ratio of the fair rental value of the items located in Texas to the fair value of the items located outside of Texas.

(D) Gross receipts from the lease, sublease, rental, or subrental of a vessel that engages in commerce are sourced to Texas

based on the number of days that the vessel is engaged in commerce in Texas waters divided by the number of days that the vessel is engaged in commerce everywhere.

(E) Gross receipts from a lease, sublease, rental, or subrental of real property or tangible personal property that is treated as a sale for federal income tax purposes are sourced in the same manner as a sale. Any portion of the payments that the contracting parties designate as interest is sourced as provided in paragraph (12) of this subsection, concerning interest.

(15) Litigation awards. Litigation awards are gross receipts that are sourced to the location of the payor; however, if the litigation awards are intended to replace receipts for which another rule provided in this section applies, then the gross receipts are sourced in accordance with that rule. For example, if a taxable entity sues a Delaware corporation to recover on a sale of goods delivered to a Texas location, then a judgment for the amount of that sale would not convert the receipts from Texas gross receipts to Delaware receipts. See subsection (f) of this section, for the sourcing of receipts from judgments, compromises, or settlements that relate to natural gas production.

(16) Loan servicing.

(A) Gross receipts from servicing loans secured by real property are sourced to the location of the collateral real property that secures the loan being serviced.

(B) Gross receipts from servicing loans that are not secured by real property are sourced as provided in paragraph (26) of this subsection, concerning services.

(17) Loans and securities treated as inventory of the seller.

(A) Gross proceeds from the sale of a loan or security treated as inventory of the seller for federal income tax purposes are included in gross receipts even though the tax basis is not included in total revenue under §3.587(e)(4) of this title. Securities and loans held for investment or risk management purposes are not inventory. Gross receipts from the sale of a loan or security treated as inventory of the seller are sourced to the location of the payor as provided in paragraph (25) of this subsection, concerning securities. See paragraph (2) of this subsection, concerning capital assets and investments, or paragraph (10) of this subsection, concerning financial derivatives, for the treatment of gains and losses from sales of loans and securities not treated as inventory of the seller.

(B) If a lending institution categorizes a loan or security as "Securities Available for Sale" or "Trading Securities" under Financial Accounting Standard No. 115, the gross proceeds of the sale of that loan or security are considered gross receipts. In this subparagraph, "Financial Accounting Standard No. 115" means the Financial Accounting Standard No. 115 in effect as of January 1, 2009, not including any changes made after that date.

(18) Membership or enrollment fees paid for access to benefits. Membership or enrollment fees paid for access to benefits are gross receipts from the sale of an intangible asset and are sourced to the location of the payor.

(19) Mixed transactions. If a transaction involves elements of both a sale of tangible personal property and a service, but no documentation exists to show separate charges for the tangible personal property and service elements, then the comptroller may determine the amounts that are allocable to each element based on fair values or on any available evidence.

(20) Net distributive income. The net distributive income or loss from a passive entity that is included in total revenue is sourced to the principal place of business of the passive entity.

(21) Patents, copyrights, and other intangible assets.

(A) Gross receipts from the use of intangible assets.

(i) Revenues from a patent royalty are included in Texas receipts to the extent that the patent is utilized in production, fabrication, manufacturing, or other processing in Texas.

(ii) Revenues from a copyright royalty are included in Texas receipts to the extent that the copyright is utilized in printing or other publication in Texas.

(iii) Gross receipts that the owner of a patent, copyrighted material, trademark, franchise, or license receives from licensing the use of the patent, copyrighted material, trademark, franchise, or license are sourced to Texas to the extent the patent, copyrighted material, trademark, franchise or license is used in Texas.

(iv) Royalties from an affiliated taxable entity that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States are excluded from Texas gross receipts and gross receipts from an entity's entire business.

(B) Gross receipts from the sale of intangible assets. Except as otherwise provided in this section, gross receipts from the sale of intangible assets are sourced to the location of payor.

(C) Examples.

(i) Example 1. The owner of seismic data grants a license to an oil company to access the seismic data. Even though a license is part of this transaction, the receipts are from the use of the underlying intangible property, the seismic data (which cannot be copyrighted), not from the use of a license. Accordingly, the receipts are sourced under subparagraph (B) of this paragraph to the location of the payor.

(ii) Example 2. An inventor licenses a patent to a manufacturer. When the manufacturer licensee thereafter produces the patented item, it uses the patent, and its payments to the inventor, owner of the patent, are receipts from the use of a patent under subparagraph (A) of this paragraph. The receipts that the inventor receives are included in Texas receipts to the extent that the patent is used in production, fabrication, manufacturing, or other processing in Texas.

(iii) Example 3. The owner of copyrighted material grants a license to a publisher to publish the copyrighted material. When the publisher publishes the copyrighted material, it uses the copyright, and its payments to the owner are receipts from the use of a copyright under subparagraph (A) of this paragraph. The receipts that the copyright owner receives from the use of its copyright is included in Texas receipts to the extent the copyright is used in Texas.

(22) Qualified stock purchase under IRC, §338(h)(10) (Certain stock purchases treated as asset acquisitions). Receipts that are treated as receipts from the sale of assets by the target taxable entity under IRC, §338(h)(10) are sourced according to the rules that apply to sales of such assets. For the purposes of this paragraph, the purchaser of the target's stock is considered the purchaser of the assets.

(23) Real property. Gross receipts from the sale, lease, rental, sublease, or subrental of real property, including mineral interests, are sourced to the location of the property. Royalties from mineral interests are considered revenue from real property.

(24) Sales taxes. State or local sales taxes that are imposed on the customer, but are collected by a seller are not included in the seller's gross receipts. However, discounts that a seller is allowed to take in remittance of the collected sales tax are gross receipts to the seller.

(25) Securities. Gross receipts from the sale of securities are sourced to the location of the payor. If securities are sold through an exchange, and the payor cannot be identified, then 8.7% of the revenue is a Texas gross receipt. For reports originally due prior to January 1, 2021, a taxable entity may use 7.9% instead of 8.7%.

(26) Services. Except as otherwise provided in this section, gross receipts from a service are sourced to the location where the service is performed.

(A) Location of performance. Except as provided in other subparagraphs, a service is performed at the location or locations where the taxable entity's personnel or property are doing the work that the customer hired the taxable entity to perform. Activities that are not directly used to provide a service are not relevant when determining the location where a taxable entity performs a service [of the receipts-producing, end-product act or acts. If there is a receipts-producing, end-product act, the location of other acts will not be considered even if they are essential to the performance of the receipts-producing acts. If there is not a receipts-producing, end-product act, then the locations of all essential acts may be considered].

~~{(i) Example 1. Admission fees, subscription fees, or other charges for an audience to observe live or pre-recorded performances are sourced to the locations where the recipients observe the performance. The location where the live performance was rehearsed, the location where the pre-recorded performance was recorded, and the location where the admission fee or other charge was paid are not determinative.}~~

~~{(ii) Example 2. Gross receipts from the architectural design of a structure, are sourced to the location or locations where the architect performed the work. The delivery location of any tangible work product, such as a blueprint, is not determinative. However, if the tangible work product of the architect is considered to be the sale of tangible personal property rather than the sale of a service, such as the sale of house plan books, the gross receipts are sourced as provided in paragraph (29) of this subsection, concerning tangible personal property.}~~

(B) If services are performed both inside and outside Texas for a single charge, then receipts from the services are Texas gross receipts on the basis of the fair value of the services that are performed in Texas. In determining fair value, the relative value of each service provided on a stand-alone basis may be considered. Units of service, such as hours worked, may also be considered. The cost of performing a service does not necessarily represent its value. If costs are considered, costs should be limited to the direct costs of doing the work that the customer hired the taxable entity to perform and should not include any costs that are not directly used to provide a service to the customer [directly related to the service and not overhead costs].

(i) Example 1. A law firm with offices in Texas and Louisiana charges a client by the hour. Hours billed for work conducted in Texas are Texas gross receipts.

(ii) Example 2. A law firm with offices in Texas and Louisiana charges a client a lump sum fee of \$5,000 to draft a document. Attorneys in the Texas office recorded 20 hours on the project, and attorneys in the Louisiana office recorded 5 hours on the project at the same billing rate. Texas gross receipts are \$4,000. If the law firm

does not record hours worked on a project, other measures of direct cost may be considered.

(iii) Example 3. A Texas-based landscaper provides grounds maintenance services at its client's four offices in Texas, and one office in Oklahoma, for an annual fee of \$50,000. The landscape services at each of the locations are substantially the same. Texas gross receipts are \$40,000. Although the cost of performing the landscaping maintenance service at the Oklahoma office is higher than the cost of performing the service at the other locations because of the additional travel cost, the additional cost is not considered.

(C) Taxable entities that have margin that is derived, directly or indirectly, from the sale of services to or on behalf of a regulated investment company should refer to subsection (c)(1) of this section for information on apportionment of such margin.

(D) Taxable entities that have margin that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan should refer to subsection (c)(2) of this section for information on apportionment of such margin.

(E) Receipts from services that a defense readjustment project performs in a defense economic readjustment zone are not Texas gross receipts.

(27) Single member limited liability company (SMLLC). For purposes of this section, the sale of a SMLLC by its sole owner is the sale of a membership interest in the SMLLC. The membership interest is an intangible asset, and receipts from the sale of a SMLLC are sourced to the location of payor.

(28) Subsidies or grants. Proceeds of subsidies or grants that a taxable entity receives from a governmental agency are gross receipts, except when the funds are required to be expended dollar-for-dollar (i.e., passed through) to third parties on behalf of the agency. Receipts from a governmental subsidy or grant are sourced in the same manner as the item to which the subsidy or grant was attributed. For example, receipts from a grant to conduct research for the government are receipts from a service and are sourced to the location where the research is performed.

(29) Tangible personal property. Examples of transactions that involve the sale of tangible personal property and result in Texas gross receipts include, but are not limited to, the following:

(A) the sale of tangible personal property that is delivered in Texas to a purchaser. Delivery is complete upon transfer of possession or control of the property to the purchaser, an employee of the purchaser, or transportation vehicles that the purchaser leases or owns. FOB point, location of title passage, and other conditions of the sale are not relevant to the determination of Texas gross receipts;

(B) the sale of tangible personal property that is delivered in Texas to an employee or transportation agent of an out-of-state purchaser. A carrier is an employee or agent of the purchaser if the carrier is under the supervision and control of the purchaser with respect to the manner in which goods are transported;

(C) the sale and delivery in Texas of tangible personal property that is loaded into a barge, truck, airplane, vessel, tanker, or any other means of conveyance that the purchaser of the property leases and controls or owns. The sale of tangible personal property that is delivered in Texas to an independent contract carrier, common carrier, or freight forwarder that a purchaser of the property hires results only in gross receipts everywhere if the carrier transports or forwards the property to the purchaser outside this state;

(D) the sale of tangible personal property with delivery to a common carrier outside Texas, and shipment by that common carrier to a purchaser in Texas;

(E) the sale of oil or gas to an interstate pipeline company, with delivery in Texas;

(F) the sale of tangible personal property that is delivered in Texas to a warehouse or other storage facility that the purchaser owns or leases;

(G) the sale of tangible personal property that is delivered to and stored in a warehouse or other storage facility in Texas at the purchaser's request, as opposed to a necessary delay in transit, even though the property is subsequently shipped outside Texas;

(H) the drop shipment of tangible personal property in Texas. A drop shipment is a shipment of tangible personal property from a seller directly to a purchaser's customer, at the request of the purchaser, without passing through the hands of the purchaser. This results in Texas gross receipts for the seller and the purchaser.

(30) Telecommunication services.

(A) Gross receipts from telephone calls that both originate and terminate in Texas are sourced to Texas.

(B) Gross receipts from telephone calls that originate in Texas but terminate outside of Texas or that originate outside of Texas but terminate in Texas are not sourced to Texas.

(C) Gross receipts from telecommunication services other than those services in subparagraph (A) or (B) of this paragraph are sourced to Texas if the services are performed in Texas. For example, a telephone company that provides a long distance carrier access to the telephone company's local exchange network in Texas is performing a service in Texas. Any fee that the telephone company charges the long distance carrier for access to the local exchange network in Texas is a Texas receipt regardless of whether the access is related to an interstate call. A fee that is charged to obtain access to a local exchange network in Texas and that is based on the duration of an interstate telephone call are not sourced to Texas.

(31) Television broadcaster licensing income. For reports originally due on or after January 1, 2018, a broadcaster's gross receipts from licensing income from broadcasting or otherwise distributing film programming by any means are sourced to Texas if the legal domicile of the broadcaster's customer is in this state. In this subparagraph, the following words and terms shall have the following meaning:

(A) Broadcaster--A taxable entity, not including a cable service provider or a direct broadcast satellite service, that is a television station licensed by the Federal Communications Commission, television broadcast network, cable television network, or television distribution company.

(B) Customer--A person, including a licensee, who has a direct connection or contractual relationship with a broadcaster under which the broadcaster derives revenue.

(C) Film programming--All or part of a live or recorded performance, event, or production intended to be distributed for visual and auditory perception by an audience.

(D) Programming--Includes news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

(32) Texas waters. Gross receipts from transactions that occur in Texas waters are sourced to Texas. Texas waters are consid-

ered to extend to 10.359 statute miles, or nine nautical miles, from the Texas coastline.

(33) Transportation services. Gross receipts from the transportation of goods or passengers are sourced to Texas by:

(A) including gross receipts from the transportation of goods or passengers that both originates and terminates in Texas; or

(B) the multiplication of total transportation receipts by the ratio of total compensated mileage in the transportation of goods and passengers in Texas to total compensated mileage.

(f) Natural gas production.

(1) Gross receipts that a gas producer realizes from the contract price of gas that the gas producer produces and that the purchaser takes pursuant to the terms of sales are sourced to Texas, if the gas is delivered in Texas.

(2) Gross receipts that a gas producer realizes from a purchaser's payment under a sale or purchase contract for gas to be produced even if no gas is produced and delivered to the purchaser, are sourced to the location of the payor.

(3) Gross receipts that a gas producer realizes from a purchaser's payments to terminate a gas purchase contract are sourced to the location of the payor.

(4) Gross receipts that a gas producer realizes from a contract amendment that relates to the price of the gas sold are treated as gross receipts from the sales of gas and are sourced to Texas if delivery is made to a location in Texas. Gross receipts that the gas producer realizes from a contract amendment that relates to a provision other than the price of gas sold are sourced to the location of the payor.

(5) Gross receipts that a gas producer realizes from litigation awards for a breach of contract, reimbursements for litigation-related expenses (e.g., documented attorney's fees or court costs), or in-

terest (upon which the parties have agreed, that the records of the producer reflects, or in an amount that a court has ordered) are sourced to the location of the payor.

(6) Gross receipts that a gas producer realizes from a judgment, compromise, or settlement relating to the recovery of a contract price of gas produced are sourced to Texas to the extent the contract specified delivery to a location in Texas. Gross receipts that a gas producer realizes from a judgment, compromise, or settlement that relates to several claims or causes of action shall be prorated based upon the documented amounts due under the contract for each claim or cause of action according to the records of the producer. For example, a settlement sum of \$100,000 for a pricing dispute of \$25,000 and for failure to pay for gas not taken in the amount of \$225,000, would result in receipts of \$10,000 from gas sales ($100,000 \times 25,000/250,000$) and receipts from other business of \$90,000 ($100,000 \times 225,000/250,000$). Records of the producer shall include, but are not limited to the following: contracts, settlement agreements, accounting records and entries, court pleadings and worksheets, including calculations reflecting settlement amounts.

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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