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# TEXAS REGISTER

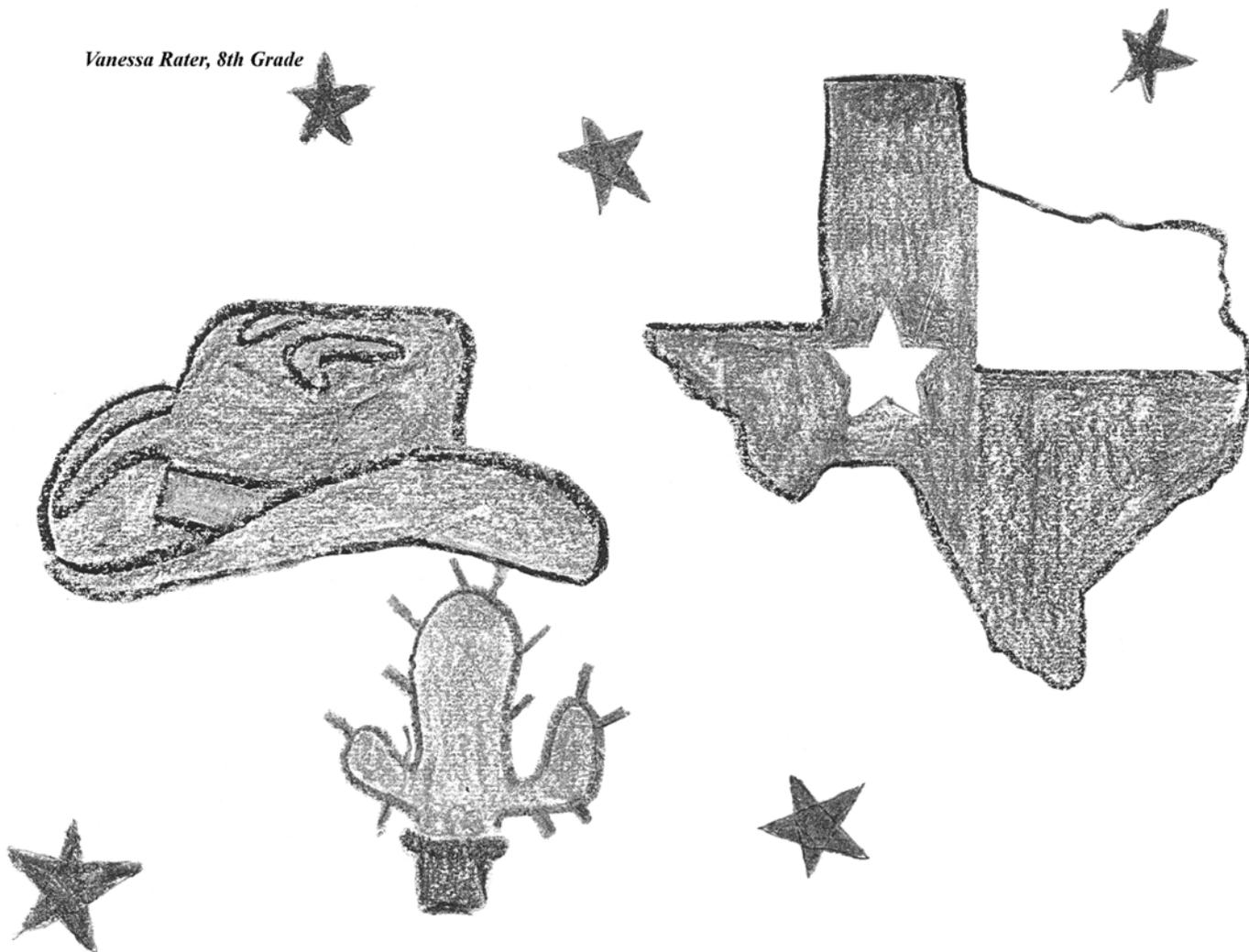
*Volume 41 Number 14*

*April 1, 2016*

*Pages 2365 - 2768*

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*Vanessa Rater, 8th Grade*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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# TEXAS REGISTER

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

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Requests for Opinions

**RQ-0102-KP**

**Requestor:**

The Honorable Rodolfo V. Gutierrez

Jim Hogg County Attorney

Post Office Box 847

Hebbronville, Texas 78361

Re: Whether section 49.052 of the Water Code disqualifies an employee of the County Attorney's Office from serving as a member of the board of a water control and improvement district in the same county, when the County Attorney also provides professional legal services to the water district (RQ-0102-KP)

**Briefs requested by April 18, 2016**

**RQ-0103-KP**

**Requestor:**

Michael Morath

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Procedures for requesting video surveillance of special education settings pursuant to Education Code section 29.022 (RQ-0103-KP)

**Briefs requested by April 1, 2016**

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201601336

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: March 21, 2016



Opinions

**Opinion No. KP-0070**

Mr. James M. Bass

Executive Director

Texas Department of Transportation

125 East 11th Street

Austin, Texas 78701-2483

Re: Whether Senate Bill 374, requiring state agency participation in the E-Verify program, supersedes Executive Order RP-80 (RQ-0055-KP)

**S U M M A R Y**

Section 673.002 of the Government Code supersedes Executive Order RP-80 with respect to the requirement that all state agencies must verify the employment eligibility of new employees through the Department of Homeland Security's E-Verify program.

With respect to the verification of employment eligibility of contractors and subcontractors by state agencies under the direction of the Governor, section 673.002 does not specifically supersede or preempt Executive Order RP-80.

**Opinion No. KP-0071**

The Honorable Harold V. Dutton, Jr.

Chair, Committee on Juvenile Justice and Family Issues

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Constitutionality of Senate Bill 1876, relating to the appointment of attorneys ad litem, guardians ad litem, mediators, and guardians (RQ-0060-KP)

**S U M M A R Y**

A court is unlikely to conclude that Senate Bill 1876 from the Eighty-fourth Legislature is unconstitutional under article II, section 1 of the Texas Constitution or is unconstitutionally vague.

**Opinion No. KP-0072**

The Honorable Jane Nelson

Chair, Committee on Finance

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a school district, municipality, or county may reduce or repeal the local option homestead exemption from the amount that was adopted for the 2014 tax year through the 2019 tax year (RQ-0082-KP)

TRD-201601347  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: March 21, 2016

**S U M M A R Y**

Subsection 11.13(n-1) of the Tax Code prohibits a school district, municipality, or county from repealing or reducing the local option homestead exemption from the amount that was adopted for the 2014 tax year through the 2019 tax year.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*



# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Requests

The Texas Ethics Commission has been asked to consider whether a legislator may accept a tax deduction for donating property to the state. **(AOR-609)**

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201601341  
Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission  
Filed: March 21, 2016



## Advisory Opinion Requests

The Texas Ethics Commission has been asked to consider whether a communication relating to a measure election complies with §255.003 of the Election Code. **(AOR-610)**

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201601360  
Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission  
Filed: March 22, 2016



*Rosemere Morones  
5th Grade*



# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 8. TEXAS JUDICIAL COUNCIL

#### CHAPTER 171. REPORTING REQUIREMENTS

##### 1 TAC §§171.2, 171.4 - 171.10

The Texas Judicial Council (the Council) proposes amendments to §§171.2 and 171.4 - 171.8 and new §171.9 and §171.10 regarding requirements for case activity reports and other reports required to be submitted to the Office of Court Administration (OCA). The purpose of the proposed changes to Chapter 171 is to include all requirements provided by statute or by Supreme Court of Texas rule regarding reporting to OCA.

Notwithstanding the effective date of the adoption of the proposed rules and amendments, the reporting requirements of §171.9(a)(1) take effect with the reports beginning September 1, 2016.

Glenna Bowman, chief financial officer of the Office of Court Administration (OCA), has determined that for each year of the first five-year period the new sections and amendments are in effect, there will be no significant fiscal implication for the state. Because most of the proposed provisions are for reporting requirements that are already required by statute and the new reporting requirements are few, OCA does not anticipate that the fiscal implication for local governments will be significant. The actual cost as a result of compliance with the new and amended sections will depend on 1) the existence and terms of any contract with a case management system vendor concerning implementation of changes in reporting case activity information to OCA; and 2) the level of sophistication of the government's current case management system and the degree to which changes will need to be made.

Scott Griffith, director of research and court services with OCA, has determined that for each year of the first five years the new and amended sections are in effect, the public benefit anticipated as a result of the sections will be clarity in what is required by law and rule for reporting case activity and other information to OCA. There will be no cost to small business or individuals.

Maria Elena Ramon, general counsel of OCA, has reviewed the proposed new rules and amendments and found them to be within the Council's authority to adopt.

Comments on the proposal may be submitted to Scott Griffith at scott.griffith@txcourts.gov, at P.O. Box 12066, Austin, Texas 78711-2066 or at fax number (512) 463-1648.

The amendments and new rules are proposed under the following Government Code Sections: §71.019, which authorizes the Council to adopt rules expedient for the administration of its functions; §71.035, which authorizes the Council to require a state

justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court; §71.0352, which requires justice and municipal courts to report juvenile data; §71.0353, which requires district and county courts at law to report data regarding trafficking of persons; §72.031, which requires local governments and appellate courts that charge a \$2 filing fee to certify to OCA that the fee is necessary to recover system operating costs to implement e-filing; §36.004, which requires courts to report the appointment of and payment made to attorneys ad litem, guardians ad litem, guardians, mediators or competency evaluators; §72.087, which requires the submission of jury charges and sentences in capital cases; and §29.013(a), which requires municipalities to report the name of each person who is elected or appointed mayor, municipal court judge or clerk of a municipal court and each person who vacates these offices. The amendments and rules are also proposed under §11.104 of the Civil Practice and Remedies Code, which requires the submission of orders declaring persons to be vexatious litigants; §574.014 of the Health and Safety Code, which requires the reporting of mental health commitments; §33.003(l) of the Family Code, which requires the submission of a report regarding the filing of an application for a court order authorizing a minor to consent to the performance of an abortion without notification and consent of a parent, managing conservator or guardian; Art. 102.017 of the Code of Criminal Procedure, which requires a local administrative judge to report incidents involving court security; and §1104.306 of the Estates Code, which requires the county clerk of each county to submit to the Judicial Branch Certification Commission the name and business address of each private professional guardian who has satisfied the registration requirements of §1104.303 of the Estates Code.

No other statutes, articles, or codes are affected by these sections.

##### *§171.2. General Reporting Requirements.*

District clerks, county clerks, justices of the peace, and municipal judges shall submit a summary-level court activity report and other required reports each month to the Office of Court Administration (OCA) using the methods required by this chapter. Unless specifically provided otherwise in this chapter, all reports are due no later than 20 days following the end of the month reported. [The revised reporting requirements of this chapter concerning district courts, statutory county courts, and constitutional county courts will take effect with reports beginning September 1, 2010. The revised reporting requirements of this chapter concerning justice courts and municipal courts will take effect with reports beginning September 1, 2011.] OCA shall maintain and update reporting instructions and forms initially approved by the Texas Judicial Council, and shall continually make

the instructions and forms available by publishing them on its website and by other appropriate means.

§171.4. *District Court Reports.*

(a) Method. The district clerk of each county shall submit a district court activity report of the criminal, civil, family law and juvenile cases in the county's district courts. A separate report may be submitted for each district court or a single report may be submitted showing the combined activity of all the district courts in the county. Unless OCA grants a waiver for good cause, the district clerk shall submit the reports by electronic means approved by OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report contains the following categories of felony case types: capital murder, murder, other homicides, aggravated assault or attempted murder, sexual assault of an adult, indecency with or sexual assault of a child, family violence assault, aggravated robbery or robbery, burglary, theft, automobile theft, drug sale or manufacture, drug possession, felony D.W.I., and other felonies; and a misdemeanor case type category for all misdemeanors.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(D) Other Case Activity Reporting. Pursuant to Section 71.0353 of the Government Code, the clerk shall also report the number of cases filed for the following offenses:

- (i) trafficking of persons under Sec. 20A.02, Penal Code,
- (ii) prostitution under Sec. 43.02, Penal Code; and
- (iii) compelling prostitution under Sec. 43.05, Penal Code.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage--motor vehicle, injury or damage--medical malpractice, injury or damage--other professional malpractice, injury or damage--asbestos/silica product liability, injury or damage--other product liability, other injury or damage, real property--eminent domain, other real property, contract--consumer/commercial/debt, other contract, civil cases relating to criminal matters, other civil cases, and tax cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Family Law Cases.

(A) Family law case type categories. The monthly report contains the following categories of family law cases: divorce--children, divorce--no children, parent/child--no divorce, child protective services, termination of parental rights, adoption, protective orders--no divorce, Title IV-D--paternity, Title IV-D--support order, and Title IV-D--UIFSA, all other family law cases, and post-judgment actions for modification--custody, modification--other, enforcement, and Title IV-D.

(B) Family law case activity categories. The monthly report contains sections for cases on docket, dispositions and additional court activity section.

(4) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for conduct indicating a need for supervision (C.I.N.S.) cases and the following categories of delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting cases on docket, adjudications, dispositions and additional court activity.

§171.5. *Statutory County Court Reports.*

(a) Method. Each district clerk or county clerk who maintains the records for the statutory county courts (including statutory probate courts) of a county shall submit a court activity report of criminal, civil, family law, juvenile, probate and guardianship, and mental health cases for these courts. A separate report may be submitted for each statutory county court or a single report may be submitted for all statutory county courts in the county. Unless OCA grants a waiver for good cause, the clerk shall submit the reports by electronic means approved by the OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report for criminal cases is divided into sections for misdemeanors and felonies.

(i) Misdemeanor case types. The report contains the following categories for reporting misdemeanor cases: D.W.I.--first offense, D.W.I.--second offense, theft, theft by check, drug possession--marijuana, drug offenses--other, family violence assault, other assault, traffic, D.W.L.S./D.W.L.I., and other misdemeanor cases.

(ii) Felony case types. The report contains the following categories for reporting felony cases: capital murder, murder, other felony homicides, aggravated assault or attempted murder, sexual assault of an adult, indecency with or sexual assault of a child, family violence assault, aggravated robbery or robbery, burglary, theft, automobile theft, drug sale or manufacture, drug possession, felony D.W.I., and other felonies.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(D) Other case activity reporting. Pursuant to Section 71.0353 of the Government Code, the clerk shall also report the number of cases filed for the following offenses:

- (i) trafficking of persons under Sec. 20A.02, Penal Code;
- (ii) prostitution under Sec. 43.02, Penal Code; and
- (iii) compelling prostitution under Sec. 43.05, Penal Code.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage--motor vehicle, injury or damage--medical malpractice, injury or damage--other professional malpractice, injury or damage--asbestos/silica product liability, injury or damage--other product liability, other injury or damage, real property--eminent domain, other real property, contract--consumer/commercial/debt, other contract, civil cases relating to criminal matters, all other civil cases, and tax cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Family Law Cases.

(A) Family law case type categories. The monthly report contains the following categories of family law cases: divorce--children, divorce--no children, parent/child--no divorce, child protective services, termination of parental rights, adoption, protective orders--no divorce, Title IV-D--paternity, Title IV-D--support order, Title IV-D--UIFSA, all other family law cases, and post-judgment actions for modification--custody, modification--other, enforcement, and Title IV-D.

(B) Family law case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(4) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for C.I.N.S. cases and the following categories of delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting juvenile case activity for cases on docket, adjudications, dispositions and additional court activity.

(5) Probate and Guardianship Cases.

(A) Probate and guardianship case type categories. The monthly report contains the following categories for reporting probate and guardianship case types: decedents' estates (independent administration, dependent administration, and all other estate proceedings), guardianships (minor and adult), and other cases.

(B) Probate and guardianship activity categories. The monthly report contains activity report categories for cases on docket and additional information.

(6) Mental Health Cases.

(A) Mental health case type categories. The monthly report contains the following categories for reporting mental health cases: temporary mental health services, extended mental health services, modification--inpatient to outpatient, modification--outpatient to inpatient, and orders to authorize psychoactive medications.

(B) Mental health activity categories. The monthly report contains activity report categories for intake, hearings, and other information.

(C) Mental health commitments. Pursuant to Section 574.014 of the Health and Safety Code, the clerk shall report the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases,

including the number of commitment orders for inpatient and outpatient mental health services.

*§171.6. Constitutional County Courts Reports.*

(a) Method. County clerks shall submit a court activity report of criminal, civil, juvenile, probate and guardianship, and mental health cases for each constitutional county court. Unless OCA grants a waiver for good cause, county clerks shall submit the reports by electronic means approved by the OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal Cases.

(A) Criminal case type categories. The monthly report contains the following categories of misdemeanor case types: D.W.I.--first offense, D.W.I.--second offense, theft, theft by check, drug possession--marijuana, drug offenses--other, family violence assault, other assault, traffic, D.W.L.S./D.W.L.I., and other misdemeanor cases.

(B) Criminal case activity categories. The monthly report contains sections for reporting cases on docket, dispositions, supplemental information and additional court activity.

(C) Report of a request for a hate crime finding. This section of the monthly report requests information pursuant to Article 2.211 of the Code of Criminal Procedure.

(2) Civil Cases.

(A) Civil case type categories. The monthly report contains the following categories of civil cases: injury or damage--motor vehicle, other injury or damage, real property, contract--consumer/commercial/debt, contract--landlord/tenant, other contract, civil cases relating to criminal matters, and all other civil cases.

(B) Civil case activity categories. The monthly report contains sections for reporting cases on docket, dispositions and additional court activity.

(3) Juvenile Cases.

(A) Juvenile case type categories. The monthly report contains a category for C.I.N.S. cases and the following categories of delinquent conduct cases: capital murder, murder, other homicides, aggravated assault or attempted murder, assault, indecency with a child or sexual assault, aggravated robbery or robbery, burglary, theft, automobile theft, felony drug offenses, misdemeanor drug offenses, D.W.I., contempt of court, and all other offenses.

(B) Juvenile case activity categories. The monthly report contains sections for reporting cases on docket, adjudications, dispositions and additional court activity.

(4) Probate and Guardianship Cases.

(A) Probate and guardianship case type categories. The monthly report contains the following categories for reporting probate and guardianship case types: decedents' estates--independent administration, decedents' estates--dependent administration, and all other decedents' estate proceedings, guardianships--minor, guardianships--adult, and other cases.

(B) Probate and guardianship activity categories. The monthly report contains activity report categories for cases on docket and additional information.

(5) Mental Health Cases.

(A) Mental health case type categories. The monthly report contains the following categories for reporting mental health

cases: temporary mental health services, extended mental health services, modification--inpatient to outpatient, modification--outpatient to inpatient, and orders to authorize psychoactive medications.

(B) Mental health activity categories. The monthly report contains the activity report categories for intake, hearings, and other information.

(C) Mental health commitments. Pursuant to Section 574.014 of the Health and Safety Code, the clerk shall report the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases, including the number of commitment orders for inpatient and outpatient mental health services.

§171.7. *Justice Court Reports.*

(a) Method. Each justice of the peace shall submit a justice court activity report of the criminal and civil cases in the judge's court. Unless OCA grants a waiver for good cause, the justice of the peace shall submit the reports by electronic means approved by OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal case type categories. The monthly report contains the following categories of criminal case types: traffic misdemeanors--subdivided into non-parking, parking, and county ordinance offenses; and non-traffic misdemeanors--subdivided into Penal Code violations, other state law violations, and county ordinance violations.

(2) Civil case type categories. The monthly report contains the following categories of civil case types: debt claim, landlord/tenant, and small claims suits.

(3) Juvenile/minor activity. The monthly report contains a section for reporting court activity related to juveniles and minors. Pursuant to Section 71.0352 of the Government Code, the report must include:

(A) the number of cases filed for:

(i) truant conduct under Sec. 65.003(a), Family Code; and

(ii) the offense of parent contributing to nonattendance under Sec. 25.093, Education Code; and

(B) in cases in which a child fails to obey an order of the court under circumstances that would constitute contempt of court, the number of incidents in which a child is:

(i) referred to juvenile court for delinquent conduct as provided under Art. 45.050(c)(1), Code of Criminal Procedure, or Sec. 65.251, Family Code; or

(ii) held in contempt, fined, or denied driving privileges as provided by Art. 45.050(c)(2), Code of Criminal Procedure, or Sec. 65.251, Family Code.

(4) Additional activity. The monthly report contains a section for reporting additional court activity such as magistrate activities and information on fines, court costs and fees collected or otherwise satisfied.

§171.8. *Municipal Court Reports.*

(a) Method. Each municipal court shall submit a municipal court activity report of the criminal and civil or administrative cases in the court. Unless OCA grants a waiver for good cause, the court shall submit the reports by electronic means approved by OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal case type categories. The monthly report contains the following categories of criminal case types: traffic misdemeanors--subdivided into non-parking, parking, and city ordinance offenses; and non-traffic misdemeanors--subdivided into Penal Code violations, other state law violations, and city ordinance violations.

(2) Civil/administrative case type category. The monthly report contains a civil/administrative case type category for civil or administrative cases.

(3) Juvenile/minor activity. The monthly report contains a section for reporting court activity related to juveniles and minors. Pursuant to Section 71.0352 of the Government Code, the report must include:

(A) the number of cases filed for:

(i) truant conduct under Sec. 65.003(a), Family Code; and

(ii) the offense of parent contributing to nonattendance under Sec. 25.093, Education Code; and

(B) in cases in which a child fails to obey an order of the court under circumstances that would constitute contempt of court, the number of incidents in which a child is:

(i) referred to juvenile court for delinquent conduct as provided under Art. 45.050(c)(1), Code of Criminal Procedure, or Sec. 65.251, Family Code; or

(ii) held in contempt, fined, or denied driving privileges as provided by Art. 45.050(c)(2), Code of Criminal Procedure, or Sec. 65.251, Family Code.

(4) Additional activity. The monthly report contains a section for reporting additional court activity such as magistrate activities and information on fines, court costs and fees collected or otherwise satisfied.

§171.9. *Other Reports Required from the Courts.*

(a) Judicial Appointments and Fees. The clerk of each court shall submit a monthly report to OCA in the format prescribed by OCA. The report must:

(1) pursuant to Section 36.004 of the Government Code, list every appointment made for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator and the compensation paid, if any. Appointments made by the court for positions exempted from reporting under Sec. 36.003, Tex. Gov't Code, are not required to be reported. The requirements of §171.9(a)(1) become effective September 1, 2016.

(2) pursuant to Supreme Court Order 07-9188, list every appointment in a civil, probate or family case for any other position for which a fee may be paid and the compensation paid, if any.

(3) The report shall include the case number and style, and the name of the judge and date of order approving compensation. The report is due no later than 15 days following the end of the month reported. If no appointments were made or fees were approved by the courts in the preceding month, the clerk shall file a report indicating that no appointments or payments were made in that month.

(b) Jury Charges and Sentences in Capital Cases. Pursuant to Section 72.087 of the Government Code, the judge or clerk of a court in which a capital case is heard must submit to OCA a written record of the case that includes the content of the trial court's charge to the jury and the sentence issued in the case. The information must be submitted no later than 30 days after the date of judgment of conviction or acquittal.

(c) Vexatious Litigants. Pursuant to Section 11.104 of the Civil Practice and Remedies Code, the clerk of each court shall submit to OCA within 30 days a copy of any order declaring a person a vexatious litigant and prohibiting the person from filing new litigation without the consent of the local administrative judge.

(d) Judicial Bypass. Pursuant to Section 33.003(l) of the Family Code, the district clerk or county clerk shall submit a report to OCA on a form prescribed by OCA listing the case number and style of each case in which a minor files an application for a court order authorizing the minor to consent to the performance of an abortion without notification and consent of a parent, managing conservator, or guardian.

(e) Court Security Incident. Pursuant to Article 102.017 of the Code of Criminal Procedure, a local administrative judge is required to submit a report to OCA regarding any incident involving court security that occurs in or around a building housing a court for which the judge serves as local administrative judge. The report is due no later than three business days after the date the incident occurred.

(f) Private Professional Guardians. Pursuant to Section 1104.306 of the Estates Code, the clerk of each county shall annually submit to the Judicial Branch Certification Commission the name and business address of each private professional guardian who has satisfied the registration requirements of Sec. 1104.303, Tex. Estates Code. The report is due no later than January 31 of each year.

(g) E-filing Fee. Pursuant to Section 72.031 of the Government Code, an appellate court that charges a \$2 fee for each electronic filing must certify annually to OCA on a form prescribed by OCA that the amount of the fee is necessary to recover the actual system operating costs incurred by the appellate court. The report is due 30 days after the last day of the county's fiscal year.

§171.10. Other Reports Required by Non-Court Personnel.

(a) Municipal Officers. Pursuant to Section 29.013(a) of the Government Code, the secretary of a municipality with a municipal court, including a municipal court of record, or the person responsible for maintaining the records of the municipality's governing body, shall submit the name of each person who is elected or appointed mayor, municipal court judge, or clerk of a municipal court and each person who vacates these offices. This information must be reported no later than 30 days after the person's election or appointment to the office or vacancy from office.

(b) E-filing Fee. Pursuant to Section 72.031 of the Government Code, each local government that charges a \$2 fee for each electronic filing must certify annually to OCA on a form prescribed by OCA that the amount of the fee is necessary to recover the actual system operating costs incurred by the local government. The report is due 30 days after the last day of the county's fiscal year.

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 March 21, 2016.

TRD-201601303

Mena Ramon

General Counsel

Texas Judicial Council

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 463-1682



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 354. MEDICAID HEALTH SERVICES

#### SUBCHAPTER A. PURCHASED HEALTH SERVICES

#### DIVISION 25. SCHOOL HEALTH AND RELATED SERVICES

##### 1 TAC §354.1342

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1342, concerning Conditions for Participation.

##### BACKGROUND AND JUSTIFICATION

School and Health Related Services (SHARS) is a joint program of HHSC and the Texas Education Agency that allows school districts to obtain federal Medicaid reimbursement for the provision of health-related services to students in special education. The proposed amendment is designed to hold school districts accountable if they do not follow current SHARS policy for billing requirements.

Current SHARS policy requires that the enrolled independent school districts bill the Texas Medicaid and Healthcare Partnership (TMHP) by filing claims for interim reimbursement as the allowable services are delivered. Many districts are not billing as they deliver the services but presenting their costs for the services on the annual cost report, thus avoiding the process that allows for the audit of their claim(s). The proposed amendment clarifies billing requirements and allows HHSC to disallow any costs reported for cost categories for which a district did not bill TMHP during the cost reporting period.

##### SECTION-BY-SECTION SUMMARY

Proposed §354.1342 is amended to require school districts to bill for services at the time the services are delivered and requires billing for each cost category for which the district will seek reconciliation through the annual cost report.

The proposed rule also corrects a minor grammatical error.

##### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for HHSC, has determined that during the first five-year period the amended rule is in effect there will not be an impact to costs or revenues of state or local governments.

##### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of the proposed rule amendment, as school districts do not meet the definition of small businesses or micro-businesses.

##### PUBLIC BENEFIT AND COSTS

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule amendment is in effect, the public benefit from the adoption of this rule will be the increased transparency that results from clarifying the language of the rule.

There is no anticipated economic cost to persons who are required to comply with the proposed rule amendment. There is no anticipated negative impact on local employment.

#### REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Nadia Bobb, Rate Analyst of Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, MC-H400, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

#### §354.1342. *Conditions for Participation.*

To claim for school health and related services (SHARS) provided to Medicaid-enrolled students eligible for services provided under the Individuals with Disabilities Education Act (IDEA), school districts must:

- (1) ensure that services are provided in a manner and environment consistent with:
  - (A) the student's physical and mental condition;
  - (B) the overall goals and objectives of the student's individual education program (IEP); and
  - (C) other services and schedules prescribed in the student's IEP;
- (2) ensure that services are provided by persons licensed, accredited, or certified by the appropriate federal or state agency or recognized professional organization to deliver the specific service(s);

(3) meet Texas Education Agency (TEA) standards for the delivery of SHARS;

(4) abide by the rules and regulations of TEA related to service delivery, record-keeping, documentation, client confidentiality, and access to client records by other professionals involved in the implementation of the student's IEP;

(5) comply with all applicable federal, state, and local laws and regulations regarding the services provided;

(6) be enrolled and approved for participation in the Texas Medical Assistance Program (Medicaid);

(7) sign a written provider agreement with the Texas Health and Human Services Commission (the Commission) or its designee agreeing[- By signing the agreement, the provider agrees] to comply with the terms of the agreement and all requirements of Medicaid, including regulations, rules, handbooks, standards, and guidelines published by the Commission or its designee;

(8) bill for services reimbursable [covered] by Medicaid in the manner and format prescribed by the Commission or its designee, at the time services are delivered, including billing for each cost category for which the district will seek reimbursement through the annual cost report required by paragraph (11) of this section;

(9) participate in the Commission-administered time study;

(10) certify each quarter the Total Computable Expenditure (Total Computable Expenditure = amount paid (Federal share) + calculated State/Local share); and

(11) submit an annual cost report, as described in §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)).

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 March 21, 2016.

TRD-201601305

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 424-6900



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 102. EDUCATIONAL PROGRAMS

##### SUBCHAPTER JJ. INNOVATION DISTRICT

#### **19 TAC §§102.1301, 102.1303, 102.1305, 102.1307, 102.1309, 102.1311, 102.1313, 102.1315**

The Texas Education Agency (TEA) proposes new §§102.1301, 102.1303, 102.1305, 102.1307, 102.1309, 102.1311, 102.1313, and 102.1315, concerning districts of innovation. The proposed new sections would outline the applicable processes and procedures related to an Innovation District to reflect the changes in statute made by House Bill (HB) 1842, 84th Texas Legislature, 2015.

The 84th Texas Legislature, Regular Session, 2015, passed HB 1842, which amended the Texas Education Code (TEC) by adding Chapter 12A, Districts of Innovation, authorizing an eligible school district to be designated as a district of innovation following adoption of a local innovation plan that exempts the district from certain TEC requirements that inhibit the goals of the plan. The local innovation plan must be reported to the TEA. The proposed new section would provide the applicable processes and procedures related to innovation districts. The proposed sections include a non-comprehensive list of allowable exemptions. A list of prohibited exemptions is also included. TEC, §12A.009, authorizes the commissioner to adopt rules to implement the entire chapter.

Proposed new 19 TAC §102.1301, Definitions, would define terms for implementation of the subchapter. In accordance with the TEC, §§12A.001, 12A.005, and 12A.007, paragraph (1) would define the district-level committee as the committee established under the TEC, §11.251. TEC, Chapter 12A, does not define the composition of the committee to develop the local innovation plan so proposed new paragraph (2) would address the composition of that committee. TEC, Chapter 12A, does not define what constitutes a "public hearing" but does distinguish between a public hearing and a public meeting. Proposed new paragraph (3) would define a public hearing as an open meeting that allows the public an opportunity to provide comments and opinions. Accordingly, proposed new paragraph (4) would define a public meeting as an open meeting that provides the public an opportunity to hear facts about a proposed plan. TEC, Chapter 12A, focuses on unacceptable performance for both academic and financial accountability purposes. Proposed new paragraphs (5) and (6) would clarify the meaning of "unacceptable performance" by linking with the corresponding ratings adopted by the TEA under the accountability statutes.

Proposed new 19 TAC §102.1303, Eligibility, would clarify that a district cannot be designated as a district of innovation if it receives either a preliminary or final hearing of below "acceptable performance." TEC, §12A.001, authorizes districts to be designated as a district of innovation only if the district's most recent performance rating under TEC, §39.054, is at least "acceptable performance."

Proposed new 19 TAC §102.1305, Process Timeline, would recognize the statutory methods for designating a district of innovation and the requirement that the district hold a public hearing if one of those methods is realized in accordance with the TEC, §12A.001 and §12A.002. As the statutory provisions lack a requisite timeline for action and to ensure a timely review process, proposed new subsection (b) would require the board of trustees to either decline to pursue a district of innovation or to appoint an innovation committee to develop an innovation plan not later than 30 days after the public hearing. Proposed new subsection (c) would require a district's innovation plan to meet the requirements imposed by the TEC, §12A.003.

Statutory provisions under the TEC, §12A.005, authorize the board of trustees to adopt or reject the plan after meeting certain procedural requirements. However, statutory provisions do not define a planning committee's authority when pursuing the creation of a plan; therefore, the proposed new rule would make clear that when pursuing a district of innovation plan, the board of trustees may establish parameters in which the planning committee must operate. As various statutory provisions, including TEC, §§12A.002, 12A.004 and 12A.005, emphasize public awareness and the necessity for the commissioner to maintain

a list of exempted provisions and report to the legislature, proposed new subsection (d) would require the district to clearly post the innovation plan on the district website for the term of the designation as an innovation district in order to promote transparency to the public.

Proposed new 19 TAC §102.1307, Adoption of Local Innovation Plan, would implement the requirements imposed by the TEC, §12A.005, which include actions necessary prior to a board of trustee's vote on adopting the proposed innovation plan, voting requirement for adoption, status of the district once the plan is adopted, and the extent of the exemptions should future requirements be amended or redesignated.

As the TEC, §12A.003(b)(2), requires a district to identify the requirements from which it seeks to be exempted and the TEC, §12A.004(b), requires the commissioner to maintain a list of TEC provisions from which innovation districts are exempt and to notify the legislature of these provisions for districts enrolling a majority of students, proposed new 19 TAC §102.1307 would require, in addition to the notification of the commissioner of approval of the plan as required by the TEC, §12A.005, that the district report exemptions to the commissioner using a form developed by the commissioner. The reporting form, adopted as Figure: 19 TAC §102.1307(d), would emphasize the non-exclusive major TEC items from which an innovation district may exempt itself and would also provide a method to include items not specifically designated on the form.

Proposed new 19 TAC §102.1309, Prohibited Exemptions, would provide clarity regarding the statutory provisions from which districts of innovation may not exempt themselves in accordance with the TEC, §12A.004, and the commissioner's rulemaking authority. Prohibited exemptions are as follows.

*19 TAC §§102.1309(a)(1), (4), (7), (8), (9), (10), (14), and (15)*

TEC, §12A.004(a)(1), prohibits exemption of a district of innovation from any state or federal requirement applicable to an open-enrollment charter school operating under the TEC, Chapter 12, Subchapter D, which, among others, prohibits exemption from statutory sections imposed on an open-enrollment charter under the TEC, Chapter 12, including the requirements listed in the TEC, §§12.104(b), 25.001, 25.002, 25.0021, 25.0031, and 25.004; Chapter 30, Subchapter A; §30.104; Chapter 34; §§37.006(l), 37.007(e), and 37.020; §§44.0011, 44.002, 44.003, 44.004, 44.0041, 44.005, 44.0051, 44.006, 44.007, 44.0071, 44.008, 44.009, 44.011, 44.0312, 44.032, 44.051, 44.052, 44.053, and 44.054; and §§45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, and 45.203. This list is not comprehensive; several additional statutes reference charters.

*19 TAC §§102.1309(a)(3), (10), (12), (13), (14), (15), and (16)*

TEC, §12A.004(a)(1), establishes a floor for exemptions for a district seeking to be a district of innovation. Several provisions of the TEC are inapplicable to an open-enrollment charter school, not because the legislature has intentionally limited the requirement, but because the inherent nature of an open-enrollment charter school makes application of the provision nonsensical. As the legislature clearly intended a floor to apply to the exemptions, consequently, districts may not seek an exemption from certain statutory provisions that lack a charter analog. As such, a district seeking to be a district of innovation may not seek an exemption from: TEC, Chapter 13, as open-enrollment charters have no exclusive boundaries vis-à-vis other charter schools nor are open-enrollment charters as a group required to cover all geographic boundaries of the

state; TEC, §§37.011, 37.012, and 37.013, because a district must allow an open-enrollment charter school student to be served at a Juvenile Justice Alternative Education program; TEC, Chapters 41 and 42, because open-enrollment charters have no taxing capacity, and HB 1842 contained no textual indication or legislative intent demonstrating that the legislature intended to alter current funding mechanisms; TEC, §§44.0011, 44.002, 44.003, 44.004, 44.0041, 44.005, 44.0051, 44.006, 44.007, 44.0071, 44.008, 44.009, 44.011, 44.0312, 44.032, 44.051, 44.052, 44.053, and 44.054; TEC, §§45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, 45.203; and TEC, Chapter 46, as open-enrollment charters have no taxing capacity for interest and sinking purposes and, therefore, have no access to facility assistance.

*19 TAC §102.1309(a)(2)*

TEC, §12A.004(a)(2), prohibits an exemption from a requirement imposed by the TEC, Chapter 11, Subchapters A, C, D, and E, with exception of §11.1511(b)(5) and (14) and §11.162.

*19 TAC §102.1309(a)(5)*

TEC, §12A.004(a)(3), prohibits an exemption from a provision regarding state curriculum and graduation requirements adopted under the TEC, Chapter 28. A district of innovation may not seek an exemption from the TEC, §§28.002, 28.0021, 28.023, 28.005, 28.0051, 28.006, 28.016, 28.0211, 28.0213, 28.0217, 28.025, 28.0254, 28.0255, 28.0258, 28.0259 and 28.026, as those provisions constitute a state curriculum and graduation requirement under the TEC, Chapter 28. A district may not seek an exemption from the TEC, §30.104, because this provision implements the graduation requirements adopted under the TEC, Chapter 28.

*19 TAC §102.1309(a)(6)*

Some provisions of the TEC supersede the provisions of the TEC, Chapter 12A, and a district of innovation may not seek an exemption from those provisions. TEC, §29.201, applies the provisions of the TEC, Chapter 29, Subchapter G, notwithstanding any other law, which prohibits a district from seeking an exemption from the TEC, Chapter 29, Subchapter G.

*19 TAC §102.1309(a)(11)*

TEC, §12A.004(a)(4), prohibits an exemption from provisions of academic and financial accountability and sanctions under the TEC, Chapter 39. A district of innovation may not be exempt from any provision of the TEC, Chapter 39.

*19 TAC §102.1309(b)(1)*

TEC, §12A.004(a)(1), prohibits exemption from any state or federal requirement applicable to an open-enrollment charter school operating under the TEC, Chapter 12, Subchapter D. TEC, §12.104(d), imposes a requirement on open-enrollment charters to comply with all requirements of a state program in which the charter voluntarily participates. Consequently, a school district may not seek an exemption from a requirement of a grant or other voluntary benefit.

*19 TAC §102.1309(b)(2)*

TEC, §12A.003(b)(2), requires a district to identify requirements imposed by the TEC from which the district should be exempt on adoption of an innovation plan. Several provisions of the TEC do not impose a requirement on districts but authorize discretionary participation by a district. However, a district that chooses to participate must meet certain conditions imposed by statute on the

operation of that authority. As those provisions only apply if a district chooses to operate under those provisions, those provisions do not constitute a requirement from which the district may seek an exemption under the TEC, Chapter 12A.

*19 TAC §102.1309(b)(4)*

TEC, §12A.003(b)(2), limits an innovation district to identifying requirements of the TEC. Requirements imposed by provisions outside the TEC may not be exempted, including requirements under the Texas Government Code, Chapter 822.

Proposed new 19 TAC §102.1311, Term, would implement the TEC, §12A.006, requirement that the term of designation as an innovation district may not exceed five years. As various provisions discuss a local innovation plan as singular, and the plan, under the TEC, §12A.003, must be "comprehensive," and multiple innovation plans would thwart the necessity for amendments under the TEC, §12A.007, proposed new 19 TAC §102.1311 would, therefore, limit a district to one innovation plan at a time. In accordance with the TEC, §12A.007, changes to a plan shall be handled through the amendment process rather than adopting multiple plans.

Proposed new 19 TAC §102.1313, Amendment, Rescission, or Renewal, would implement the TEC, §12A.007, which authorizes a local innovation plan to be amended, rescinded, or renewed if approved by vote of the district-level committee and board of trustees. The proposed new section would clarify that the requirement of the TEC, §12A.007, stating "in the same manner as required for initial adoption" imposes a two-thirds voting requirement of the board of trustees. As statute authorizes an amendment process but does not impose a requirement for total plan review, proposed new paragraph (1) would clarify in rule that exemptions already approved need not be reviewed during an amendment. To ensure proper notice and orderly return to statutory compliance and to allow the TEA to accurately comply with reporting requirements, proposed new paragraph (2) would require a district that rescinds its plan to notify the TEA of the rescission within five business days of the approved vote and provide a date for compliance with the TEC provisions, which may not be later than the following school year. To ensure orderly transition and ensure proper public notice, proposed new paragraph (3) would clarify in rule that a plan may be renewed within six months of expiration and that all sections of the plan must be reviewed during renewal.

Proposed new 19 TAC §102.1315, Termination, would reflect the statutory authorization under the TEC, §12A.008, for the commissioner to terminate an innovation district designation or permit a district to amend its innovation plan after two consecutive years of unacceptable academic or financial performance ratings. The proposed new section would require the commissioner to terminate an innovation district designation after three consecutive years of unacceptable academic or financial performance ratings, or any combination of the two rating systems. The proposed new section would also implement the statutory provision making the related commissioner decision final and not appealable.

As required by statute, the proposed new sections would require innovation districts to report a list of district-approved TEC exemptions to the TEA. The proposed new sections would require innovation districts to maintain the approved plan, available on the district website for public review.

FISCAL NOTE. Sally Partridge, associate commissioner for accreditation and school improvement, has determined that for the

first five-year period the proposed new sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the proposed new sections. The TEA will incur additional personnel costs to fulfill the reporting requirements of statute. The estimated cost is \$100,000 each year for fiscal years 2016 and 2017. School districts could potentially save money depending upon the exemptions claimed and how they would be implemented, but the estimated savings cannot be determined at this time.

**PUBLIC BENEFIT/COST NOTE.** Ms. Partridge has determined that for each year of the first five years the proposed new sections are in effect the public benefit anticipated as a result of enforcing the new sections would be providing school districts with flexibilities that allow for district innovation based on their local innovation plans. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES.** There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**REQUEST FOR PUBLIC COMMENT.** The public comment period on the proposal begins April 1, 2016, and ends May 2, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 1, 2016.

**STATUTORY AUTHORITY.** The new sections are proposed under the Texas Education Code (TEC), §12A.001, which authorizes districts to be designated as a district of innovation if the district's most recent performance rating under TEC, §39.054, is at least acceptable performance. The designation as a district of innovation may be initiated by a resolution adopted by the board of trustees or a petition signed by a majority of the members of the district-level committee established under TEC, §11.251; TEC, §12A.002, which requires a board of trustees to hold a public hearing to consider if the district should develop a plan for the designation as a district of innovation after adopting a resolution or receiving a petition; TEC, §12A.003, which requires the development of a plan prior to a designation as a district of innovation. This section requires the local innovation plan to provide for a comprehensive educational program and to identify requirements of the TEC that inhibit the plan's goals and from which the district should be exempted. The section provides specific examples of the considerations the plan may include; and TEC, §12A.004, which prohibits a district of innovation from being exempt from requirements that apply to open-enrollment charters; from certain sections of the TEC, Chapter 11; from state curriculum and graduation requirements adopted under the TEC, Chapter 28; and from academic and financial accountability and sanctions under the TEC, Chapter 39. The section requires the commissioner to maintain a list of the exempted provisions and provide notice to the legislature of provisions where districts enrolling a majority of students are exempt; TEC, §12A.005,

which imposes requirements related to the local innovation plan that must be met prior to a board of trustees' vote on adopting the proposed innovation plan; TEC, §12A.006, which limits the term of designation as an innovation district to no more than five years; TEC, §12A.007, which authorizes a local innovation plan to be amended, rescinded, or renewed if approved by vote of the district-level committee and board of trustees; TEC, §12A.008, which authorizes the commissioner to terminate an innovation district designation or permit the district to amend its innovation plan after two consecutive years of unacceptable academic or financial performance ratings. The section requires termination after three consecutive years of unacceptable academic or financial performance ratings, or any combination of the two rating systems. This provision makes the commissioner's decision final and not appealable; and TEC, §12A.009, which authorizes the commissioner to adopt rules to implement districts of innovation.

**CROSS REFERENCE TO STATUTE.** The new sections implement the TEC, §§12A.001 - 12A.009, as added by HB 1842, 84th Texas Legislature, 2015.

§102.1301. Definitions.

For purposes under this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) District-level committee--This term has the meaning assigned by the Texas Education Code (TEC), §11.251.

(2) Innovation Plan committee--An innovation plan committee shall consist of members designated by the board of trustees.

(3) Public hearing--An open meeting held by the board of trustees that allows members of the public to hear facts about the proposed plan and designation and provides the opportunity for the public to give opinions and comments on the proposed actions.

(4) Public meeting--An open meeting held by the board of trustees that allows members of the public to hear facts about the proposed plan and designation.

(5) Unacceptable academic performance rating--For the purposes of this chapter, the term "unacceptable academic" performance rating means a rating of Improvement Required or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System).

(6) Unacceptable financial accountability rating--For the purposes of this chapter, the term "unacceptable financial" performance rating means a Financial Integrity Rating System of Texas (FIRST) rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title (relating to Financial Accountability Rating).

§102.1303. Eligibility.

(a) A district is eligible for designation as an innovation district if the district's most recent performance rating under the Texas Education Code (TEC), §39.054, is at least acceptable performance, as indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) A district may not begin operations as an innovation district if the district is assigned either a final or preliminary rating below acceptable performance, as indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title.

§102.1305. Process Timeline.

(a) If a resolution is adopted by the board of trustees or a petition is signed by a majority of the members of the district-level committee, the board of trustees shall hold a public hearing as soon as possible, but no later than the next scheduled board of trustees meeting, to consider if the district should develop a local innovation plan for the designation of the district as an innovation district. The board resolution may outline the parameters around which the innovation committee may develop the plan.

(b) At the conclusion of the public hearing, or within 30 days after conclusion of the public hearing, the board of trustees may:

(1) decline to pursue designation of the district as an innovation district; or

(2) appoint an Innovation Plan committee to develop a local innovation plan in accordance with the TEC, §12A.003.

(c) Prior to the designation as an innovation district, a local innovation plan must be developed for the school district and shall meet the plan requirements as outlined in the TEC, §12A.003.

(d) The plan must be clearly posted on the district's website for the term of the designation as an innovation district.

§102.1307. Adoption of Local Innovation Plan.

(a) The board of trustees may not vote on adoption of a proposed local innovation plan unless:

(1) the final version of the proposed plan has been available on the district's website for at least 30 days;

(2) the board of trustees has notified the commissioner of education of the board's intention to vote on adoption of the proposed plan; and

(3) the district-level committee established under the Texas Education Code (TEC), §11.251, has held a public meeting to consider the final version of the proposed plan and has approved the plan by a majority vote of the committee members. This public meeting may occur at any time, including up to or on the same date at which the board intends to vote on final adoption of the proposed plan.

(b) A board of trustees may adopt a proposed local innovation plan by an affirmative vote of two-thirds of the membership of the board.

(c) On adoption of a local innovation plan, the district:

(1) is designated as a district of innovation under this chapter for the term specified in the plan but no longer than five calendar years, subject to the TEC, §12A.006;

(2) shall begin operation in accordance with the plan; and

(3) is exempt from state requirements identified under the TEC, §12A.003(b)(2).

(d) The district shall notify the commissioner of approval of the plan along with a list of approved TEC exemptions by completing the agency form provided in the figure in this subsection.

Figure: 19 TAC §102.1307(d)

(e) A district's exemption described by subsection (c)(3) of this section includes any subsequent amendment or redesignation of an identified state requirement, unless the subsequent amendment or redesignation specifically applies to an innovation district.

§102.1309. Prohibited Exemptions.

(a) An innovation district may not be exempted from the following sections of the Texas Education Code (TEC) and the rules adopted thereunder:

(1) a state or federal requirement, imposed by statute or rule, applicable to an open-enrollment charter school operating under the TEC, Chapter 12, Subchapter D, including, but not limited to, the requirements listed in the TEC, §12.104(b);

(2) TEC, Chapter 11, Subchapters A, C, D, and E, except that a district may be exempt from the TEC, §11.1511(b)(5) and (14) and §11.162;

(3) TEC, Chapter 13;

(4) TEC, Chapter 25, Subchapter A, §§25.001, 25.002, 25.0021, 25.0031, and 25.004;

(5) TEC, Chapter 28, §§28.002, 28.0021, 28.0023, 28.005, 28.0051, 28.006, 28.016, 28.0211, 28.0213, 28.0217, 28.025, 28.0254, 28.0255, 28.0258, 28.0259, and 28.026;

(6) TEC, Chapter 29, Subchapter G;

(7) TEC, Chapter 30, Subchapter A;

(8) TEC, §30.104;

(9) TEC, Chapter 34;

(10) TEC, Chapter 37, §§37.006(l), 37.007(e), 37.011, 37.012, 37.013, and 37.020;

(11) TEC, Chapter 39;

(12) TEC, Chapter 41;

(13) TEC, Chapter 42;

(14) TEC, Chapter 44, §§44.0011, 44.002, 44.003, 44.004, 44.0041, 44.005, 44.0051, 44.006, 44.007, 44.0071, 44.008, 44.009, 44.011, 44.0312, 44.032, 44.051, 44.052, 44.053, and 44.054;

(15) TEC, Chapter 45, §§45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, 45.203; and

(16) TEC, Chapter 46.

(b) In addition to the prohibited exemptions specified in subsection (a) of this section, an innovation district may not be exempted from:

(1) a requirement of a grant or other voluntary benefit;

(2) duties that the statute applies to the execution of that power if a district chooses to implement an authorized power that is optional under the terms of the statute;

(3) any other requirement from which the district of innovation cannot be exempted, as determined by the commissioner of education; and

(4) requirements imposed by provisions outside the TEC, including requirements under the Texas Government Code, Chapter 822.

§102.1311. Term.

The term of a district's designation as a district of innovation may not exceed five calendar years and is effective upon district approval and notification of the plan to the Texas Education Agency. A district may only have one innovation plan at any given time.

§102.1313. Amendment, Rescission, or Renewal.

A district innovation plan may be amended, rescinded, or renewed if the action is approved by a majority vote of the district-level committee established under the Texas Education Code (TEC), §11.251, or a comparable committee if the district is exempt from that section, and a two-thirds majority vote of the board of trustees.

(1) Amendment. An amendment to an approved plan does not change the date of the term of designation as an innovation district. Exemptions that were already formally approved are not required to be reviewed.

(2) Rescission. A district must notify the Texas Education Agency within five business days of rescission and provide a date at which time it will be in compliance with all sections of the TEC, but no later than the start of the following school year.

(3) Renewal. A district may renew the district plan within six months of the expiration of the plan's term. During renewal, all sections of the plan and exemptions shall be reviewed and the district must follow all components outlined in §102.1307 of this title (relating to Adoption of Local Innovation Plan).

§102.1315. Termination.

(a) The commissioner of education may:

(1) terminate a district's designation as a district of innovation if, beginning with its ratings in the year of designation, the district is assigned for two consecutive school years:

(A) a final unacceptable academic performance rating under the Texas Education Code (TEC), §39.054;

(B) a final unacceptable financial accountability rating under the TEC, §39.082; or

(C) a final unacceptable academic performance rating under the TEC, §39.054, for one of the school years and a final unacceptable financial accountability rating under the TEC, §39.082, for the other school year; or

(2) permit the district to amend the district's local innovation plan to address concerns specified by the commissioner in lieu of terminating the designation as described in paragraph (1) of this subsection.

(b) The commissioner shall terminate a district's designation as a district of innovation if, beginning with its ratings in the year of designation, the district is assigned for three consecutive school years:

(1) a final unacceptable academic performance rating under the TEC, §39.054;

(2) a final unacceptable financial accountability rating under the TEC, §39.082; or

(3) any combination of one or more unacceptable ratings under paragraph (1) of this subsection and one or more unacceptable ratings under paragraph (2) of this subsection.

(c) Upon termination of an innovation plan, a district must return to compliance with all specified areas of the TEC by a date to be determined by the commissioner.

(d) A decision by the commissioner under this section is final and may not be appealed.

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 March 21, 2016.

TRD-201601304

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 1, 2016

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

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**TITLE 22. EXAMINING BOARDS**

**PART 9. TEXAS MEDICAL BOARD**

**CHAPTER 185. PHYSICIAN ASSISTANTS**

**22 TAC §185.8**

The Texas Medical Board (Board) proposes an amendment to §185.8, concerning Inactive License.

The amendment adds new language in subsection (d) providing that a licensee attempting to return from inactive to active status must complete a fingerprint card and return the card to the board as part of the application, as well as submitting, or having submitted on the applicant's behalf, a report from the National Practitioner Data Bank/Health Integrity and Protection Data Bank (NPDB-HIPDB).

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to protect the safety of the public by insuring that the Board is able to evaluate whether criminal arrests, convictions or disciplinary actions in other jurisdictions occurring during the licensee's period of inactive licensure impact the licensee's fitness to safely practice in Texas as a Physician Assistant.

Mr. Freshour has also determined that for the first five-year period the amendment is in effect there will be no fiscal implication to state or local government as a result of enforcing the amendment as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro-businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; enforce this subtitle; and establish rules related to licensure.

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

*§185.8. Inactive License.*

(a) A license holder may have the license holder's license placed on inactive status by applying to the board. A physician assistant with an inactive license is excused from paying renewal fees on the license and may not practice as a physician assistant in Texas.

(b) In order for a license holder to be placed on inactive status, the license holder must have a current annual registration permit and have a license in good standing.

(c) A license holder who practices as a physician assistant in Texas while on inactive status is considered to be practicing without a license.

(d) A physician assistant may return to active status by:

(1) applying to the board, paying an application fee equal to an application fee for a physician assistant license;[;]

(2) complying with the requirements for license renewal under the Act;[-]

(3) providing current verifications from each state in which the physician assistant holds a license;[-]

(4) demonstrating current certification by NCCPA;[- and]

(5) completing a fingerprint card and returning the card to the board as part of the application;

(6) submitting a report from the National Practitioner Data Bank/Health Integrity and Protection Data Bank (NPDB-HIPDB) by contacting the NPDB-HIPDB and having a report of action submitted directly to the board on the applicant's behalf; and

(7) submitting professional evaluations from each employment held after the license was placed on inactive status, and complying with subsection (e) of this section.

(e) A physician assistant applicant applying to return to active status shall provide sufficient documentation to the board that the applicant has, on a full-time basis as defined in §185.4(d) of this title (relating to Procedural Rules for Licensure Applicants), actively practiced as a physician assistant or has been on the active teaching faculty of an acceptable approved physician assistant program, within either of the two years preceding receipt of an application for reactivation. Applicants who do not meet this requirement may, in the discretion of the board, be eligible for the reactivation of a license subject to one or more of the following conditions or restrictions as set forth in paragraphs (1) - (5) of this subsection:

(1) current certification by the National Commission on the Certification of Physician Assistants;

(2) completion of specified continuing medical education hours approved for Category 1 credits by a CME sponsor approved by the American Academy of Physician Assistants;

(3) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a physician assistant;

(4) remedial education; and/or

(5) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a physician assistant.

(f) After five years on inactive status, the license shall be canceled as if by request. The physician assistant may obtain a new license by complying with the requirements and procedures for obtaining an original license.

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 March 17, 2016.

TRD-201601271

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 305-7016



## CHAPTER 187. PROCEDURAL RULES

## SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

### 22 TAC §187.16, §187.19

The Texas Medical Board (Board) proposes amendments to §187.16, concerning Informal Show Compliance Proceedings (ISCs), and §187.19, concerning Resolution by Agreed Order.

The amendment to §187.16 adds clarifying language to the notice provision in order to clearly state that the notice provided to complainants differs from the notice provided to licensees, in that the latter contains the ISC evidence, which is confidential by statute and cannot legally be disclosed to the complainant.

The amendment to §187.19 eliminates subsection (e) relating to post-ISC negotiations, via telephone or in person, between panel members, Respondents and board staff, as this provision does not comport with our current process relating to post-ISC negotiations between board members and Respondents. Additionally, such negotiation between board members (directly) and Respondents is specifically reserved and provided for during the mediation process.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have a clear, articulated process for providing ISC notice to complainants and licensees, which aligns with our current process and procedure; and to have a rule that aligns with our current procedures for post-ISC negotiations between panel members, Respondents and board staff, which are handled through mediation and addressed in Chapter 187.

Mr. Freshour has also determined that for the first five-year period the amendments are in effect there will be no fiscal implication to state or local government as a result of enforcing the amendments as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro-businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§187.16. *Informal Show Compliance Proceedings (ISCs).*

(a) Notice of the time, date and place of the ISC shall be extended to the licensee and the complainant(s) in writing, by hand delivery, regular mail, certified mail - return receipt requested, overnight or express mail, courier service, or registered mail, to the address of record of the complainants and the address of record of the licensee or the licensee's authorized representative to be sent by the Board at least 30 days prior to the date of the ISC for complaints filed before September 1, 2011. For complaints filed on or after September 1, 2011, the notice shall be sent at least 45 days prior to the date of the ISC. The notice to the licensee or the licensee's authorized representative shall also include:

(1) a statement that the licensee has the opportunity to attend and participate in the informal meeting;

(2) a written statement of the nature of the allegations; and

(3) a copy of the information the board intends to use at the ISC. If the complaint includes an allegation that the licensee has violated the standard of care, the notice shall also include a copy of the Expert Physician Reviewers' Report, prepared in accordance with §154.0561, Texas Occupations Code. In addition, the board will also provide the licensee with the rules governing the proceeding and guidelines to assist the licensee to prepare for the ISC, including requirements regarding requests to reschedule the ISC. The information required by this section may be given in separate communications at different times, provided all of the information has been provided at least 30 days prior to the date of the ISC for complaints filed before September 1, 2011. For complaints filed with the board on or after September 1, 2011, the information to the licensee shall be sent at least 45 days prior to the date of the ISC.

(b) If the information that the board intends to use at the ISC includes only excerpts of any medical record, the licensee has a right to obtain the complete medical record within 14 days after a request is mailed.

(c) A licensee may be asked to respond in writing to questions from the board staff concerning the matter. If the licensee is asked to respond to written questions, the licensee shall respond within 14 days after the notice is mailed. The licensee's response may include any additional information the licensee wants the board representatives to consider.

(d) All information provided by the board staff and the licensee shall be provided to the board representatives for review prior to the board representatives making a determination of whether the licensee has violated the Act, board rules, remedial plan, or board order.

(e) All informal show compliance proceedings shall be scheduled not later than the 180th day after the date the board's official investigation of the complaint is commenced, unless good cause is shown by the board for scheduling the informal meeting after that date. For purposes of this subsection:

(1) "Scheduled" means the act of the agency to reserve a date for the ISC.

(2) "Good cause" shall have the meaning set forth in §179.6 of this title (relating to Time Limits).

*§187.19. Resolution by Agreed Order.*

(a) If the board representatives determine that the licensee has violated the Act, board rules, or board order, the board representatives may recommend board action and terms and conditions for informal resolution.

(b) The recommendation of the board representatives shall be reduced to writing in an agreed order or remedial plan prepared by board staff and presented to the licensee and the authorized representative.

(c) The licensee may accept the proposed settlement by signing and returning the agreed order or remedial plan within the time period prescribed. If the licensee rejects or fails to timely accept the proposed agreement, board staff may proceed with the filing of a Complaint at SOAH.

(d) Additional negotiations may be held between board staff and the licensee or the authorized representative. In consultation with the board representatives, as available, the recommendations of the

board representatives may be subsequently modified based on new information, a change of circumstances, or to expedite a resolution in the interest of protecting the public.

~~[(e) At the discretion of board staff, a licensee may be invited to participate in negotiations. One or both of the board representatives from the informal show compliance proceeding, or a board member if no such board representative is available, may participate in the negotiations, either in person or by telephone.]~~

~~(e) [(f)]~~ The board representative(s) shall be consulted and must concur with any subsequent substantive modifications before any recommendations are sent to the full board for approval.

~~(f) [(g)]~~ The recommendations may be adopted, modified, or rejected by the board.

~~(g) [(h)]~~ Board staff may communicate directly with the board representative(s) after the ISC for the purpose of discussing settlement of the case.

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 March 18, 2016.

TRD-201601299

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 305-7016



## CHAPTER 190. DISCIPLINARY GUIDELINES SUBCHAPTER B. VIOLATION GUIDELINES

### 22 TAC §190.8

The Texas Medical Board (Board) proposes an amendment to §190.8, concerning Violation Guidelines.

The amendment to §190.8 adds the phrase "post-exposure prophylaxis" to language related to the type of treatment that may be provided by physicians for infectious diseases located under paragraph (1)(L)(iii)(II), so as to improve consistency and mirror other language under paragraph (1)(L)(iii)(I), pertaining to sexually transmitted diseases. The added phrase "post-exposure prophylaxis" (PEP) is intended to further clarify that the purpose of the exception is to potentially prevent infection and the furtherance of an outbreak. The amendments propose changes to the definition of a patient's "close contacts" so that the definition better reflects guidance published by the Centers for Disease Control and Prevention and local Texas health authority, so that the specific circumstances of a local communicable disease outbreak and possible drug shortages might be better addressed by physicians. Language under paragraph (1)(L)(iii)(II)(-a-), relating to Chicken Pox, and paragraph (1)(L)(iii)(II)(-f-), stating shingles, is deleted, and replaced with the addition of the term *Varicella zoster*, for the purpose of reorganizing the list and using scientific names. New language is added to paragraph (1)(L)(iii)(II) and (1)(L)(iii)(II)(-g-) providing language that would allow PEP to be administered by physicians providing public health medical services pursuant to a memorandum of understanding between DSHS and the Texas Medical Board, and for any new or emergent communicable disease not specifically listed under

the rule that are determined to be a public health threat by state health authorities, thereby improving the state's ability to provide a quick public health response to communicable diseases affecting the health of Texans. The terms "infectious disease" and "communicable disease" are intended to be interchangeable.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to allow physicians, both in the private sector and those employed by the state and providing public health medical services, to have greater flexibility to quickly and effectively treat infectious diseases affecting the lives of Texans, while maintaining appropriate limits so that the public health and welfare will not be jeopardized by the exception provided for under the rule.

Mr. Freshour has also determined that for the first five-year period the amendment is in effect there will be no fiscal implication to state or local government as a result of enforcing the amendment as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro-businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

#### §190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

- (A) failure to treat a patient according to the generally accepted standard of care;
- (B) negligence in performing medical services;
- (C) failure to use proper diligence in one's professional practice;
- (D) failure to safeguard against potential complications;
- (E) improper utilization review;
- (F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;
- (G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;
- (H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;
- (I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's

behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a defined physician-patient relationship.

(i) A defined physician-patient relationship must include, at a minimum:

(I) establishing that the person requesting the medication is in fact who the person claims to be;

(II) establishing a diagnosis through the use of acceptable medical practices, which includes documenting and performing:

(-a-) patient history;

(-b-) mental status examination;

(-c-) physical examination that must be performed by either a face-to-face visit or in-person evaluation as defined in §174.2(3) and (4) of this title (relating to Definitions). The requirement for a face-to-face or in-person evaluation does not apply to mental health services, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions); and

(-d-) appropriate diagnostic and laboratory testing.

(III) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient are inadequate to establish a defined physician-patient relationship;

(IV) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(V) ensuring the availability of the licensee or coverage of the patient for appropriate follow-up care.

(ii) A proper professional relationship is also considered to exist between a patient certified as having a terminal illness and who is enrolled in a hospice program, or another similar formal program which meets the requirements of subclauses (I) through (IV) of this clause, and the physician supporting the program. To have a terminal condition for the purposes of this rule, the patient must be certified as having a terminal illness under the requirements of 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Service) and 42 CFR 418.22.

(iii) Notwithstanding the provisions of this subparagraph, establishing a professional relationship is not required for:

(I) a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease; or

(II) a physician to prescribe dangerous drugs and/or vaccines for post-exposure prophylaxis of disease for close contacts of a patient [a patient's close contacts] if the physician diagnoses

the patient with one or more of the following infectious diseases listed in items (-a-) - (-g-) of this subclause, or is providing public health medical services pursuant to a memorandum of understanding entered into between the board and the Department of State Health Services. For the purpose of this clause, a "close contact" is defined as a member of the patient's household or any person with significant exposure to the patient for whom post-exposure prophylaxis is recommended by the Centers for Disease Control and Prevention, Texas Department of State Health Services, or local health department or authority ("local health authority or department" as defined under Chapter 81 of the Texas Health and Safety Code).~~[: any person who provided care for the patient while the patient was symptomatic; or a member of the patient's household.]~~ The physician must document the treatment provided to the patient's close contact(s) in the patient's medical record. Such documentation at a minimum must include the close contact's name, drug prescribed, and the date that the prescription was provided.

- ~~{(-a-) Chicken Pox;}~~
- (-a-) ~~[(b)]~~ Influenza;
- (-b-) ~~[(e)]~~ Invasive Haemophilus influenzae

Type B;

- (-c-) ~~[(d)]~~ Meningococcal disease;
- (-d-) ~~[(e)]~~ Pertussis;
- (-e-) ~~[(f)]~~ Scabies; ~~[(g)]~~
- (-f-) ~~[(g)]~~ Varicella zoster; or ~~[(h)]~~ Shingles;
- (-g-) a communicable disease determined by

the Texas Department of State Health Services to:

~~(-1-) present an immediate threat of a high risk of death or serious long-term disability to a large number of people; and~~

~~(-2-) create a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.~~

(M) - (O) (No change.)

(2) - (8) (No change.)

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

Filed with the Office of the Secretary of State on March 18, 2016.

TRD-201601300

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 305-7016



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

##### SUBCHAPTER R. ADVISORY COMMITTEES

###### 25 TAC §§37.401, 37.410, 37.420

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of

State Health Services (department), proposes new §37.401, concerning the Maternal Mortality and Morbidity Task Force, new §37.410 concerning the State Child Fatality Review Committee, and new §37.420 concerning the Sickle Cell Advisory Committee.

#### BACKGROUND AND PURPOSE

Senate Bill (SB) 200 and SB 277, 84th Legislature, Regular Session, 2015, directed the Executive Commissioner of HHSC to establish and maintain advisory committees to address major health and human services issues and to adopt rules to govern the advisory committee's purpose, tasks, reporting requirements, and date of abolition. As part of health and human services (HHS) system-wide inventory and analysis, the Maternal Mortality and Morbidity Task Force, the State Child Fatality Review Team Committee and the Sickle Cell Advisory Committee have been identified for rulemaking.

The Maternal Mortality and Morbidity Task Force is a statutorily-defined multidisciplinary task force within the department. Texas Health and Safety Code, §§34.001 - 34.018, directs this task force to study and review cases of pregnancy-related deaths and trends in severe maternal morbidity, determine the feasibility of the task force studying cases of severe maternal morbidity, and make recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in Texas. New §37.401 describes the operations of the task force including the purpose, tasks, reporting requirements, membership composition, and meeting schedules.

The State Child Fatality Review Team Committee is a statutorily-defined multidisciplinary committee within the department, whose mission is to reduce the number of preventable child deaths. Texas Family Code, §§264.501 - 264.515, directs the State Child Fatality Review Team Committee to meet quarterly to discuss issues related to child risks and safety, to develop strategies to improve child death data collection and analysis, to develop position statements on specific child safety issues, and to research and develop recommendations that will make Texas safer for children. New §37.410 describes the operations of the committee including the purpose, tasks, reporting requirements, membership composition, and meeting schedules. This team has been in existence with regular meetings since 1995.

Senate Bill 277, 84th Legislature, Regular Session, 2015, repealed Texas Health and Safety Code, §33.053, abolishing the Sickle Cell Advisory Committee. As a part of the HHS system-wide analysis, the HHSC Executive Commissioner recommended continuation of the Sickle Cell Advisory Committee in rule. Texas Health and Safety Code, §33.052, directs the department to identify efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with sickle cell trait and sickle cell disease. The purpose of this advisory committee is to raise public awareness of sickle cell disease and sickle cell trait. New §37.420 establishes the committee's purpose, tasks, reporting requirements, membership requirements, membership qualifications and meetings schedules.

#### SECTION-BY-SECTION SUMMARY

An amendment to the title of Subchapter R, "School Health Advisory Committee," revises the title to "Advisory Committees" to allow for additional advisory committees rules within this subchapter.

New §37.401 establishes the Maternal Mortality and Morbidity Task Force. The new rule (1) identifies the statutory authority for the task force; (2) outlines the task force's purpose; (3) describes tasks; (4) outlines the reporting requirements; (5) gives the date of abolition; (6) establishes membership composition and qualifications; and (7) establishes meeting schedules.

New §37.410 establishes the State Child Fatality Review Team Committee. The new rule (1) identifies the statutory authority for the committee; (2) outlines the committee's purpose; (3) describes tasks; (4) outlines the reporting requirements; (5) establishes membership composition and qualifications; and (6) establishes meeting schedules.

New §37.420 establishes the Sickle Cell Advisory Committee. The new rule (1) identifies the statutory authority for the committee; (2) outlines the committee's purpose; (3) describes tasks; (4) describes reporting requirements; (5) gives the date of abolition; (6) establishes membership composition and qualifications; and (7) establishes meeting schedules.

#### FISCAL NOTE

Evelyn Delgado, Assistant Commissioner of the Family and Community Health Services Division, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Evelyn Delgado has also determined that there will not be an adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices, beyond what is already required by statute, in order to comply with the sections.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL GOVERNMENT

There are no anticipated costs to persons who are required to comply with the sections as proposed. There is no fiscal impact to local employment.

#### PUBLIC BENEFIT

Mrs. Delgado has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefits anticipated as a result of enforcing or administering the sections are (1) a better understanding of the causes and incidences of child deaths in Texas; (2) strategies for reducing the number of preventable child deaths; (3) policy, law and/or practice recommendations for reducing the incidence of pregnancy-related deaths and severe maternal morbidity in Texas; and (4) improved strategies and methods for raising of public awareness related to preventable child deaths, pregnancy related deaths and severe maternal morbidity in Texas, and sickle cell disease and sickle cell trait.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure

and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Sandra Serna, Family and Community Health Services Division, Department of State Health Services, Mail Code 1920, P.O. Box 149347, Austin, Texas 78714-9347 or by email at sandra.serna@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code, §531.012, which requires the department to adopt rules necessary to establish an Advisory Committee, and by Chapter 2110 in general; and Texas Government Code, §531.0055(e), and the Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules affect Texas Government Code, Chapters 531 and 2110; and Texas Health and Safety Code, Chapter 1001.

#### §37.401. Maternal Mortality and Morbidity Task Force.

(a) The committee. The Maternal Mortality and Morbidity Task Force (committee) is appointed under and governed by this section. The committee is established under Texas Health and Safety Code, §§34.001 - 34.018.

(b) Purpose. The purpose of the committee is to study cases of pregnancy-related deaths and trends in severe maternal morbidity and to make recommendations to reduce the incidence of pregnancy-related deaths and severe maternal morbidity in Texas.

(c) Tasks. The committee:

(1) studies and reviews:

(A) cases of pregnancy-related deaths; and

(B) trends in severe maternal morbidity.

(2) determines the feasibility of the committee studying cases of severe maternal morbidity; and

(3) makes recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in Texas.

(d) Reports. No later than September 1 of each even-numbered year, the committee must submit a biennial written report to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and appropriate committees of the Texas Legislature.

(1) The report must include:

(A) the findings of the committee related to their study and review of cases and trends in pregnancy-related deaths and severe maternal morbidity in this state; and

(B) any policy recommendations made to the HHSC Executive Commissioner to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity.

(2) DSHS must disseminate the report to the state professional associations and organizations listed in Texas Health and Safety Code, §34.006(b).

(e) Sunset Provision. The committee is subject to Texas Government Code, Chapter 325, (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this section expires September 1, 2019.

(f) Composition.

(1) The committee is composed of 15 members:

(A) thirteen members appointed by the DSHS Commissioner:

(i) four physicians specializing in obstetrics, at least one of whom is a maternal fetal medicine specialist;

(ii) one certified nurse-midwife;

(iii) one registered nurse;

(iv) one physician specializing in family practice;

(v) one physician specializing in psychiatry;

(vi) one physician specializing in pathology;

(vii) one epidemiologist, biostatistician, or researcher of pregnancy-related deaths;

(viii) one social worker or social service provider;

(ix) one community advocate in a relevant field; and

(x) one medical examiner or coroner responsible for recording deaths;

(B) a representative of DSHS's family and community health programs; and

(C) the state epidemiologist for DSHS or the epidemiologist's designee.

(2) In appointing members to the committee, the DSHS Commissioner:

(A) includes members working in and representing communities that are diverse with regard to race, ethnicity, immigration status, and English proficiency;

(B) includes members from differing geographic regions in the state, including both rural and urban areas;

(C) endeavors to include members who are working in and representing communities that are affected by pregnancy-related deaths and severe maternal morbidity and by a lack of access to relevant perinatal and intrapartum care services; and

(D) ensures that the composition of the committee reflects the racial, ethnic, and linguistic diversity of Texas.

(g) Terms of office.

(1) Members are appointed for staggered six-year terms, with the terms of four or five members, as appropriate, expiring February 1st of each odd-numbered year.

(2) A committee member may serve more than one term.

(3) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(h) Officers. The DSHS Commissioner appoints from among the committee members a presiding officer.

(1) The presiding officer presides at all committee meetings at which he or she is in attendance, calls meetings in accordance with this section, appoints subcommittees of the committee as necessary, and causes proper reports to be made to the HHSC Executive Commissioner. The presiding officer may serve as an ex officio member of any subcommittee of the committee.

(2) The committee may reference its presiding officer by another term, such as chairperson.

(i) Meetings. The committee meets at least quarterly to conduct business, or at the call of the DSHS Commissioner.

(1) The committee meets at the call of the presiding officer.

(2) Meeting arrangements are made by DSHS staff.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act, Texas Government Code, Chapter 551. Meetings may be conducted in person, through teleconference call, or by means of other technology.

(4) A simple majority of the appointed committee members constitutes a quorum for the purpose of transacting official business.

(5) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(6) The agenda for each committee meeting must include an opportunity for new business or for any member to address the committee on matters relating to committee business.

(j) Attendance. Members must attend committee meetings as scheduled.

(1) A member must notify the presiding officer or appropriate DSHS staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when grounds for removal of a member exists.

(k) Staff. Staff support for the committee is provided by DSHS staff.

(l) Procedures.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member has one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee must make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting are taken by DSHS staff and approved by the committee at the next scheduled meeting.

(m) Confidentiality.

(1) Any information pertaining to a pregnancy-related death or severe maternal morbidity is confidential.

(2) Confidential information that is acquired by DSHS and that includes identifying information of an individual or health care provider is confidential and may not be disclosed to any person.

(3) Information is not confidential under this section if the information is general information that cannot be connected with any specific individual, case, or health care provider.

(4) The committee may publish statistical studies and research reports based on information that is confidential under this section, provided that the information:

(A) is published in the aggregate;

(B) does not identify a patient or the patient's family;

(C) does not include any information that could be used to identify a patient or the patient's family; and

(D) does not identify a health care provider.

(5) The department will adopt and implement practices and procedures to ensure that information that is confidential under this section is not disclosed in violation of this section.

(6) In accordance with Texas Health and Safety Code §34.009, information in the committee's possession is confidential and excepted from disclosure under the Public Information Act, Texas Government Code Chapter 552.

(7) The committee and DSHS must comply with all state and federal laws and rules relating to the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

(n) Statements by members.

(1) HHSC, DSHS, and the committee are not bound in any way by any statement, recommendation, or action on the part of any committee member, except when a statement or action is in pursuit of specific instructions from HHSC, DSHS, or the committee.

(2) The committee and its members may not participate in legislative activity in the name of HHSC, DSHS, or the committee except with approval through HHSC's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member must not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member must not disclose confidential information acquired through his or her committee membership.

(5) A committee member must not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee must publicly disclose

the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reimbursement for expenses.

(1) Members appointed to the committee are not entitled to compensation for service on the committee or reimbursement for travel or other expenses incurred by the member while conducting the business of the committee.

(2) In carrying out its duties, the committee may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses.

§37.410. State Child Fatality Review Team Committee.

(a) The committee. The State Child Fatality Review Team Committee (committee) is appointed under and governed by this section. The committee is established under Texas Family Code, §§264.501 - 264.515.

(b) Purpose. The purpose of the committee is to reduce the number of preventable deaths to children in the State of Texas.

(c) Tasks.

(1) The committee develops an understanding of the causes and incidences of child death in Texas.

(2) The committee identifies procedures within agencies represented on the committee to reduce the number of preventable child deaths.

(3) The committee promotes public awareness and makes recommendations to the Governor and Texas Legislature for changes in law, policy, and practice to reduce the number of preventable child deaths.

(d) Reports.

(1) The committee files a biennial written report with the Governor, Lieutenant Governor, Speaker of the House of Representatives, Texas Department of State Health Services (DSHS), and Texas Department of Family and Protective Services (DFPS) and makes the report available to the public.

(2) The report contains aggregate child fatality data collected by local child fatality review teams, recommendations to prevent child fatalities and injuries, and recommendations to DFPS based on input from the child safety review subcommittee.

(3) The committee shall submit data reports to the Vital Statistics Unit not later than the 30th day after the day on which the review of child fatalities took place.

(e) Composition. The committee is composed of 22 members appointed by the Texas Health and Human Services Commission (HHSC) Executive Commissioner. The committee includes:

(1) a person appointed by and representing the State Registrar of Vital Statistics;

(2) a person appointed by and representing the DSHS Commissioner;

(3) a person appointed by and representing the DSHS Title V Director; and

(4) the following individuals:

(A) a criminal prosecutor involved in prosecuting crimes against children;

(B) a sheriff;

(C) a justice of the peace;

(D) a medical examiner;

(E) a police chief;

(F) a pediatrician experienced in diagnosing and treating child abuse and neglect;

(G) a child educator;

(H) a child mental health provider;

(I) a public health professional;

(J) a child protective services specialist;

(K) a sudden infant death syndrome family service provider;

(L) a neonatologist;

(M) a child advocate;

(N) a chief juvenile probation officer;

(O) a child abuse prevention specialist;

(P) a representative of the Texas Department of Public Safety;

(Q) a representative of the Texas Department of Transportation;

(R) an emergency medical services provider; and

(S) a provider of services to, or an advocate for, victims of family violence.

(f) Terms of office. Except as necessary to stagger terms, the term of office for each member is three years.

(1) At the expiration of their terms, members may renew their terms.

(2) The person appointed by and representing the State Registrar of Vital Statistics, the person appointed by and representing the DSHS Commissioner, and the person appointed by and representing the DSHS Title V Director are permanent members of the committee.

(3) An appointment to a vacancy on the committee is made in the same manner as the original appointment.

(g) Officers. The committee selects from its members a presiding officer and an assistant presiding officer.

(1) The presiding officer presides at all committee meetings at which he or she is in attendance and calls meetings of the committee.

(2) The assistant presiding officer presides at meetings if the presiding officer is unable to attend.

(h) Meetings.

(1) The committee meets quarterly.

(2) Meeting arrangements are made by DSHS staff.

(3) The committee is a "governmental body" as defined in the Open Meetings Act, Texas Government Code, Chapter 551. Meetings may be conducted in person, through teleconference call, or by means of other technology.

(4) A simple majority of the appointed committee members constitutes a quorum for the purpose of transacting official business.

(5) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(6) The agenda for each committee meeting includes an item entitled public comment under which any person is allowed to address the committee on matters relating to business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(i) Attendance. Members must attend committee meetings as scheduled.

(1) A member must notify the presiding officer or appropriate DSHS staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for which the member is appointed because of illness or disability or is absent from more than one committee meeting per year.

(3) A member may give another member voting proxy upon his or her absence.

(j) Staff. Staff support for the committee is provided by DSHS.

(k) Procedures.

(1) Any action taken by the committee must be approved by a majority vote of the members present, once quorum is established.

(2) Each member has one vote unless given proxy by another member.

(3) The committee makes decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(4) Minutes of each committee meeting are taken by DSHS staff and approved by the committee at the next scheduled meeting.

(l) Statement by members.

(1) HHSC, DSHS, and the committee are not bound in any way by any statement, recommendation, or action on the part of any committee member, except when a statement or action is in pursuit of specific instructions from HHSC, DSHS, or the committee.

(2) The committee and its members may not participate in legislative activity in the name of the committee. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member may not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member may not disclose confidential information acquired through his or her committee membership.

(5) A committee member may not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee must publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(m) Reimbursement for expenses. A member of the committee is not entitled to compensation for serving on the committee but is entitled to reimbursement for the member's travel expenses as provided for in the General Appropriations Act.

(1) Reimbursement for a person serving on the committee is paid from funds appropriated by DSHS.

(2) Reimbursement for other persons serving on the committee shall be paid from funds appropriated to DSHS.

§37.420. Sickle Cell Advisory Committee.

(a) The committee. The Sickle Cell Advisory Committee (committee) is appointed under and governed by this section. The committee is established under Texas Government Code, §531.012.

(b) Applicable law. The committee is subject to Texas Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to raise awareness of sickle cell disease and sickle cell trait in Texas.

(d) Tasks.

(1) The committee reviews and suggests methods for raising public awareness of sickle cell disease and sickle cell trait.

(2) The committee recommends two specific strategies in the two-year term to raise public awareness.

(e) Reports.

(1) The committee files an annual written report with the Texas Health and Human Services Commission (HHSC) Executive Commissioner.

(A) The report lists:

(i) the meeting dates of the committee;

(ii) the attendance records of its members;

(iii) a brief description of actions taken by the committee;

(iv) a description of how the committee has accomplished the tasks given to the committee by the Texas Department of State Health Services (DSHS) and HHSC; and

(v) anticipated activities of the committee for the next year.

(B) The report identifies the costs related to the committee, including the cost of DSHS staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(C) The report covers the meetings and activities in the immediate preceding fiscal year and is filed with the HHSC Executive Commissioner by the first day of December of the following fiscal year.

(2) The committee reports any recommendations to the HHSC Executive Commissioner at a meeting of the HHSC Executive Council established under Texas Government Code, §531.0051.

(3) The committee files an annual written report with the Texas Legislature of any policy recommendations made to the HHSC Executive Commissioner.

(f) Abolishment. The committee is abolished and this section expires September 1, 2018.

(g) Composition. The committee is composed of seven members appointed by the HHSC Executive Commissioner, including:

(1) two members from community based organizations with experience addressing the needs of individuals with sickle cell disease;

(2) two physicians specializing in hematology;

(3) two members of the public who are either an individual with sickle cell disease or a parent of a person with sickle cell disease or trait; and

(4) one representative from a health professions academic setting.

(h) Terms of office.

(1) The term of office for each member is two years.

(2) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(i) Officers. The committee selects from its members a presiding officer and an assistant presiding officer.

(1) The presiding officer serves until September 1, 2018. The assistant presiding officer serves until September 1, 2018. Both the presiding officer and the assistant presiding officer may holdover until his or her replacement is selected.

(2) The presiding officer presides at all committee meetings at which he or she is in attendance, calls meetings in accordance with this section, appoints subcommittees of the committee as necessary, and causes proper reports to be made to the HHSC Executive Commissioner. The presiding officer may serve as an ex officio member of any subcommittee of the committee.

(3) The assistant presiding officer performs the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer serves until the committee selects a new presiding officer.

(4) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(j) Meetings. The committee meets three times a year to conduct business.

(1) The committee meets at the call of the presiding officer.

(2) Meeting arrangements are made by DSHS staff.

(3) The committee is a "governmental body" as defined in the Open Meetings Act, Texas Government Code, Chapter 551. Meetings may be conducted in person, through teleconference call, or by means of other technology.

(4) A simple majority of the appointed committee members constitutes a quorum for the purpose of transacting official business.

(5) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(6) The agenda for each committee meeting includes an opportunity for new business or for any member to address the committee on matters relating to committee business.

(7) The agenda for each committee meeting also includes an item entitled public comment under which any person is allowed to address the committee on matters relating to business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(k) Attendance. Members must attend committee meetings as scheduled.

(1) A member must notify the presiding officer or appropriate DSHS staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member:

(A) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability;

(B) is absent from more than half of the committee meetings during a calendar year; or

(C) is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when grounds for removal of a member exists under paragraph (2) of this subsection.

(l) Staff. Staff support for the committee is provided by DSHS.

(m) Procedures. Roberts Rules of Order are the basis of parliamentary decisions, except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present, once quorum is established.

(2) Each member has one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee makes decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting are taken by DSHS staff and approved by the committee at the next scheduled meeting.

(n) Statement by members.

(1) HHSC, DSHS, and the committee are not bound in any way by any statement, recommendation, or action on the part of any committee member, except when a statement or action is in pursuit of specific instructions from HHSC, DSHS, or the committee.

(2) The committee and its members may not participate in legislative activity in the name of HHSC, DSHS, or the committee except with approval through HHSC's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member may not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member may not disclose confidential information acquired through his or her committee membership.

(5) A committee member may not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee must publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reimbursement for expenses. In accordance with the requirements set forth in Texas Government Code Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

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 March 18, 2016.

TRD-201601301

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 776-6972



## CHAPTER 265. GENERAL SANITATION SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

### 25 TAC §265.29

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), proposes an amendment to §265.29, concerning the Youth Camp Training Advisory Committee.

#### BACKGROUND AND PURPOSE

The purpose of the amendment is to implement the repeal of Health and Safety Code, §141.0096, by Senate Bill (SB) 277, 84th Legislature, Regular Session, 2015, which abolished the Youth Camp Training Advisory Committee. Section 265.29 currently includes the Youth Camp Training Advisory Committee and the Youth Camp Advisory Committee. This amendment will remove the Youth Camp Training Advisory Committee from §265.29.

The Youth Camp Training Advisory Committee was created by the Legislature in 2005 to advise the department and the executive commissioner in the development of criteria and guidelines for the training and examination program on sexual abuse and child molestation for staff and volunteers of youth camps.

The Youth Camp Training Advisory Committee was one of several advisory committees recommended for abolishment by the Sunset Advisory Commission during the 2014 review of the department. Subsequent to the repeal of the statutory requirements for this and other committees, the commission conducted a comprehensive analysis and sought stakeholder input on the continuation of the advisory committees abolished in statute to determine if there was a need to recreate any of the committees in rule.

No comments were received regarding the discontinuation of the Youth Camp Training Advisory Committee. The department will continue to obtain input as needed on youth camp training through the Youth Camp Advisory Committee and ongoing interactions with youth camp representatives.

#### SECTION-BY-SECTION SUMMARY

Existing §265.29(b) is being deleted to remove references to the Youth Camp Training Advisory Committee, abolished by SB 277.

The amendment to §265.29(c) renumbers and renames subsection (b) to reflect section reorganization and the procedures for the Youth Camp Advisory Committee.

#### FISCAL NOTE

Jon Huss, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to the state or local governments as a result of enforcing or administering the section as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Huss has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section as proposed.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Mr. Huss has also determined that for each year of the first five years that the section will be in effect, the public will benefit from adoption of the section. The public benefit anticipated from enforcing or administering the section is to better ensure the health and safety of children attending youth camps.

#### REGULATORY ANALYSIS

The department has determined that this is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Carolyn Bivens, Department of State Health Services, P.O. Box 149347, Mail Code 1911, Austin, Texas 78714-9347, (512) 776-2370, or by email to Carolyn.Bivens@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed

by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §141.008, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to administer the youth camp program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Government Code, Chapter 531, and Health and Safety Code, Chapters 141 and 1001.

§265.29. *Youth Camp Committee* [~~Committees~~].

(a) (No change.)

~~[(b) Training advisory committee.]~~

~~[(1) Training advisory committee appointment. The commissioner or his designee shall appoint a training advisory committee to advise the department and the executive commissioner in the development of criteria and guidelines for the training and examination.]~~

~~[(2) Training advisory committee membership. The training advisory committee consists of not more than nine members including at least two members who represent the general public; and other members, who include experienced camping professionals representing the camping communities of this state, representatives of youth camps selected by the department, and representatives of the Council on Sex Offender Treatment established under Occupations Code, Chapter 110.]~~

~~[(3) Filling a vacancy on the training advisory committee. Any vacancy on the training advisory committee will be filled by the department in the same manner as other appointments to the training advisory committee.]~~

~~[(4) Meetings. The advisory committee shall meet at the call of the commissioner.]~~

(b) ~~[(c)]~~ Procedures. [~~Both committees.~~]

(1) Staggered terms of service. Committee members shall serve for staggered six-year terms, with the terms of three members expiring on August 31 of each odd-numbered year.

(2) Adoption of committee rules of conduct and election of officers. The committee may adopt rules for the conduct of its own activities and may elect from among its members a chairperson, a vice-chairperson, and a secretary.

(3) Committee quorum. A simple majority of the members of the committee who are statutorily required to be appointed shall constitute a quorum for the purpose of transacting official business.

(4) Committee meetings announced. The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Texas Government Code, Open Meetings Act, Chapter 551.

(5) Compensation or reimbursement of expenses. A committee member may not receive compensation or reimbursement of expenses for serving on a youth camp committee.

(6) Presiding officer. The [Eaeh] committee shall annually select from among its members a chair who will serve as the presiding officer of the committee. The presiding officer of the committee shall preside over the committee.

(7) Reports. The presiding officer shall file an annual written report with the department.

(A) The report may list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished any specific tasks officially given to the committee, the status of any rules that were recommended by the committee, and anticipated activities of the committee for the next year.

(B) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the department. The report shall be signed by the presiding officer.

(8) Committee abolished. By October 1, 2021, the executive commissioner will initiate and complete a review of the committee [eommittees] to determine whether the committee [eommittees] should be continued, consolidated with another committee, or abolished. If the [a] committee is not continued or consolidated, the committee shall be abolished on that date.

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 March 18, 2016.

TRD-201601296

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 776-6972



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB" or "board") proposes amendments to 31 Texas Administrative Code ("TAC") §§371.1, 371.2, 371.10 - 371.18, 371.20 - 371.24, 371.30 - 371.35, 371.40 - 371.42, 371.60 - 371.62, 371.70 - 371.74, 371.80 - 371.82, and 371.85 - 371.88, relating to the TWDB's administration of the Drinking Water State Revolving Fund ("DWSRF"). TWDB also proposes new §§371.3, 371.4, 371.36, and 371.43 - 371.52 are proposed. Repeals of existing §§371.3, 371.4, and 371.43 - 371.51 are simultaneously proposed elsewhere in this issue of the *Texas Register*.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENTS AND NEW RULES.

The TWDB proposes to amend numerous provisions in 31 TAC Chapter 371. Various amendments are proposed to provide greater clarity in this chapter of TWDB rules or to update rule provisions pursuant to TWDB practice. The specific provisions

being amended and the reasons for the amendments are discussed in more detail below.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS AND NEW RULES.

##### *Subchapter A. General Program Requirements.*

##### *Section 371.1. Definitions.*

The definition of "Acquisition" is added to discuss eligible project costs and to describe a phase of the project.

The definition of "Applicant" is revised for clarity to focus on the repayment of the debt rather than ownership of the project.

The definition of "Application" is revised to expand the focus from solely 'forms' to 'forms and other information' that is submitted to the Board.

The definition of "Authorized representative" is revised to provide greater clarity.

The definition of "Bypass" is revised to incorporate the specific reasoning for passing over a higher ranked project in favor of lower ranked project.

The definition of "Commitment" is revised for clarity to refer directly to the Board resolution that constitutes the commitment rather than to the applicant's fulfillment of the conditions.

The definition of "Commitment term" is deleted because it is no longer needed with the added definition of "Expiration date," which provides more clarity.

The definition of "Construction" is deleted because it is no longer necessary.

The definition of "Construction phase" is added to provide greater clarity.

The definition of "Corporation" is deleted because it is not necessary.

The definition of "Design" is revised for clarity.

The definition of "Disadvantaged community" is revised to incorporate unemployment rates and population trends into the affordability criteria that currently consider only the income level.

The definition of "Disaster" is revised to add extreme heat.

The definition of "Eligible applicant" is revised to include a privately-owned community water system, which is currently eligible, as one of the eligible entities listed in the rule.

The definition of "Environmental affirmation" is deleted because it is no longer needed.

The definition of "Expiration date" is added to provide greater clarity regarding the Board's offer of financial assistance and is used to clarify the timeframe allowed for the applicant to submit a request to extend the Board's commitment.

The definition of "Financial assistance" is revised to provide greater clarity.

The definition of "Invited Projects List" is retitled "Initial Invited Projects List" to be consistent with the terminology used in the Board's Intended Use Plan.

The definition of "Lending rate" is revised for greater clarity to distinguish between financial assistance, which must be repaid and accrues interest, and principal forgiveness, which is not repaid and does not accrue interest.

The definition of "Nonprofit noncommunity (NPNC water system)" is revised to focus on the operation of the system rather than ownership by a non-profit organization.

The definition of "Person" is revised to align more closely to the definition in Chapter 15, Subchapter J, of the Texas Water Code.

The definition of "Planning" is added to reference a particular phase or aspect of the project.

The definition of "Population" is revised to specify that the data used must be the latest data available from the U.S. Census Bureau, such as the American Community Survey data released annually, rather than the decennial census.

The definition of "Principal forgiveness" is added to specify the type of additional subsidization that is being offered for the program.

The definition of "Project" is revised to provide greater clarity.

The definition of "Project information form" is retitled as "Project Information Form (PIF)" and is revised to clarify that the information submitted must conform to the agency's requirements.

The definition of "Project Priority List" is revised for clarity to reference the specific list found in the Intended Use Plan that contains the projects eligible for funding ranked according to their rating criteria score.

The definition of "Ready to proceed" is revised for clarification purposes.

The definition of "Subsidy" is revised to reference only a reduction in the interest rate from the market interest rate rather than principal forgiveness.

The definition of "Utility Commission" is added to delineate between the Public Utility Commission of Texas and the Texas Commission on Environmental Quality because of new powers and duties of the Public Utility Commission.

Other non-substantive, grammatical changes are made for clarification and grammatical purposes. Subsections are renumbered to reflect added and removed definitions.

#### *Section 371.2. Projects and Activities Eligible for Assistance.*

Section 371.2 is revised to include a list of all eligible project categories, eligible project-related costs, and ineligible projects in accordance with the Federal Safe Drinking Water Act ("FSDWA") (42 U.S.C. §§300f *et seq.*). While all projects and activities eligible under federal law are listed, the specific projects and activities eligible for assistance under the Texas DWSRF program for a particular funding year would be established annually in the DWSRF's Intended Use Plan. This will allow greater flexibility to adjust the program based on needs and capacity.

#### *Section 371.3. Other Authorized Activities: Source Water Protection and Technical Assistance.*

New §371.3 is added. Language from previously numbered §371.3 and §371.4 is added and revised to align the language more closely to the federal regulations. The reference to limitations on the use of funds for these purposes includes the percentages specified in the federal regulations.

#### *Section 371.4. Federal Requirements.*

A new §371.4 is added to discuss the federal requirements currently applicable to DWSRF projects. The applicability of the American Iron and Steel requirement currently established an-

nually through the federal appropriations for the program will be specified in the Intended Use Plan.

#### *Subchapter B. Financial Assistance.*

##### *Section 371.10. Type of Financial Assistance.*

Section 371.10 is revised to state that the executive administrator shall determine the type of financial assistance in accordance with the types of financial assistance authorized by the Act.

##### *Section 371.11. Financing of Planning, Acquisition, and Design Phases.*

Section 371.11 is revised to reflect a change in terminology regarding the phases of projects. It is revised to state that applicants may request financial assistance for planning, acquisition, and design without a determination that the project is ready to proceed. It also deletes the reference to applicants who have completed the planning, acquisition, and design for a proposed project within three years of the closing date for financial assistance receiving priority for construction phase funding of the project in the next available IUP if the project is ready to proceed. This priority is retained elsewhere in §371.21(d). The title is revised from "Planning, Acquisition, and Design Funding" to "Financing of Planning, Acquisition, and Design Phases."

##### *Section 371.12. Construction Phase Funding.*

Section 371.12 is revised to reflect a change in terminology regarding the phases of projects. The title is revised from "Construction Funding" to "Construction Phase Funding."

##### *Section 371.13. Pre-Design Funding Option.*

Section 371.13 is revised to reflect a change in terminology regarding the phases of projects.

##### *Section 371.14. Lending Rates.*

Section 371.14 is revised to make private and taxable entities eligible for the interest rate reduction. As part of the revision to clarify eligibility for the reduction, TWDB is proposing to revise the method of establishing the fixed rate scale and determining the amount of adjustment from the market interest rate. TWDB is not proposing to alter the interest rate reduction a borrower would have received under the current program practices. For consistency, the point in time for determining the total fixed lending rate reduction will be set at 30 days from the proposed date the application will be presented to the Board for approval. Other wording changes were made to provide greater clarity. In addition, references to the maximum reduction level have been removed to allow greater flexibility in establishing a significant interest rate reduction consistent with projections of the long-term financial health of the DWSRF. The interest rate reduction will instead be established annually in DWSRF's Intended Use Plan.

##### *Section 371.15. Fees for Financial Assistance.*

Section 371.15 is revised to allow greater flexibility to make annual adjustment to the DWSRF program based on needs and projected financial conditions. To accomplish this, the amount of any administrative loan origination fee, up to the maximum specified amount, would be established in the DWSRF's Intended Use Plan. The title is revised from "Fees of Financial Assistance" to "Fees for Financial Assistance."

##### *Section 371.16. Term of Financial Assistance.*

Section 371.16 is revised to incorporate a reference to the Federal Safe Drinking Water Act with respect to the expected design life of extended term financing offered to a disadvantaged

community and extended financing through the purchase of debt obligations of a municipality.

*Section 371.17. Principal Forgiveness.*

Section 371.17 is revised to substitute "principal forgiveness" for "subsidies" in the title and text. As explained under Definitions, principal forgiveness is a type of additional subsidization offered in the program. The term "subsidy" now refers only to a reduction in the interest rate from the market interest rate rather than principal forgiveness.

*Subchapter C. Intended Use Plan.*

*Section 371.20. Submission of Project Information Forms.*

Section 371.20 is revised to clarify the requirements for submission of project information forms. It specifically references submission of Project Information Forms to be included on an amended Project Priority List within the Intended Use Plan. It also establishes that the required information that must be in a Project Information Form will be specified in Board guidance. It clarifies that a registered engineer must properly affix the engineer's seal, signature, and date of execution to the project information form if the amount requested from the program is equal to or greater than \$100,000.

*Section 371.21. Rating Process.*

Section 371.21 is revised to incorporate a consideration of effective management in the rating factors for the program. A new subsection (f) is added to discuss the selection process for urgent need financial assistance, including the ability to bypass higher rated projects to provide funding to urgent need projects.

*371.22. Public Notice.*

Section 371.22 is revised to better reflect TWDB processes whereby the executive administrator, not the Board members, hold public hearings. The rule would state that the executive administrator may make amendments to the Project Priority List after a 14-day public comment period without any public hearing.

*Section 371.23. Criteria and Methods for Distribution of Funds.*

Section 371.23 is revised to reflect a change in terminology and to provide greater clarity. It revises "Subsidy" or "subsidies" to "principal forgiveness" and "Invited Projects List" to "Project Priority List" to be consistent with other sections as well as the terminology in the Intended Use Plan. The reference to small communities is clarified to mean small water systems.

*Section 371.24. Changes to Project.*

Section 371.24 is revised to adjust permitted changes in a proposed project listed in the Intended Use Plan without requiring a re-ranking of the project. First, the applicant for a proposed project may change provided the project itself does not change. Second, the fundable amount of a proposed project may not increase by more than 10% of the amount listed in the approved IUP. The rule is revised to allow the executive administrator to waive the 10% limit to not only incorporate additional elements to the project, but also increased project costs. Further, the section is revised to specify that any principal forgiveness awarded may not exceed the amount in the original Intended Use Plan.

*Subchapter D. Application for Assistance.*

*Section 371.30. Pre-Application Conferences.*

Section 371.30 is revised to allow individuals to participate in the conference without being in attendance.

*Section 371.31. Timeliness of Application and Required Application Information.*

Section 371.31 is revised to base the due date for curing a deficiency on the date of the notice to the applicant rather than the date the applicant receives the notice. This will allow enhanced tracking for program administration. This section specifies that the application must include a copy of any actual or proposed contracts covering revenues for the project for a duration specified by the agency. To allow additional flexibility to the agency, the rule would permit an alternative method of establishing a reliable accounting of the financial records of the applicant if approved by the executive administrator. The rule would clarify the listing within the application of all the funds used for the project. This section is revised to require private applicants to submit an affidavit stating that the decision to apply for financial assistance was done so in accordance with the Applicant's bylaws or charter, instead of submitting an affidavit stating the Applicant sent written 72-hour notice to all customers, to allow Applicants to follow their established notice requirements. The provisions regarding required documentation from private applicants are revised to also cover sole proprietorships. Other non-substantive and grammatical changes were made for clarification purposes.

*Section 371.32. Review of Applications for Financial Assistance.*

Section 371.32(c) is deleted because it is no longer necessary. New subsection (c) is added to establish commitment timeframes for projects that qualify and have been designated to receive principal forgiveness. Due to the high demand and limited availability of subsidized funding, it is imperative that applicants offered principal forgiveness proceed in a timely manner.

*Section 371.33. Refinancing.*

Section 371.33 is revised to require the project to meet programmatic requirements.

*Section 371.34. Required Water Conservation Plan and Water Loss Audit.*

Section 371.34 is revised to incorporate new statutory requirements. According to §16.0121(g), Water Code, a retail public utility providing potable water that receives financial assistance from the TWDB is required to use a portion of that financial assistance, or any additional financial assistance provided by TWDB, to mitigate the utility's system water loss if, based on a water audit filed by the utility, the water loss meets or exceeds the threshold established by TWDB rule. In accordance with §16.0121(g), Water Code, as amended by H.B. 949, 84th Legislative Session, §371.34 is revised to allow the TWDB, at the request of the retail public utility, to waive this requirement. TWDB rules regarding this waiver are located in 31 TAC §358.6.

*Section 371.35. Board Approval of Funding.*

Section 371.35 is revised to remove the commitment expiration timeframes from the rules and establish the expiration timeframes through the annual Intended Use Plan applicable to the project in order to provide greater flexibility in administering the program. Section 371.35 will allow multiple extensions instead of one extension and the language is revised to better instruct applicants on the procedure for requesting an extension.

*Section 371.36. Multi-year Commitments.*

New §371.36 is added to implement multi-year commitments to provide a reliable source of capital based on a commitment structure that meets the annual capital requirements of the project. In order to provide a reliable source of capital based on a commitment structure that meets the annual capital requirements of the project, the TWDB is proposing to offer multi-year commitments. Multi-year commitments should assist entities that need to fund large projects over a period of time. Further, to assist in providing for long-term financial planning, the minimum interest rate reduction for the multi-year commitments will be established and locked for the five year period based on the interest rate reduction prescribed in the IUP for the first year's commitment.

#### *Subchapter E. Environmental Reviews and Determinations.*

Subchapter E is revised to provide greater clarity on the environmental review process through a reorganization of this subchapter. Repeals of existing §§371.43 - 371.51 are simultaneously proposed elsewhere in this issue of the *Texas Register*.

#### *Section 371.40. Definitions.*

The definition of "Affected community" is revised to clarify its meaning in the context of its use within the subchapter.

The definitions of "Categorical Exclusion," "Environmental Assessment," "Environmental Impact Statement," "Environmental Information Document," "Finding of No Significant Impact," "Record of Decision," and "Statement of Finding" are added to provide greater clarity on what is included in these various documents, which party prepares the documents, and their use.

The definitions of "Federal Environmental Cross-cutters" and "Human environment" are added to clarify terminology utilized within the subchapter.

The definition of "Mitigation" is revised to better reflect the federal definition by adding fuller explanations of the avoidance, minimization, and rectification aspects of mitigation. Therefore, because it is no longer necessary to retain separate definitions of "Avoidance" and "Minimization," they have been deleted.

The definition of "Emergency Relief Project" is revised to include natural disasters as an emergency condition or incident.

#### *Section 371.41. Environmental Review Process.*

Section 371.41 is revised to delete references to avoidance and minimization, which are both included in the definition of mitigation. In addition, disbursement of funds information was removed as this information is already provided in §371.72, relating to Disbursement of Funds. Section 371.41 is further revised to add more details on the timing and preparation of different environmental documents in order to provide greater clarity. Certain terminology is revised in order to avoid confusion between state and federal environmental documents. Other non-substantive and grammatical changes are made for clarification purposes.

#### *Section 371.42. Board's Environmental Finding: Categorical Exclusions.*

The title of §371.42 is revised from "Types of Environmental Determinations: Categorical Exclusion" to "Board's Environmental Finding: Categorical Exclusion" in order to provide greater clarity on which party is responsible for evaluating eligibility and issuing the Categorical Exclusion. It is further revised to clarify when a project can be categorically excluded from a full environmental review. Subsection (f) is deleted in order to move this information

to new §371.43 in order to further separate and clarify Applicant versus TWDB responsibilities.

#### *Section 371.43. Applicant Requirements: Categorical Exclusions.*

New §371.43 is added in order to delineate between the Applicant's and the TWDB's responsibilities regarding a Categorical Exclusion. New §371.43 contains the Applicant's responsibilities. This change was made to provide greater clarity.

#### *Section 371.44. Board's Environmental Finding: Finding of No Significant Impact.*

New §371.44 is added to reorganize and revise previous provisions on the Finding of No Significant Impact in order to provide greater clarity on each party's responsibilities regarding this document. Language from previous §371.43 is added here and is revised to remove the statement that an environmental assessment is required for proposed projects involving new construction. This is because some minor new construction elements are eligible for a CE, which does not require an environmental assessment. The previous language is further revised to reflect the fact that an environmental assessment is not required if the action is categorically excluded or if the executive administrator has decided that an environmental impact statement is required. It is revised to require that all contracts, plans, specifications, or other applicable documents used during the design and construction of the project include reference to or descriptions of the mitigation measures. References to avoidance and minimization were deleted because both are included in the definition of mitigation. Other minor revisions were made to provide greater clarity.

#### *Section 371.45. Applicant Requirements: Environmental Information Document.*

New §371.45 is added to reorganize and revise previous provisions on the Environmental Information Document in order to provide greater clarity on each party's responsibilities regarding this document. Language from previous §371.44 is added here and revised to provide greater clarity. An Applicant must prepare an Environmental Information Document for projects that have potential environmental impacts and the significance of those impacts is unknown. New §371.45 provides greater clarity on when an Environmental Information Document is needed, which party prepares the document, and what the document must include.

#### *Section 371.46. Environmental Impact Statements.*

New §371.46 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.47 is added here and non-substantive changes to that language are made for clarity purposes.

#### *Section 371.47. Decision to Prepare an Environmental Impact Statement: Notice of Intent.*

New §371.47 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.45 is added here and non-substantive changes to that language are made for clarity purposes.

#### *Section 371.48. Board's Environmental Finding: Record of Decision.*

New §371.48 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.46 is added here and non-substantive changes to that language are made

for clarity purposes. That language is revised to delete references to avoidance and minimization because both are included in the definition of mitigation. The language is further revised to clarify that the TWDB may provide written notification regarding the outcome of the mitigation measures rather than issue a statement of findings.

*Section 371.49. Applicant Requirements: Environmental Impact Statement.*

New §371.49 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.48 is added here and non-substantive changes to that language are made for clarity purposes.

*Section 371.50. Proposed Project Alterations.*

New §371.50 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.49 is added here and revised to state that the executive administrator's review of proposed project alterations may result in a notation to the file when the alterations are minor. It is further revised for clarity to explain the process of confirming that project alterations are within the scope of the original environmental finding.

*Section 371.51. Use of Previously Prepared Environmental Findings.*

New §371.51 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.50 is added here and revised to allow the executive administrator to adopt previous environmental findings issued by other agencies, not just federal agencies, provided that the finding is compliant with NEPA. It is also revised to clarify that only mitigation measures from the previous findings that are applicable to the proposed project components will be applied as conditions of the financial assistance. It is revised to state that the executive administrator may provide written notification of the outcome of the mitigation measure proposed in an environmental finding to interested agencies and public groups. References to avoidance and minimization were deleted because both are included in the definition of mitigation. Certain wording from previous language is revised in order to provide greater clarity.

*Section 371.52. Emergency Relief Project Procedures.*

New §371.52 is added here to reorganize Subchapter E for greater clarity. The language from previous §371.51 is added here and non-substantive changes to that language are made for clarity purposes. Certain references to the Board are removed to provide greater flexibility in the emergency relief project procedures.

*Subchapter F. Engineering Review and Approval.*

*Section 371.60. Engineering Feasibility Report.*

Section 371.60 is revised to require the engineering feasibility report to show how the project will remedy the drinking water issues and problems instead of simply that they will remedy the problems and issues. Other non-substantive changes are made for clarity purposes.

*Section 371.61. Contract Documents: Review and Approval.*

Section 371.61 is revised to provide greater clarity on what the term "contract documents" include for the purposes of this section and to reference the TWDB's authority to audit project files.

*Section 371.62. Advertising and Awarding Construction Contracts.*

Section 371.62 is revised to extend the required notification period for pre-construction conferences from five to ten days to ensure TWDB staff would be able to attend if desired.

*Subchapter G. Loan Closings and Availability of Funds.*

*Section 371.70. Financial Assistance Secured by Bonds or Other Authorized Securities.*

Section 371.70 is revised to require the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board to include a statement that all payments, including the origination fee, are made to the Board via wire transfer at no cost to the Board. Further, §371.70(a)(5) is revised to still require assurances that the Applicant will comply with any special conditions specified by the Board's environmental finding, but to delete the requirement that this assurance last until all financial obligations to the state have been discharged. Subsection (d) is added to provide greater clarity on which documents are required and which are not in the case of 100 percent principal forgiveness. Other non-substantive and grammatical changes are made for clarification purposes.

*Section 371.71. Financial Assistance Secured by Promissory Notes and Deeds of Trust.*

Section 371.71 is revised to clarify that a deed of trust, security agreement, and title insurance policy is not required in the situation of 100 percent principal forgiveness. It is also revised to change "Commission" to "Utility Commission" because of new powers and duties of the Public Utility Commission.

*Section 371.72. Disbursement of Funds.*

Section 371.72 is revised to eliminate the environmental affirmation by the Board but still require the environmental review to be completed before release of funds for design.

*Section 371.73. Remaining Unused Funds.*

Section 371.73 is revised to use "unused funds" instead of "surplus funds" for consistency.

*Section 371.74. Surcharge.*

Section 371.74 is revised to remove "as those terms are defined" because those terms are not defined. It is also revised to reflect new powers and duties of the Public Utility Commission

*Subchapter H. Construction and Post-Construction Requirements.*

*Section 371.80. Inspection During Construction.*

Section 371.80 is revised to eliminate the reference to "sound engineering principles" for consistency with §17.185 of the Texas Water Code. Further, on-site observations were added to the scope of inspections as part of TWDB's actions to confirm ongoing compliance with all applicable requirements. Other minor revisions were made to provide greater clarity.

*Section 371.81. Alterations During Construction.*

Section 371.81 is revised to include the requirement in §17.186 of the Texas Water Code that the Texas Commission on Environmental Quality must give its approval before any substantial or material changes are made in any previously approved plans for facilities required to have commission approval of plans and specifications.

*Section 371.85. Final Accounting.*

Section 371.85 is revised to specify that remaining surplus funds may be used as specified in any applicable bond ordinance for certain purposes.

#### *Section 371.87. Release of Retainage.*

Section 371.87 is revised to clarify that the TWDB must issue a Certificate of Approval prior to approving the full release of retainage on a contract.

Non-substantive or grammatical changes are made to the following sections for clarification and grammatical purposes: §§371.18, 371.82, 371.86, and 371.88.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

There is no change in costs because there are no direct costs associated with the proposed amendments and new rules. This proposal is not expected to have any impact on state or local revenues. The proposal does not require any increase in expenditures for state or local governments as a result of administering the rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the proposal.

#### PUBLIC BENEFITS AND COSTS

Ms. Cindy Demers also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it provides clarity regarding the TWDB's Drinking Water State Revolving Fund program and is consistent with state and federal laws regarding the Drinking Water State Revolving Fund.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposal does not adversely affect a local economy in a material way for the first five years that the proposal is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to provide greater clarity regarding the Drinking Water State

Revolving Fund and to follow federal and state requirements for that fund.

Even if the proposal were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed the Federal Safe Drinking Water Act or any other federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather it is also proposed under authority of Texas Water Code §15.605. Therefore, this proposed rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to make clarifying changes that align with state statutes and federal requirements related to the Drinking Water State Revolving Fund. The proposed rulemaking would substantially advance this stated purpose by clarifying rules related to the Drinking Water State Revolving fund, incorporating applicable language from state and federal laws and rules, and reflecting the current state and federal requirements for the Drinking Water State Revolving Fund.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the Drinking Water State Revolving Fund for the State of Texas.

Nevertheless, the board further evaluated these proposed rules and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rulemaking requires compliance with state and federal laws and rules regarding the Drinking Water State Revolv-

ing Fund. These requirements will not burden, restrict, or limit an owner's right to property. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

## SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

### 31 TAC §§371.1 - 371.4

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §371.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Chapter 15 of the Texas Water Code and not defined here shall have the meanings provided by Chapter 15.

(1) Acquisition--The Applicant obtaining interests in land for the purposes of locating eligible project components.

(2) ~~[(4)]~~ Act--The Federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq.

(3) ~~[(2)]~~ Applicant--The entity applying for financial assistance from the DWSRF including:

(A) the entity that receives the financial assistance;[,] and

(B) the entity legally responsible to repay the debt [that owns the project funded under this chapter, or an entity authorized to act on behalf of the Applicant].

(4) ~~[(3)]~~ Application--The information and supporting documentation submitted by or on behalf of the Applicant that may be used for commitment for financial assistance from the DWSRF or that [The forms provided by] the executive administrator determines [that] must be completed for consideration for financial assistance from the DWSRF.

(5) ~~[(4)]~~ Authorized representative--The signatory agent [of the Applicant] authorized and directed by the Applicant's governing body to file the application and to sign documents relating to the project, on behalf of the Applicant.

(6) ~~[(5)]~~ Board--The Texas Water Development Board.

(7) ~~[(6)]~~ Bonds--All bonds, notes, certificates of obligation, and book-entry obligations authorized to be issued by any political subdivision.

(8) ~~[(7)]~~ Bypass--To pass over a higher ranked project in favor of a lower ranked project to ensure that funds available are utilized in a timely manner, to select an interrelated project, or to meet statutory and capitalization grant requirements as [The selection of a project for funding independent of ranking based on factors] delineated in the applicable IUP.

(9) ~~[(8)]~~ Capitalization grant--The federal grant funds awarded annually by the EPA to the State for capitalization of the DWSRF.

(10) ~~[(9)]~~ Certification of Trust--An instrument executed by a home-rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the financial assistance proceeds in accordance with §114.086, Texas Property Code.

(11) ~~[(10)]~~ Closing--The exchange of the Applicant's approved debt instruments for DWSRF financial assistance.

(12) ~~[(11)]~~ Commission--The Texas Commission on Environmental Quality.

(13) ~~[(12)]~~ Commitment--An offer by the Board to provide financial assistance to an Applicant as evidenced by [who timely fulfills the conditions in] a Board resolution.

~~[(13)] Commitment term--The amount of time, after the Board commitment, within which the commitment for financial assistance must be closed.]~~

(14) Community water system--A public water system that:

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(15) Consolidation--Any one of the following activities:

(A) a public water system acquiring another public water system;

(B) a public water system providing retail service to another public water system; or

(C) a public water system providing wholesale service, which may include operation of the system, to another public water system.

~~[(16)] Construction--The erection, acquisition, alteration, remodeling, rehabilitation, improvement, extension or other man-made change necessary for an eligible project or activity.]~~

(16) ~~[(17)]~~ Construction account--A separate account created and maintained for the deposit of financial assistance and utilized by the Applicant to pay eligible expenses for the project.

(17) Construction phase--The erection, acquisition, alteration, remodeling, rehabilitation, improvement, extension, or other man-made change necessary for an eligible project or activity.

(18) Contaminant--Any physical, chemical, biological, or radiological substance present in water.

(19) Contract documents--The engineering documentation relating to the project including engineering drawings, maps, technical specifications, design reports, instructions, and other contract conditions and forms that are in sufficient detail to allow contractors to bid on the work.

~~[(20)] Corporation--A nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code.]~~

(20) ~~[(21)]~~ Davis-Bacon Act--The federal statute at 40 U.S.C. §§3141 et seq. and in conformance with the U.S. Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) and 29 CFR Part 3 (Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from the United States).

~~(21)~~ ~~[(22)]~~ Debt--All bonds or other documents issued or to be issued by any political subdivision or eligible Applicant pledging repayment of the Board's financial assistance.

~~(22)~~ ~~[(23)]~~ Design--The project phase during which [the Applicant prepares] the project design documents are prepared by the Applicant. Documents may include [including] design surveys, plans, working drawings, specifications, and any procedures and protocols to be used during the construction of the project.

~~(23)~~ ~~[(24)]~~ Disadvantaged community--A community that meets the affordability criteria based on income, unemployment rates, and population trends. Specifically, the service area of an eligible applicant, the service area of a community that is located outside the entity's service area, or a portion within the entity's service area if the proposed project is providing new service to existing residents in unserved areas; and meets the following affordability criteria: (a) has an annual median household income that is no more than 75 percent of the state median household income using an acceptable source of socioeconomic data, and (b) the household cost factor that considers income, unemployment rates, and population trends must be greater than or equal to one percent if only water or sewer service is provided or greater than or equal to two percent if both water and sewer service are provided. The required data and calculations of the household cost factor are specified in the IUP under which the project would receive funding. [The service area or portion of a service area that has an adjusted median household income that is no more than 75% of the State median household income for the most recent year for which statistics are available; and if the service area is only charged for one type of service, water or sewer with a household cost factor for water or sewer rates that is greater than or equal to one percent; or if the service area is charged for both water and sewer services with a combined household cost factor for water and sewer rates that is greater than or equal to two percent. The Board may provide financial assistance to an entity that cannot otherwise afford financial assistance under the DWSRF based on considerations other than household cost factors if such considerations clearly warrant financial assistance.]

~~(24)~~ ~~[(25)]~~ Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency as defined in Texas Government Code §418.004.

~~(25)~~ ~~[(26)]~~ Drinking Water State Revolving Fund (DWSRF)--The financial assistance program authorized by Texas Water Code, Chapter 15, Subchapter J in accordance with the Act.

~~(26)~~ ~~[(27)]~~ Eligible Applicant--Any of the following entities:

- (A) a nonprofit noncommunity water system;
- (B) a nonprofit community water system;
- (C) a political subdivision that is a municipality, intermunicipal, interstate or state agency, or a nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code; [or]
- (D) a privately-owned community water system; or
- (E) ~~[(D)]~~ any other entity eligible under federal law to receive funds from the DWSRF.

~~(27)~~ ~~[(28)]~~ Engineering feasibility report--Those necessary plans and studies that directly relate to the project and that are needed

in order to assure compliance with the enforceable requirements of the Act and state statutes.

~~[(29)~~ Environmental affirmation--The Board's acceptance of the environmental determination made prior to the release of funds for design or construction for a project receiving pre-design financial assistance.]

~~(28)~~ ~~[(30)]~~ EPA--The United States Environmental Protection Agency or a designated representative.

~~(29)~~ ~~[(31)]~~ Escrow account--A separate account maintained by an escrow agent until such funds are eligible for release to the construction account.

~~(30)~~ ~~[(32)]~~ Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Government Code, Chapter 404, Subchapter C;

(B) a custodian of collateral as designated in accordance with Government Code, Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.

~~(31)~~ ~~[(33)]~~ Executive administrator--The executive administrator of the Board or a designated representative.

~~(32)~~ Expiration date--The date on which the Board's offer of financial assistance is no longer open or valid and by which a Closing must occur.

~~(33)~~ ~~[(34)]~~ Financial assistance--Funding made available to eligible Applicants as authorized in 40 CFR §35.3525 [Loan funds], including principal forgiveness [and negative interest loans, provided to eligible Applicants].

~~(34)~~ ~~[(35)]~~ Force majeure--Acts of god, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other incapacities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

~~(35)~~ ~~[(36)]~~ Green project--A project or components of a project that, when implemented, will result in energy efficiency, water efficiency, green infrastructure, or environmental innovation that is [are] characterized as a green project [projects] either categorically or by utilizing a business case as approved by the executive administrator.

~~(36)~~ ~~[(37)]~~ Green project reserve--A federal directive requiring a specified portion of the capitalization grant to be used for green projects.

~~(37)~~ Initial Invited Projects List--That portion of the Project Priority List listing the eligible projects ranked according to their rating that will initially be invited to submit applications in accordance with procedures and deadlines as detailed in the applicable IUP.

~~(38)~~ Intended Use Plan [use plan] (IUP)--A document prepared annually by the Board, after public review and comment, which identifies the intended uses of all DWSRF program funds and describes how those uses support the overall goals of the DWSRF program.

~~(39)~~ Invited Projects List--That portion of the IUP listing eligible projects ranked according to their rating which will be invited to submit applications in accordance with procedures and deadlines as detailed in the applicable IUP.

~~(39)~~ [(40)] Lending rate--The rate of interest applicable to [a particular] financial assistance that must be repaid [under the DWSRF].

~~(40)~~ [(41)] Market interest rates--Interest rates comparable to those attained for [municipal] securities in an open market offering.

~~(41)~~ [(42)] Municipality--A city, town, or other public body created by or pursuant to state law.

~~(42)~~ [(43)] Nonprofit organization--Any legal entity that is recognized as a tax exempt organization by the Texas Comptroller of Public Accounts pursuant to 34 Texas Administrative Code, Part 1, Chapter 3, Subchapter O (relating to State and Local Sales and Use Taxes [Tax]).

~~(43)~~ [(44)] Nonprofit noncommunity (NPNC) water system--A public water system that is not operated for profit, [a community water system and that] is owned [and operated] by a political subdivision or nonprofit entity, and is not a community water system [organization].

~~(44)~~ [(45)] Outlay report--The Board's form used to report costs incurred on the project.

~~(45)~~ [(46)] Permit--Any permit, license, registration, or [and] other legal document required from any local, regional, state, or federal government for construction of the project.

~~(46)~~ [(47)] Person--An individual, corporation, partnership, association, State, municipality, commission, or political subdivision of the State, or any interstate body, as defined by 33 U.S.C. §1362, including a political subdivision as defined by Chapter 15, Subchapter J, of the Texas Water Code, if the person is eligible for financial assistance under the Act.

~~(47)~~ Planning--The project phase during which the Applicant identifies and evaluates potential alternatives to meet the needs of the proposed project. It includes the environmental review described in Subchapter E of this chapter and preparation of the engineering feasibility report as described in Subchapter F of this chapter.

~~(48)~~ Political subdivision--A municipality, intermunicipal, interstate, or state agency, any other public entity eligible for assistance, or a nonprofit water supply corporation created and operating under Texas Water Code Chapter 67.

~~(49)~~ Population--The number of people who reside within the territorial boundaries of or receive wholesale or retail water service from the Applicant based upon data that is acceptable to the executive administrator and which includes the following:

(A) acceptable demographic projections or other information in the engineering feasibility report or the latest official data available from the U.S. Census Bureau [census] for an incorporated city; or

(B) information on the population for which the project is designed, where the Applicant is not an incorporated city or town.

~~(50)~~ Primary drinking water regulation--Regulations promulgated by EPA which:

(A) apply to public and private water systems;

(B) specify contaminants which, in the judgment of the EPA [administrator], may have any adverse effect on the health of persons;

(C) specify for each such contaminant either:

(i) a maximum contaminant level if, in the judgment of the EPA [administrator], it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems; or

(ii) if, in the judgment of the EPA [administrator], it is not economically or technologically feasible to [so] ascertain the level of such contaminant, each treatment technique known to the EPA [administrator] which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of the Act; and

(D) contain criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels including quality control and testing procedures to insure compliance with such levels and to ensure the proper operation and maintenance of the system, and requirements as to:

(i) the minimum quality of water which may be taken into the system; and

(ii) the siting of new facilities for public water systems.

~~(51)~~ Principal forgiveness--A type of additional subsidization authorized by 42 U.S.C. §300j-12(d) or federal appropriations acts, as detailed in the Intended Use Plan and principal forgiveness agreement or bond transcript applicable to the project.

~~(52)~~ [(51)] Private Placement Memorandum (PPM)--A document functionally similar to an "official statement" used in connection with an offering of municipal securities in a private placement.

~~(53)~~ [(52)] Project--The planning, acquisition [of land, water rights and permits], environmental review, design, construction, and other activities designed to accomplish the objectives, goals, and policies of [eligible for funding under] the Act.

~~(54)~~ [(53)] Project engineer--The engineer retained by the Applicant to provide professional engineering services during any phase of a project.

~~(55)~~ [(54)] Project Information Form (PIF) [information form]--The form that the executive administrator determines must be submitted by Applicants for rating and ranking on an IUP.

~~(56)~~ [(55)] Project Priority List--A [That portion of the IUP] listing found in the IUP of projects eligible for funding, [projects] ranked according to their rating criteria score and that may be further prioritized as described in the applicable IUP.

~~(57)~~ [(56)] Public water system--

(A) In General. A system that provides water to the public for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

(i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(B) Connections. A connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if:

(i) the water is used exclusively for purposes other than residential use (consisting of drinking, bathing, cooking, or other similar uses);

(ii) the EPA [administrator] or the Commission determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(iii) the EPA [administrator] or the Commission determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(C) Irrigation districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar uses shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subparagraph (B)(ii) and (iii) of this paragraph.

(D) Transition period. A water supplier that would be a public water system only as a result of modifications made shall not be considered a public water system until two years after August 6, 1996. If a water supplier does not serve 15 service connections or 25 people at any time after the conclusion of the two-year period, the water supplier shall not be considered a public water system.

(58) [(57)] Ready to proceed--A project for which available information indicates that there are no significant permitting, land acquisition, social, contractual, environmental, engineering, or financial issues that would keep the project from proceeding in a timely manner to the construction phase of the project.

(59) [(58)] Release of funds--The sequence and timing for Applicant's release of financial assistance funds from the escrow account to the construction account.

(60) [(59)] Secondary drinking water regulation--Regulations promulgated by EPA which apply to public water systems and which specify the maximum contaminant levels which, in the judgment of the EPA [administrator], are necessary to protect the public welfare. Such regulations may vary according to geographic and other circumstances and may apply to any contaminant in drinking water:

(A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use; or

(B) which may otherwise adversely affect the public welfare.

(61) [(60)] Small water system--A system that serves ten thousand persons or fewer.

(62) [(61)] State--The State of Texas.

(63) [(62)] Subsidy--A reduction in the interest rate from the market interest rate. [Any special financial terms and conditions available including loan forgiveness, negative interest rates, or other financial incentives as detailed in an IUP.]

(64) Utility Commission--The Public Utility Commission of Texas.

(65) [(63)] Water conservation plan--A report outlining the methods and means by which water conservation may be achieved within a particular facilities planning area.

(66) [(64)] Water conservation program--A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.

§371.2. *Projects and Activities Eligible for Assistance.*

(a) Eligible projects. Projects that address or prevent violations of health-based drinking water standards. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are eligible for assistance if they are needed to maintain compliance [facilitate compliance with the primary or secondary drinking water regulations applicable to the public water systems] or [otherwise significantly] further the public health protection objectives of the Act. The specific projects and activities eligible for assistance for a particular funding year will be established annually in the IUP based on the eligible project categories and eligible project-related costs in (b) and (c) of this section, as authorized by the Act. [Eligible projects include:]

[(1) upgrade or replacement of infrastructure in order to continue providing the public with safe drinking water, including projects to replace aging infrastructure;]

[(2) correction of exceedances of the health standards established by the Act;]

[(3) consolidation of water supplies where the water supply is contaminated or the system is unable to maintain compliance with the national primary drinking water regulations for financial or managerial reasons and the consolidation will achieve compliance;]

[(4) purchase of capacity in another system if the purchase is part of a consolidation plan and is cost-effective considering buy-in fees and user fees;]

[(5) ensuring that the system has the technical, managerial, and financial capacity to comply with the national primary drinking water regulations and applicable state drinking water regulations over the long term or, where the owner or operator of the system to be funded agrees to undertake all feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) to ensure compliance; and]

(b) Eligible Project Categories.

(1) Treatment. Examples of projects include, but are not limited to, installation or upgrade of facilities to improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under 42 U.S.C. §300f(4)(B)(i)(III).

(2) Transmission and distribution. Examples of projects include, but are not limited to, installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(3) Source. Examples of projects include, but are not limited to, rehabilitation of wells or development of eligible sources to replace contaminated sources.

(4) Storage. Examples of projects include, but are not limited to, installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(5) Consolidation. Eligible projects are those needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(6) Creation of new systems. Eligible projects are those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated. A project must be a cost-effective solution to addressing the problem. The applicant must have given sufficient public notice to potentially affected parties and must have considered alternative solutions to addressing the problem. Capacity to serve future population growth cannot be a substantial portion of a project.

(7) ~~(6)~~ Green Projects. Projects that ~~[projects which]~~ qualify as green projects, in accordance with EPA definitions, based upon information provided within the submitted project information form, the application, and if necessary, the business case.

(c) Eligible project-related costs. In addition to costs needed for the project itself, the following project-related costs are eligible for assistance:

(1) Pre-project costs for planning and design.

(2) Costs for the acquisition of land only if needed for the purposes of locating eligible project components. The land must be acquired from a willing seller.

(3) Costs for restructuring systems that are in significant noncompliance with any national primary drinking water regulation or variance or that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the systems are ineligible under paragraph (d)(2) or (d)(3) of this section.

(d) Ineligible projects. Assistance from the Fund may not be provided to:

(1) Federally-owned public water systems or for-profit noncommunity water systems.

(2) Systems that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the assistance will ensure compliance and the owners or operators of the systems agree to undertake feasible and appropriate changes in operations to ensure compliance over the long term.

(3) Systems that are in significant noncompliance with any national primary drinking water regulation or variance, unless:

(A) The purpose of the assistance is to address the cause of the significant noncompliance and will ensure that the systems return to compliance; or

(B) The purpose of the assistance is unrelated to the cause of the significant noncompliance and the systems are on enforcement schedules (for maximum contaminant level and treatment technique violations) or have compliance plans (for monitoring and reporting violations) to return to compliance.

(e) Ineligible projects. The following projects are ineligible for assistance:

(1) Dams or rehabilitation of dams.

(2) Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy.

(3) Reservoirs or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located.

(4) Projects needed primarily for fire protection.

(5) Projects needed primarily to serve future population growth. Projects must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the facility.

(6) Projects that have received assistance from the national set-aside for Indian Tribes and Alaska Native Villages under 42 U.S.C. §300j-12(i).

(f) Ineligible project-related costs. The following project-related costs are ineligible for assistance from the Fund:

(1) Laboratory fees for routine compliance monitoring.

(2) Operation and maintenance expenses.

~~{(b) Ineligible projects. Projects are not eligible to receive DWSRF funds if the primary purpose of the project is to supply or attract growth. If the primary purpose is to solve a compliance or public health problem, the entire project, including the portion necessary to accommodate a reasonable amount of growth over its useful life, is eligible.}~~

*§371.3. Other Authorized Activities: Source Water Protection and Technical Assistance.*

(a) DWSRF financial assistance is available to eligible Applicants for:

(1) implementation of local, voluntary source water protection measures to protect source water of the system from contamination and to ensure compliance with national primary drinking water regulations applicable to the community water system;

(2) assistance in the development of voluntary local incentive-based partnerships to reduce the presence of contaminants, to provide financial, managerial, or technical assistance, and to develop recommendations for voluntary, long-term source water protection strategies;

(3) a capacity development strategy to assist public water systems in developing and maintaining adequate technical, financial, and management capacity; and

(4) establishment and implementation of wellhead protection programs.

(b) Limitation. For each fiscal year, the total amount of financial assistance provided for activities under this section may not exceed 15 percent of the amount of the capitalization grant received for that year and may not exceed 10 percent of the amount of the capitalization grant for that year for any one of the following activities:

(1) acquisition of land or conservation easements;

(2) implementation of voluntary, incentive-based source water quality protection measures;

(3) creation of a capacity development strategy;

(4) delineation or assessment of source water protection areas; and

(5) establishment and implementation of wellhead protection programs.

(c) Acquisition of land or of conservation easements from a willing seller or grantor is eligible for financial assistance for source water protection only if the purpose of the acquisition is to protect the source water of a public water system from contamination to maintain or achieve compliance with national primary drinking water regulations.

§371.4. Federal Requirements.

(a) Davis-Bacon Act Prevailing Wage Provision. The Applicant must comply with the requirements of section 1450(e) of the Act (42 U.S.C. §300j-9(e)) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors, and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. The Davis Bacon prevailing wage requirements, as provided in 40 U.S.C. §§3141 et seq. and the Department of Labor's implementing regulations, apply to any construction project funded by the DWSRF.

(b) National Environmental Policy Act-like environmental review. The National Environmental Policy Act provisions apply to projects receiving DWSRF assistance. The requirements are specified in Subchapter E of this chapter.

(c) Signage. Projects must comply with the EPA signage requirements implemented to enhance public awareness of DWSRF projects.

(d) American Iron and Steel requirements. As delineated in the applicable IUP, assistance recipients may be required to use only iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system.

(e) Other Federal Requirements. Other federal statutory, regulatory, executive order, and/or guidance and policy authority may apply. Federal requirements are further detailed in the IUP under which a project was funded.

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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Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## SUBCHAPTER B. FINANCIAL ASSISTANCE

### 31 TAC §§371.10 - 371.18

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §371.10. Type of Financial Assistance.

The executive administrator shall determine the type of financial assistance available to the Applicant based on the evaluation of the project

information forms, the application, and the availability of funds in accordance with the types of assistance authorized in the Act.

#### §371.11. Financing of Planning, Acquisition, and Design Phases [Funding].

~~[(a)] Applicants may request [This type of] financial assistance [is available] for the planning, acquisition [of land or water], and [the] design for a proposed project without a readiness to proceed determination.~~

~~[(b) Applicants who have completed the planning, acquisition, and design for a proposed project within three years of the closing for financial assistance will receive a priority for construction funding of the project in the next available IUP if the project is ready to proceed.]~~

#### §371.12. Construction Phase Funding.

This type of financial assistance is available for the construction phase of an eligible project that is ready to proceed.

#### §371.13. Pre-Design Funding Option.

This type of financial assistance is available for the planning, design, acquisition, and construction phase of a project. This option allows the commitment of construction funding where planning and design are not yet completed. This option is available only when the executive administrator recommends it to the Board based on a finding that the project is ready to proceed.

#### §371.14. Lending Rates.

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

(1) Average life--The number determined by dividing the sum of all [the] payment periods [of all maturities of a loan] by the total principal amount [number of maturities].

(2) Borrower--Each eligible Applicant that has received a commitment [receiving a loan] from the Board.

(3) Interest [~~Loan interest~~] rate--The individual interest rate for each maturity in an amortized debt schedule [of a loan] as identified by the executive administrator under this chapter.

(4) Market rate--The individual interest rate for each maturity in an amortized debt schedule [of a loan] payment that is the borrower's market cost of funds based on the MMD scale for the borrower as identified under subsection (c)(1) of this section.

(5) MMD--Thomson Reuters Municipal Market Data Range of Yield Curve Scales.

(6) Payment period--The number determined by multiplying the total principal amount due for an individual maturity as set forth in the debt instrument [loan] by the standard period for the debt instrument [loan].

(7) Standard period--The number identified by determining the number of days between the date of delivery of the funds to a borrower and the date of the maturity of a bond or loan payment pursuant to which the funds were provided calculated on the basis of a 360-day year composed of twelve 30-day periods and dividing that number by 360.

(8) Term--For bonds, the length of time between when the bond is issued and the final maturity in the debt instrument; for loans, the period of time any principal is outstanding.

(b) Procedure for setting fixed interest rates. [The interest rates will be determined by this section and as described in an IUP.]

(1) The executive administrator will set fixed interest rates as described in the IUP and further determined in this section, [rates for loans] on a date that is:

(A) no earlier than five business days prior to the adoption of the political subdivision's bond ordinance or resolution or the execution of a loan agreement; and

(B) not more than 45 days before the anticipated closing of a commitment [the loan] from the Board.

(2) After 45 days from the assignment of the interest rate [on the loan], rates may be extended only with the executive administrator's approval.

(c) Fixed rates. The fixed interest rates for financial assistance under this chapter will be determined as provided in this subsection. The executive administrator will identify the market rate for the borrower, determine the amount of adjustment from the market interest rate scale appropriate for the borrower pursuant to paragraph (2) of this subsection, apply the identified interest rate adjustment to the market rate for each year of the borrower's scale [the borrower] to determine the [loan] interest rate, and apply the [loan] interest rate to the proposed principal schedule, as more fully set forth in this subsection.

(1) Identifying [To identify] the market rate for eligible borrowers.[:]

(A) for borrowers that have a rating by a recognized bond rating entity and will not have bond insurance, the executive administrator will rely on the higher of the appropriate MMD scale for the current bond rating of the borrower or the appropriate MMD BAA scale; or

(B) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the appropriate MMD BAA scale.[: or]

[(C) for borrowers that are rated by a recognized rating entity with bond insurance or for borrowers with no rating by a recognized bond rating entity with insurance, the executive administrator will rely on the higher of the borrower's uninsured fixed rate scale or the insurer's fixed rate scale.]

(2) The fixed rate scale shall be established for each borrower using individual coupon rates for each maturity of the proposed debt based on the appropriate scale.

(3) [(2)] The program is designed to provide borrowers with an interest rate [a +25 basis point] reduction from the fixed rate scale applicable to the borrower [market rate] based on a level debt service schedule, or if applicable, the reduction is set at the total basis points below the fixed rate scale for borrowers as derived under paragraph (3) of this subsection. Notwithstanding the foregoing, in no event shall the [loan] interest rate as determined under this section be less than zero.

(4) For loans and bond commitments with an average life in excess of 16 years for a term of up to 20 annual maturities or years or an average life in excess of 20 years for a term of up to 30 annual maturities or years (or a pro-rata calculation for terms between 20 and 30 annual maturities or years), and at the discretion of the Board for loans and bond commitments that have debt schedules that produce a total fixed lending rate reduction in excess of a standard loan or bond commitment structure (defined as a debt service schedule in which the first year of the maturity schedule is interest-only followed by principal maturing on the basis of level debt service), the following procedures will be used to determine the total fixed lending rate reduction:

(A) The interest rate component of level debt service will be determined by using the 15th year (19th year for 30-year terms) coupon rate of the appropriate scale of the MMD scales that corresponds to the 15th year (19th year for 30-year terms) of principal of the standard loan or bond commitment structure and that is measured 30 days from the date that application is proposed to be presented to the Board for approval.

(B) Level debt service will be calculated using the 15th year (19th year for 30-year terms) MMD Scale coupon rate as described in subparagraph (A) of this paragraph and the par amount of the loan or bond commitment according to a standard loan or bond commitment structure. For a loan or bond commitment that has been proposed for a term of years equal to a standard loan or bond commitment structure, the dates specified in the application shall be used for interest and principal calculation. For a loan or bond commitment that has been proposed for a term of years less than a standard loan or bond commitment structure or longer than a standard loan or bond commitment structure, level debt service will be calculated beginning with the dated date, will be based upon the principal and interest dates specified in the application, and will continue for the term of a standard loan or bond commitment structure.

(C) A calculation will be made to determine how much a borrower's interest would be reduced if the loan or bond commitment had been made according to the total fixed lending rate reduction provided in paragraph (3) of this subsection and based upon the principal payments calculated in subparagraph (B) of this paragraph.

(D) The Board will establish a total fixed lending rate reduction for the loan or bond commitment that will achieve the interest savings in subparagraph (C) of this paragraph based upon the principal schedule proposed by the borrower.

(5) [(3)] To determine the [loan] interest rate, the following procedures will apply:

(A) Unless otherwise requested by the borrower under subparagraph (B) of this paragraph, the [loan] interest rate will be determined based on a debt service schedule that provides interest only to be paid in the first year of the debt service schedule and in which the remaining annual debt service payments are level, as determined by the executive administrator. The executive administrator will identify the appropriate MMD scale for the borrower and identify the market rate for the maturity due each year [in the year preceding the year in which the average life is reached]. The executive administrator will reduce that market rate of each year by the number of basis points applicable according to paragraph (2) of this subsection and thereby identify a proposed [loan] interest rate scale. The proposed [loan] interest rate scale will be applied to the proposed principal repayment schedule. If the resulting debt service schedule is level to the satisfaction of the executive administrator, then the proposed [loan] interest rate will be the [loan] interest rate for the commitment [loan]. If the resulting debt service schedule is not level to the satisfaction of the executive administrator, then the executive administrator may adjust the interest rate for any or all of the maturities to identify the [loan] interest rate that as closely as possible achieves the interest savings applicable according to paragraph (2) of this subsection while maintaining the principal schedule proposed by the borrower.

(B) A borrower may request a debt service schedule in which the annual debt service payments are not level through the term of the amortized debt schedule [loan], as determined by the executive administrator. [In this event, the executive administrator will approximate a level debt service schedule for the loan amount and identify a proposed loan interest rate that provides for annual debt service payments that are level for the term of the loan following the procedures set

forth in paragraph (1)(A) of this subsection.] From the level debt service schedule, the executive administrator will determine the amount of the subsidy applicable to [that would have been provided if] the [annual] debt service schedule provided [payments had been level]. The executive administrator will then identify the [loan] interest rate that as closely as possible provides the borrower the identified subsidy amount for the principal schedule requested by the borrower.

(d) Variable rates. The interest rate for DWSRF variable rate debt [loans] under this chapter will be set at a rate equal to the actual interest cost paid by the Board on its outstanding variable rate debt plus the cost of maintaining the variable rate debt in the DWSRF. Variable rate debt is [loans are] required to be converted to long-term fixed rate financing [loans] within 90 days of project completion unless an extension is approved in writing by the executive administrator. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the executive administrator and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsections (b) and (c) of this section.

[(e) Private and taxable borrowers. The interest rate for loan agreements for those borrowers receiving financial assistance who are determined to be private or taxable issuers will be:]

[(1) for borrowers that have a rating by a recognized bond rating entity and will not have bond insurance, the executive administrator will rely on the higher of the MMD taxable scale for the current bond rating of the borrower or the MMD BAA taxable scale;]

[(2) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the MMD BAA taxable scale; or]

[(3) for borrowers that are rated by a recognized bond rating entity with bond insurance or for borrowers with no rating by a recognized bond rating entity with bond insurance, the executive administrator will rely on the higher of the borrower's uninsured fixed rate taxable scale or the insurer's fixed rate taxable scale.]

(e) [(f)] NPNC borrowers. NPNC borrowers that issue tax-exempt obligations and that operate community/non-community water systems will receive interest rates pursuant to subsections (b) - (d) of this section.

(f) [(g)] Adjustments. The executive administrator may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

#### §371.15. Fees for [eff] Financial Assistance.

(a) General. The Applicant will be assessed charges for the purpose of recovering administrative costs of all projects receiving DWSRF financial assistance. However, no fees or costs shall be assessed on the portion of the project that receives principal [subsidization through loan] forgiveness [or other subsidies] as detailed in the IUP.

(b) Origination [Loan origination] fee. An administrative fee not to exceed [A loan origination fee equal to] 2.25[%] percent of the project costs will be assessed, as a one-time non-refundable charge. Project costs upon which the fee will be assessed do not include the origination fee or those project costs that are funded through principal [loan] forgiveness. The fee is due and payable at the time of closing and may be financed as a part of the financial assistance.

#### §371.16. Term of Financial Assistance.

(a) The Board may offer financial assistance up to 20 [30] years for the planning, acquisition, design and/or construction of a

project, in accordance with the Act and the IUP under which the project received funding.

(b) In accordance with the Act and notwithstanding [Notwithstanding] the terms in subsection (a) of this section, the Board may offer [the term of] financial assistance in excess of 20 years, up to 30 years for:

(1) a disadvantaged community, provided that the financial assistance does [offered may] not exceed the expected design life of an eligible project; or[-]

(2) the purchase of bonds issued by a municipality, provided the financial assistance does not exceed the useful life of the underlying asset.

#### §371.17. Principal Forgiveness [Subsidies].

(a) The Board may provide principal forgiveness [subsidies] for financial assistance for:

(1) an entity that meets the affordability criteria established in this chapter and in the IUP for a Disadvantaged Community; or

(2) an entity that meets the criteria established in the IUP for other subsidies allowed under the federal appropriations law or the capitalization grant.

(b) Total amount of principal forgiveness [subsidies]. The total amount of principal forgiveness [subsidies] may not exceed the percentages established by federal law or by the capitalization grant.

#### §371.18. Financial Guarantees for Political Subdivision Bonds.

(a) Financial guarantees. The Board will consider accepting surety bonds in lieu of required cash reserve deposits and insurance policies for political subdivision bonds. At the time of commitment and at closing, only those financial guarantors that have been approved by the Board are authorized to underwrite financial guarantee policies on political subdivision bonds approved by the Board.

(b) Criteria for authorized list. The Board will maintain a list of authorized financial guarantors. In order to be considered for placement on the list, a guarantor must meet the following minimum criteria:

(1) the financial guarantor must be a nationally-recognized [nationally recognized] provider of municipal bond insurance and must have a triple-A stable insurer financial strength rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.; and

(2) the financial guarantor must have a triple-A insurer financial enhancement rating with Standard & Poor's.

(c) Review of policies. The executive administrator shall review all policies of insurance submitted by authorized financial guarantors and may reject any policy of insurance or surety bond that [which] does not protect the interests of the Board's financial program or that [which] subrogates the Board's rights.

(d) Removal from authorized list. The executive administrator may remove a financial guarantor from the authorized list at any time that a change in status would cause the financial guarantor to fail to meet the minimum criteria.

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

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## SUBCHAPTER C. INTENDED USE PLAN

### 31 TAC §§371.20 - 371.24

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §371.20. *Submission of Project Information Forms.*

(a) Eligible [~~The executive administrator will request eligible~~] Applicants may [~~to~~] submit a project information form for rating and ranking on the applicable IUP. To be included in the IUP and on the initial Project Priority List, Applicants must [~~Applicants shall~~] submit a complete and accurate project information form by the date included in the notice. As further detailed in the applicable IUP, applicants may also submit a project information form after the date included on the notice for a project to be considered for inclusion on an amended Project Priority List published after the initial IUP has been approved. The required information will be specified in Board guidance and will include, but will not be [~~is not~~] limited, to the following:

- (1) a detailed description of the proposed project;
- (2) a county map(s) showing the location of the service area;
- (3) an estimated total project cost which:

(A) for an estimated financial assistance amount greater than \$100,000, the project information form shall be sealed [~~certified~~] by a registered professional engineer; or

(B) for an estimated financial assistance amount less than \$100,000, the project information form shall be accompanied by a statement signed by the system operator establishing the basis for the estimate;

- (4) an estimated project schedule;
- (5) the population currently served by the Applicant;
- (6) the status of the Applicant's water conservation plan;
- (7) signature of the Applicant's authorized representative;

and

(8) additional information, as detailed within the solicitation for project information forms, needed to establish the priority rating score.

(b) The Applicant's failure to submit all of the information requested may result in a failure to include the project in the IUP.

#### §371.21. *Rating Process.*

(a) Projects in an IUP will be rated based upon the information, and any accompanying supporting documentation, [~~detailed within the~~] submitted by the Applicant on the project information form.

(b) Projects will be rated based on the following factors:

(1) Health and compliance. Factors regarding public health concerns/issues or violations of maximum contaminant levels pursuant to 40 CFR [~~C.F.R.~~] Part 141.

(2) Effective management. Whether an entity has adopted or plans to prepare an Asset Management Plan and provide training to the Applicant's governing body and employees, whether the project addresses water conservation and energy efficiency, and whether the project implements a state or regional water plan.

(3) Eligibility as Disadvantaged Community. Projects located in disadvantaged communities, as defined in Subchapter A of this Chapter.

~~[(2) Affordability. A project located in a disadvantaged community shall have an affordability rating factor as defined within the applicable IUP.]~~

~~[(3) Emergency relief. Projects which are affected by events of natural disaster.]~~

~~[(A) The Applicant must demonstrate that a need for emergency relief from an imminent threat to public health, safety, environment, or welfare exists. The applicant must describe the nature of the threat and provide a complete description of the proposed emergency relief project as defined in §371.40 of this title (relating to Definitions).]~~

~~[(B) The Board may authorize funding for the emergency relief project as detailed in §371.51 of this title (relating to Emergency Relief Project Procedures) or as described in an IUP.]~~

(4) Additional factors as designated within the applicable IUP and determined by the executive administrator.

(c) Source Water Protection projects are rated and ranked according to the criteria and procedures within the applicable IUP.

(d) Previously funded projects. Planning, acquisition, or design projects, completed within three years from the closing of the financial assistance will receive a priority for construction phase funding if there are no significant changes that affect the original project rating and the project is ready to proceed.

(e) If any changes are proposed to the nature of the improvements of a proposed project, or in the number of participants in a consolidation project which would result in a change to the combined rating factor as determined in the IUP, the projects must be re-ranked. In this case, the project's ranking will be determined based on the revised combined rating factor.

(f) Urgent Need. The Board may offer urgent need financial assistance to address situations that require immediate attention to protect public health and safety as prescribed in the IUP. The executive administrator may bypass projects to provide funding to urgent need projects.

#### §371.22. *Public Notice.*

(a) In accordance with the Act, the executive administrator [~~Board~~] shall hold public hearings and allow a period for public review and comment before the Board considers [~~considering~~] the adoption and approval of the IUP and the Project Priority List.

(b) For any substantive amendments thereto, the executive administrator [~~Board~~] shall hold a public hearing and allow a period of public review and comment in accordance with the Act. The executive administrator may make amendments to the Project Priority List after a 14-day public comment period without any public hearing.

#### §371.23. *Criteria and Methods for Distribution of Funds.*

(a) Amount of available funds. Annually, the executive administrator will determine the amount of funds available for water system improvements and other projects for the fiscal year.

(b) Principal forgiveness [Subsidy] limits. The total amount of principal forgiveness [subsidies] in any fiscal year may not exceed the percentages established by federal law or by the capitalization grant.

(c) Project Priority List. Available program funds will be applied to the list of projects designated to receive funding. The methods used for ranking include:

(1) Project costs. Project costs will be determined by cost estimates contained in the project information form if the executive administrator deems those costs reasonable and acceptable; the costs will also be reflected in the applicable IUP.

(2) Tie-breakers. If two or more projects receive the same rating, then the executive administrator will use the tie-breaker procedures listed in the applicable IUP.

(3) Bypass procedure. The executive administrator may bypass higher rated and ranked projects if:

(A) an incomplete application is submitted as described in §371.31 of this title (relating to Timeliness of Application and Required Application Information); or

(B) a bypass is necessary to fund certain types of projects as detailed in the applicable IUP or as required by capitalization grant conditions.

(d) Small water systems. Projects with identical combined rating scores, including rating scores of zero, will be listed in order of population. Projects serving smaller populations will be listed above those projects serving larger populations.

(1) To the extent eligible Applicants are available, a minimum of 15[%] percent of the funds will be made available to small water systems [communities].

(2) If small community projects listed in priority order on the Invited Projects List are less than 15[%] percent, then the executive administrator may bypass projects for systems serving larger populations to ensure inclusion of small water systems [community] projects for at least 15[%] percent of available funds.

(e) Projects submitted for financing will be screened for eligibility, scored, ranked, and listed on a Project Priority List. Applicants with projects on the Initial Invited Projects List will be invited to submit applications in accordance with the procedures and deadlines as detailed in the applicable IUP. The project selection is subject to subsections (a) - (d) of this section. The Project Priority [Invited Projects] List will be reviewed periodically and additional invitations will be extended until all of the annual DWSRF funding amount is committed.

(f) Utilization of remaining funds. If there are insufficient applications for financial assistance to obligate available funds for the funding year, then the executive administrator shall utilize the remaining funds during the next funding year or at any time in combination with other Board financial assistance programs.

(g) Fund shortages. When the amount of funds required to fund all complete applications for financial assistance exceeds the amount of funds available in the funding year, a shortage of funds exists. In such an instance, the Board will fund Applicants until all funds have been utilized. The Board shall fund projects prioritized by the date and time of receipt of a complete application and the project's ability to proceed to commitment.

§371.24. *Changes to Project.*

Subsequent to adoption of an IUP, the Applicant for a proposed project listed within the Project Priority [Invited Projects] List may be allowed certain changes without requiring a re-ranking in the following circumstances:

(1) the Applicant for a proposed project changes but the project does not change;

(2) [(+) the number of participants in a consolidation project changes and [may change provided that] the change does not result in a change [modification] to the combined rating factor; and

(3) [(2) the fundable amount of a proposed project does not increase by [depending on the availability of funds, the total cost of the project may not increase in an amount of] more than 10[%] percent of the amount listed in the approved [adopted] IUP. The executive administrator may waive the 10[%] percent limit to incorporate additional elements or increased project costs; however, any principal forgiveness awarded may not exceed the original IUP amounts allocation [to the project].

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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Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## SUBCHAPTER D. APPLICATION FOR ASSISTANCE

### 31 TAC §§371.30 - 371.36

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §371.30. *Pre-Application Conferences.*

The Applicant must schedule an appointment and participate in a pre-application conference to be held in person or by teleconference to discuss the eligibility of the project and of the Applicant for financial assistance; the general, engineering, environmental, fiscal, and legal requirements of an application; and to assist the Applicant in completing an application. The following individuals should participate in [attend] the conference: a member of the governing body of the Applicant; the consulting engineer; and the financial advisor.

#### §371.31. *Timeliness of Application and Required Application Information.*

(a) Time to submit applications. Applications and required additional data or information must be submitted in a timely basis. The failure to timely submit the application, the information necessary to complete the application or additional requested information will result in the bypass of the project [on the Invited Projects List].

(1) Deadline to submit application. Applicants shall submit a complete application by the deadlines established by the Board as

detailed in the applicable IUP or the project will be bypassed [~~ineligible for funding~~]. The Applicant will be notified when an application is administratively complete.

(2) Incomplete applications. An Applicant shall cure any deficiency in an application upon request from the executive administrator and shall submit all requested information within fourteen days from the date [~~receipt~~] of the notice of a deficiency.

(3) Additional information. The Applicant shall submit any additional or modified information or data required by the executive administrator within fourteen days of the request for same, regardless of the expiration of other applicable deadlines in this section.

(4) Extension of time. The executive administrator may grant an extension of time to complete the application or to receive additional information and data if the Applicant can show good cause for the delay or if the delay is caused by an event of force majeure. The executive administrator exercises sole discretion in determining whether and to what extent to grant a time extension.

(b) Required application information. For eligible public Applicants and eligible NPNC Applicants that are also eligible public Applicants, an application shall be in the form and number of copies [~~numbers~~] prescribed by the executive administrator and, in addition to any other information that may be required by the executive administrator or the Board, the Applicant shall provide [~~at a minimum~~] the following documentation:

(1) a resolution from its governing body that shall:

(A) request financial assistance, identifying the amount of requested assistance;

(B) designate the authorized representative to act on behalf of the governing body; and

(C) authorize the representative to execute the application, appear before the Board on behalf of the Applicant, and submit such other documentation as may be required by the executive administrator;

(2) a notarized affidavit from the authorized representative stating that:

(A) the decision to request financial assistance from the Board was made in a public meeting held in accordance with the Open Meetings Act (Government Code, Chapter 551) and after providing all such notice as is required by the Open Meetings Act or, for a corporation, that the decision to request financial assistance from the Board was made in a meeting open to all customers after providing all customers written notice at least 72 hours prior to such meeting;

(B) the information submitted in the application is true and correct according to best knowledge and belief of the representative;

(C) the Applicant has no outstanding judgments, orders, fines, penalties, taxes, assessment<sub>s</sub>, or other enforcement or compliance issues of any kind or nature by EPA, the Commission, Texas Comptroller of Public Accounts, Utility Commission, Texas Office of the Secretary of State, or any other federal, state, or local government, that would materially affect the Applicant's ability to repay its debt, or identifying such judgments, orders, fines, penalties, taxes, assessment<sub>s</sub>, or other enforcement or compliance issue as may be outstanding for the Applicant;

(D) the Applicant warrants compliance with the representations made in the application in the event that the Board provides the financial assistance; and

(E) the Applicant will comply with all applicable federal laws, rules, and regulations as well as the laws of this State and the rules and regulations of the Board;

(3) copies of the following project documents:

(A) any draft or executed contracts for consulting services to be used by the Applicant in applying for financial assistance or constructing the proposed project, including but not limited to, financial advisor, engineer, and bond counsel; and

(B) contracts for engineering services should include the scope of services, level of effort, costs, project schedules, and other information necessary for adequate review by the executive administrator. A project schedule shall be provided with the contract; the schedule must provide firm timelines for the completion of each phase of a project and note the milestones within the phase of the project;

(4) a citation to the specific legal authority in the Texas Constitution and statutes under which the Applicant is authorized to provide the service for which the Applicant is receiving financial assistance as well as the legal documentation identifying and establishing the legal existence of the Applicant;

(5) if the Applicant provides or will provide water supply or treatment service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing;

(6) documentation of the ownership interest, with supporting legal documentation, for the property on which the proposed project shall be located, or if the property is to be acquired, certification that the Applicant has the necessary legal power and authority to acquire the property;

(7) if financing of the project will require a contractual loan agreement or the sale of bonds to the Board payable either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts, for a duration specified by the executive administrator, under which the Applicant's gross income is expected to accrue. Before financial assistance is closed, an Applicant shall submit executed copies of such contracts to the executive administrator;

(8) if the bonds to be sold to the Board are revenue bonds secured by a subordinate lien, a copy of the authorizing instrument of the governing body for all prior and outstanding bonds shall be furnished;

(9) if a bond election is required by law to authorize the issuance of bonds to finance the project, the executive administrator may require the Applicant to provide the election date and election results necessary for the issuance of the bonds as part of the application or prior to closing;

(10) an audit of the Applicant for the preceding year prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, unless an alternative method of establishing a reliable accounting of the financial records of the Applicant is approved by the executive administrator; and

(11) a listing of all the funds used for the project, including funds already expended from sources other than financial assistance offered from the Board, such as from participating local government entities or prior-issued debt. [if additional funds are necessary to complete the project, or if the applicant has applied for and/or received a commitment from any other source for the project or any aspect of the project, a listing of those sources, including total project costs, financing terms, and current status of the funding requests.]

(c) For eligible private Applicants and eligible NPNC Applicants that are not also eligible public Applicants, an application shall be in the form and number of copies [numbers] prescribed by the executive administrator, and, in addition to any other information that may be required by the executive administrator or the Board, such Applicant shall provide:

(1) the legal documentation identifying and establishing the legal existence of the Applicant, including articles of incorporation with certificate of account status [good standing] or partnership agreements;

(2) the documentation identifying and establishing full legal and equitable ownership interests of the real and personal property that constitute the water system held by the Applicant;

(3) [if the documentation of ownership indicates that the Applicant is a legal entity other than a sole proprietorship,] the Applicant shall provide:

(A) identification of any affiliated interests or affiliates; and

(B) a notarized statement from the sole proprietor or each entity holding an ownership interest:

(i) identifying an individual whom may act as the representative on behalf of the sole proprietor or each legal entity which has been identified as maintaining an ownership interest in the Applicant;

(ii) authorizing such representative to submit an application and such other documentation as may be required by the executive administrator;

(4) identification of the authority to provide the service for which the assistance is requested which shall include:

(A) a map of the area served acceptable to the executive administrator;

(B) if the Applicant provides or will provide water supply or treatment service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing; and

(C) for utilities, as defined pursuant to Utility Commission rules, the Certificate of [Public] Convenience and Necessity number and a service area map;

(5) a notarized affidavit by the designated representative of the Applicant:

~~[(A) for eligible private Applicants, stating that the decision to request financial assistance from the Board was made in a meeting open to all customers and after providing all customers written notice at least 72 hours prior to the meeting that a decision to request public assistance would be made during such meeting;]~~

~~(A) [(B)] requesting financial assistance and identifying the amount of requested assistance;~~

~~(B) [(C)] stating that the information submitted in the application is true and correct according to belief and knowledge of the representative;~~

~~(C) [(D)] stating that the Applicant or any of its affiliates or affiliated interests has no outstanding judgments, orders, fines, penalties, taxes, assessment, or other enforcement or compliance issue of any kind or nature by EPA, the Commission, Texas Comptroller of~~

Public Accounts, Utility Commission, Texas Office of the Secretary of State, or any other federal, state, or local government, that would materially affect the Applicant's ability to repay its debt, or identifying such judgments, orders, fines, penalties, taxes, assessment, or other enforcement or compliance issue as may be outstanding against the Applicant or any of its affiliates or affiliated interests;

~~(D) [(E)] stating that each entity with an ownership interest warrants compliance with representations made in the application in the event that the Board provides the financial assistance; [and]~~

~~(E) for eligible private Applicants, stating that the decision to request financial assistance from the Board was made in accordance with any applicable bylaws or charter of the Applicant; and~~

~~(F) assuring compliance with all applicable federal laws, rules, and regulations as well as the laws of this State and the rules and regulations of the Board;~~

(6) copies of the following project documents:

(A) any draft or executed contracts for consulting services to be used by the Applicant in applying for financial assistance or constructing the proposed project, to include, but not limited to, financial advisor, engineer, and bond counsel; and

(B) contracts for engineering services should include the scope of services, level of effort, costs, project schedules, and other information necessary for adequate review by the executive administrator. A project schedule shall be provided with the contract; the schedule must provide firm timelines for the completion of each phase of a project and note the milestones within the phase of the project;

(7) a business plan that:

(A) identifies by month for the next 18 months, or for the time period of project construction, whichever is longer, anticipated revenues, including any anticipated rate increases, and anticipated expenditures; and

(B) provides five year historical data on system revenue and expenditures;

(8) copies of the federal income tax returns for the Applicant for the two previous tax years;

(9) documentation of any bankruptcy proceedings for the Applicant or any affiliated interests or affiliates for the preceding five years or a sworn statement that the Applicant or any affiliated interests or affiliates has not been a party to a bankruptcy proceeding for the preceding five years;

(10) if any part of the community water system has been pledged or otherwise used as security for any other indebtedness of the Applicant or an affiliate or affiliated interest, a copy of the outstanding indebtedness;

(11) if financing of the project will require a contractual loan agreement or the sale of bonds to the Board payable either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts, for a duration specified by the executive administrator, under which Applicant's gross income is expected to accrue. Before the financial assistance is closed, an Applicant shall submit executed copies of such contracts to the executive administrator;

(12) if the Applicant is required to utilize a surcharge or otherwise intends to rely on an increase in the rate that it is charging in order to repay the requested financial assistance, a copy of the acknowledgment from the Utility Commission that the proposed rate change filing has been received;

(13) an audit of the Applicant for the preceding year prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, unless an alternative method of establishing a reliable accounting of the financial records of the Applicant is approved by the executive administrator; and

(14) if additional funds are necessary to complete the project, or if the Applicant has applied for and/or received a commitment from any other source for the project or any aspect of the project, a listing of those sources, including total project costs, financing terms, and current status of the funding requests.

§371.32. *Review of Applications for Financial Assistance.*

(a) Review of applications. The executive administrator will review the application to ensure that sufficient information has been provided to support the eligibility of the Applicant and the project. The executive administrator may request that the information or data for any portion of the application be modified or supplemented.

(b) Submittal of requested information. If the Applicant fails to submit information or data requested within the established time period, then the executive administrator may notify the Applicant that the application is incomplete and will be bypassed.

(c) If an applicant does not proceed through the application process and obtain a commitment within the application timeframes established within the applicable IUP, the principal forgiveness may be re-allocated to another eligible project. An extension of time for obtaining a commitment may be granted at the discretion of the executive administrator.

~~[(e) If the applicant has received an obligation of federal funds by the United States Department of Agriculture-Rural Development that would duplicate funding from the board for the same project, as evidenced in writing from the United States Department of Agriculture-Rural Development, or if the applicant has canceled such an obligation, the executive administrator shall not submit the application to the board and shall notify the applicant that its application will no longer be considered for this reason, unless good cause is shown that the application should be submitted to the board.]~~

§371.33. *Refinancing.*

(a) An application to refinance existing debt for eligible projects may be accepted by the executive administrator when sufficient funds are available to provide refinancing. If refinancing funds are available in an IUP, then the eligible Applicant shall describe the need for the eligible project and provide other specific information detailed in the project information form or otherwise requested by the executive administrator.

(b) An application for refinancing of existing debt shall be the same as an application for financial assistance under this chapter. The executive administrator may consider an application for refinancing when:

(1) the project meets all of the requirements under this chapter, including information evidencing that the environmental review, programmatic requirements, and engineering criteria meets the criteria required under law and this chapter for the same or similar projects; and

(2) the federal tax regulations allow such refinancing.

§371.34. *Required Water Conservation Plan and Water Loss Audit.*

(a) Water Conservation Plan. An Applicant shall submit a water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan).

(b) Water Loss Audit. An Applicant that is a retail public utility that provides potable water shall submit its most recent water loss audit in accordance with §358.6 of this title (relating to Water Loss Audits), unless it has previously been submitted.

(c) If a retail public utility's total water loss meets or exceeds the threshold for that utility in accordance with §358.6 of this title, the retail public utility must use a portion of any financial assistance received from the DWSRF, or any additional financial assistance provided by the Board, to mitigate the utility's water loss. However, at the request of a retail public utility, the Board may waive this requirement in accordance with §358.6 of this title.

§371.35. *Board Approval of Funding.*

(a) Presentation to Board. The Board must consider each application at a public meeting. The executive administrator will notify the Applicant when the Board's consideration of the application is scheduled for a public meeting.

(b) Action by Board. After considering the executive administrator's recommendation and comments from the Applicant and other interested persons, the Board may:

(1) resolve to approve an application only when it finds that the revenue or taxes or both revenue and taxes pledged by the Applicant will be sufficient to meet all obligations that will be assumed by the Applicant;

(2) resolve to disapprove or amend the proposed conditions for the financial assistance;

(3) request additional information related to the eligibility of the Applicant or the project or withdraw the application for consideration at another time; and

(4) approve an application for pre-design funding despite a negative recommendation from the executive administrator.

(c) Board's resolution. The Board's approval of an application and award of a commitment is recorded through the issuance of a resolution.

(d) Expiration of Board commitment. The Board's commitment for financial assistance expires on the date noted in the commitment as delineated in the IUP applicable to the project. ~~[or if no date is noted then the commitment expires after:]~~

~~[(1) 12 months for a commitment for financial assistance that includes construction, including financial assistance under the pre-design funding option; or]~~

~~[(2) six months for a commitment for financial assistance for planning, acquisition and design.]~~

(e) Extension of expiration date. ~~Upon [commitment. The Board is not required to approve the request for an extension of time to close the commitment for financial assistance. The Board is released from its offer to provide financial assistance for the project when the commitment expires. However, upon]~~ good cause shown or upon a showing that an event of [a] force majeure, as defined in this Chapter, [event] caused the Applicant's failure to [close the commitment] timely close the commitment, then an extension of the expiration date may be granted at the discretion of the Board. ~~[the Applicant may receive one extension of time by:]~~

(1) The Applicant must submit [submitting] a written request, at least 45 [30] days prior to the expiration date, except in the event of force majeure, as defined in this Chapter, that contains [containing] an explanation of the need for the extension and a request for a specific date for closing.; and]

(2) The [the] Board may, but is not required to, approve a request for an [approves the] extension of time [by minute order or resolution] and may allow a longer extension as appropriate to the circumstances in the event of force majeure.

§371.36. *Multi-year Commitments.*

(a) Commitment periods may be set for a period of up to five years. The minimum interest rate reduction for the multi-year commitments will be established for the five year period based on the interest rate reduction prescribed in the IUP for the first year's commitment.

(b) This option is only available for projects that do not receive principal forgiveness based on the affordability criteria. However, the entity receiving a multi-year commitment may receive principal forgiveness for the other eligible options, such as principal forgiveness for green projects, for the amount of funds committed for the initial year.

(c) Any entity receiving a multi-year commitment must annually re-confirm its anticipated funding commitments established with the initial commitment.

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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Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

### 31 TAC §§371.40 - 371.52

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §371.40. *Definitions.*

Unless specifically defined differently within this subchapter, the following terms and acronyms, used in this subchapter, mean:

(1) Affected community--A community potentially impacted by the proposed project [where the proposed project is expected to result in environmental impacts or potential human health or environmental effects including minority communities, low-income communities or federally-recognized Indian tribal communities].

(2) Categorical Exclusion (CE)--An environmental finding issued by the Board for projects that would not individually or cumulatively have a significant adverse effect on the human environment and for which, therefore, the Applicant is not required to prepare an Environmental Information Document or an Environmental Impact Statement.

(3) Emergency Relief Project--An infrastructure construction project that provides relief to an entity experiencing an emergency

condition or incident that causes an imminent peril to public health, safety, environment, or welfare, including natural disasters, such as:

(A) the failure or destruction of public water supply pipelines, transmission, or distribution systems;

(B) the threat of or actual contamination of a public water supply;

(C) sustained or permanent service disruption of a source water or water treatment system;

(D) the reduction of public water supplies to critical levels by drought or other natural cause(s); or

(E) any other emergency condition as described in an IUP.

(4) Environmental Assessment--A public document prepared by the executive administrator for projects that may result in adverse environmental impacts and the significance of those impacts is not known. The Environmental Assessment, based primarily on the Environmental Information Document, must provide sufficient evidence and analysis to determine whether to prepare a Finding of No Significant Impact or an Environmental Impact Statement.

(5) Environmental Impact Statement (EIS)--A detailed written statement prepared by a third-party contractor, in close coordination with the executive administrator, that analyzes environmental impacts of project alternatives for projects with significant adverse impacts on the quality of the human environment. An EIS is required for projects that do not qualify for a Finding of No Significant Impact. An EIS provides the most comprehensive and detailed information about potential environmental impacts and mitigation required to comply with the NEPA. It is the basis for the Record of Decision issued by the Board.

(6) Environmental Information Document (EID)--A written analysis prepared by the Applicant that provides sufficient information, including appropriate regulatory agency correspondence and public participation documentation, for the executive administrator to undertake an environmental review and determine if the project qualifies for a Finding of No Significant Impact or if an Environmental Impact Statement will be required. An EID is not always necessary to determine if the project will require preparation of an EIS.

(7) Federal Environmental Cross-cutters--Federal environmental statutes, laws and Executive Orders that apply to projects and activities with a federal nexus, including the receipt of federal financial assistance.

(8) Finding of No Significant Impact (FONSI)--An environmental finding issued by the Board when the environmental assessment prepared for the project supports the determination that the project will not have a significant adverse effect on the human environment and therefore, does not require the preparation of an environmental impact statement.

(9) Human environment--The natural and physical environment and the relationship of people with that environment.

(10) Indian tribes--Federally recognized Indian tribes.

{(2) Avoidance--Avoiding the impact altogether by not taking a certain action or parts of an action during project implementation.}

{(3) NEPA--The Federal National Environmental Policy Act, 42 U.S.C. 4321 et seq.}

{(4) Indian tribes--Federally recognized Indian tribes.}

~~[(5) Minimization--Minimizing impacts by limiting the degree or magnitude of the action during project implementation.]~~

~~(11) [(6)] Mitigation--~~

~~(A) avoiding the impact altogether by not taking a certain action or parts of an action;~~

~~(B) minimizing impacts by limiting the degree or magnitude of the action and its implementation;~~

~~(C) rectifying the [an] impact by repairing, rehabilitating, or restoring the affected environment;~~

~~(D) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the project; and~~

~~(E) compensating for the impact by replacing or providing substitute resources or environments.~~

~~(12) NEPA--The Federal National Environmental Policy Act, 42 U.S.C. §§4321 et seq.~~

~~(13) Record of Decision (ROD)--An environmental finding issued by the Board that identifies the selected project alternative, presents the basis for the decision, identifies all the alternatives considered, specifies the environmentally preferable alternative, and provides information on the adopted means to mitigate for environmental impacts. The ROD is based on the conclusions of the EIS.~~

~~(14) Statement of Finding (SOF)--An environmental finding issued by the Board to correct, clarify, modify, or adopt a previous environmental finding, issued by the Board or other agency.~~

~~[(7) Emergency Relief Project--Infrastructure construction project which provides relief to an entity experiencing an emergency condition or incident that causes an imminent peril to public health, safety, environment, or welfare, including natural disasters, such as:]~~

~~[(A) the failure or destruction of public water supply pipelines, transmission, or distribution systems;]~~

~~[(B) the threat of or actual contamination of a public water supply;]~~

~~[(C) sustained or permanent service disruption of a source water or water treatment system;]~~

~~[(D) the reduction of public water supplies to critical levels by drought or other natural cause(s); or]~~

~~[(E) any other emergency condition as described in an EUP.]~~

*§371.41. Environmental Review Process.*

(a) Policy and purpose. This subchapter governs the environmental review of projects funded in whole or in part by the DWSRF. Environmental review of all proposed infrastructure projects is a condition of the use of DWSRF financial assistance and is subject to annual audits by the EPA. This subchapter follows the procedures established by the EPA for implementing the National Environmental Policy Act [NEPA] set forth at 40 CFR Part 6. The environmental review process described in this subchapter applies to the maximum extent legally and practicably feasible. However, the environmental review process may be modified due to an emergency condition as described in §371.40(3) [§371.40(7)] of this title (relating to Definitions). The environmental review [must be completed prior to the release of financial assistance for design and construction and the review] is subject to public comment. The Applicant, at all times throughout the design, construction, and operation of the project, shall comply with the findings [determinations] resulting from the environmental review.

(b) Timing. The environmental review process is a component of the planning phase and must be completed prior to the executive administrator's approval of the Applicant's engineering feasibility report.

(c) [(b)] Types of environmental findings. At [determinations. An environmental determination is issued by the executive administrator at] the culmination of the environmental review process described in this subchapter[- After gathering and reviewing relevant information and data; soliciting comments from state and federal agencies and receiving and analyzing public comments], the Board [executive administrator] will issue one of the following findings [determinations]:

(1) a Categorical Exclusion[.];

(A) based on review [submission] of information submitted by [from] the Applicant; and

(B) the eligibility criteria described in §371.42 of this subchapter.

(2) a Finding of No Significant Impact[.];

(A) based on review of the Applicant's Environmental Information Document; and

(B) the executive administrator's [Board's] Environmental Assessment; [or]

(3) a Record of Decision[.] based on review of the [an] Environmental Impact Statement prepared by the Applicant's third party contractor; or[.]

(4) a Statement of Findings:

(A) based on review of a previous environmental finding for the proposed project;

(B) based on review of proposed project modifications for consistency with a previous environmental finding; and/or

(C) to correct, clarify, or modify an environmental finding.

(d) [(e)] General review by the executive administrator.

(1) The executive administrator shall ensure that [conduct] an inter-disciplinary, inter-agency, and public review is conducted consistent with the NEPA. The purpose of this review is to ensure that the proposed project will comply with the applicable local, state, and federal laws and regulations relating to the identification of potential [the] environmental impacts of a proposed project and the necessary steps required to [avoid, minimize and, if necessary,] mitigate such impacts. The scope of the environmental review will depend upon the type of proposed action, the reasonable alternatives, and the type of environmental impacts.

(2) For all environmental findings [determinations] that are five years old or older, and for which the proposed infrastructure project has not yet been implemented, the executive administrator must re-evaluate the proposed financial assistance application as well as the environmental conditions and public comment to determine whether to conduct a supplemental environmental review in compliance with the NEPA, or to reaffirm the original finding [determination]. If there has been substantial change in the proposed infrastructure project that is relevant to environmental concerns, or if there are significant new circumstances, changes in federal environmental cross-cutter requirements that affect the environmental finding, or information relevant to environmental concerns, the executive administrator must conduct a supplemental environmental review and complete an appropriate finding [determination] in compliance with the NEPA. The executive administrator may consider environmental findings [determinations] issued by other entities.

§371.42. *Board's Environmental Finding [Types of Environmental Determinations]: Categorical Exclusions.*

(a) A proposed project can be categorically excluded from a full environmental review if the proposed project:

(1) fits within the category of action that is eligible for exclusion, as listed in subsection (b) of this section;

(2) [~~Categorical Exclusions may be available for projects that~~] will not result in significant impacts on the quality of the human environment; and

(3) ~~does [that do]~~ not involve extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section.

(b) Projects that may be eligible for a categorical exclusion (CE) include the following actions on existing systems:

(1) those that involve upgrades that are minor;

(2) minor expansion of system capacity;

(3) the rehabilitation, including functional replacement of the existing system and system components; and

(4) the construction of new minor ancillary facilities located adjacent to or on the same property as existing facilities.

(c) Projects not eligible for a CE include:

(1) projects that would otherwise be eligible for a CE but due to extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, are not eligible for a CE;

(2) projects that involve new or relocated discharges to surface or ground water;

(3) projects that will likely result in the substantial increase in the volume or the loading of a pollutant to the receiving water;

(4) projects that will provide capacity to serve a population 30[%] percent greater than the existing population;

(5) projects that are not supported by the state, or other regional growth plan or strategy; and

(6) projects that directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

(d) Extraordinary circumstances may become known at any time during the planning, design, or construction of a project and may cause the project to be ineligible for a CE. Extraordinary circumstances include, but are not limited to, the following known or expected impacts:

(1) potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time;

(2) disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities;

(3) a significant effect on federal or state-listed threatened or endangered species or their critical habitat;

(4) a significant effect on national or state natural landmarks or property with nationally significant or state historic, architectural, prehistoric, archeological, or cultural value;

(5) a significant effect on environmentally important natural resource areas such as wetlands, floodplains, significant agricultural

lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat;

(6) a significant adverse air quality effect;

(7) a significant effect on the pattern and type of land use or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans;

(8) significant public controversy about a potential environmental impact of the proposed project; and

(9) conflict with federal, state, or local government, or federally-recognized Indian tribe environmental, resource protection, or land-use laws or regulations.

(e) Upon the discovery of extraordinary circumstances, the executive administrator may deny a CE or rescind an existing CE.

~~[(f) An Applicant shall submit sufficient information to demonstrate why the project is eligible for a CE including, but not limited to the following documentation:]~~

~~[(1) a brief but complete description of the project;]~~

~~[(2) plan maps or maps of the project depicting the location of all construction areas, the planning area boundaries, and any known environmentally important natural areas;]~~

~~[(3) information regarding the eligibility of the project for a CE under the criteria listed in subsection (b) of this section; and]~~

~~[(4) any information that may be helpful to determine whether any extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, apply to the project.]~~

(f) ~~[(g)]~~ The executive administrator shall review the information submitted by the Applicant and may request additional information as needed to complete the finding [determination] regarding the eligibility of a proposed project for a categorical exclusion.

(g) ~~[(h)]~~ The Board's finding [executive administrator's determination] relating to a CE shall be subject to public notice, which shall be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice in a newspaper of general circulation in the county or counties of the affected community.

§371.43. *Applicant Requirements: Categorical Exclusions.*

(a) Projects that qualify to be categorically excluded from a full environmental review fit into a category of actions, identified by the EPA, that do not individually or cumulatively have a significant effect on the human environment and do not involve extraordinary circumstances. This determination is based upon the criteria established in §371.42 of this subchapter (relating to Board's Environmental Finding: Categorical Exclusions).

(b) An Applicant shall submit sufficient information to demonstrate why the project is eligible for a CE including, but not limited to, the following documentation:

(1) a brief but complete description of the project;

(2) plan maps or maps of the project depicting the location of all construction areas, the planning area boundaries, and any known environmentally important natural areas;

(3) information regarding the eligibility of the project for a CE under the criteria listed in §371.42 of this subchapter;

(4) any information that may be helpful to determine whether any extraordinary circumstances, as listed in §371.42 of this subchapter, apply to the project; and

(5) any information that may be helpful to determine if mitigation measures are required to ensure the project will not individually or cumulatively have a significant adverse impact on the human environment. This includes, but is not limited to, coordination with applicable regulatory agencies regarding resources within their jurisdiction that may be adversely impacted by the project.

§371.44. Board's Environmental Finding: Finding of No Significant Impact.

(a) Purpose and applicability. A Finding of No Significant Impact (FONSI) may be issued if the proposed action will not have a significant effect on the human environment. A FONSI shall be based upon the information submitted by the Applicant and upon the environmental assessment (EA) prepared by the executive administrator.

(b) Environmental Assessment. An Environmental Assessment is required when the proposed project is expected to result in environmental impacts and the significance of those impacts is not known. When the executive administrator preliminarily determines that the impacts will not be significant and may be addressed by ordinary mitigation measures, then an Environmental Assessment will be prepared. An Environmental Assessment is not required if the proposed action is categorically excluded or if an Environmental Impact Statement is required.

(c) Contents of an Environmental Assessment.

(1) An Environmental Assessment shall include a brief discussion of the following:

(A) the purpose and need for the proposed project and an estimate of cost of the project;

(B) the alternatives considered, including the no action alternative, and the reasons for the rejection or acceptance of the alternatives;

(C) the affected environment, including baseline conditions that may be impacted by the proposed actions and the alternatives;

(D) the environmental impacts of the proposed project and the alternatives, including any unresolved conflicts concerning alternative use of available resources; and

(E) applicable environmental laws and executive orders.

(2) The form of the Environmental Assessment generally shall include:

(A) a listing or summary of coordination and consultation undertaken with any federal, state, local, or Indian tribe government regarding compliance with applicable environmental laws and executive orders;

(B) identification and description of the mitigation measures considered, including mitigation measures that must be adopted to ensure the proposed project will not have significant impacts; and

(C) incorporation of documents by reference, including the Environmental Information Document submitted by the Applicant.

(d) Contents of a FONSI. When the Environmental Assessment supports a finding that the proposed project will not have a significant effect on the human environment, then the Board may issue a FONSI. The FONSI must include the following components:

(1) an Environmental Assessment;

(2) a brief description of the reasons why there are no significant impacts;

(3) any commitments to mitigation measures that are essential to render the impacts of the proposed project insignificant;

(4) the date of issuance and signature of the executive administrator; and

(5) the executive administrator's statement that the Applicant has committed to the mitigation measures and that the Applicant has the ability and the authority to fulfill the commitment to mitigation;

(e) Public comments and the issuance of a FONSI.

(1) The executive administrator shall make the Environmental Assessment and preliminary FONSI available on the Board's website for review and public comment for a period of at least thirty (30) days.

(2) If no substantive comments are received, the executive administrator may proceed with the proposed project subject to the mitigation measures identified in the FONSI. If substantive comments are received, then the executive administrator shall respond to the comments and revise the FONSI accordingly, if necessary.

(3) The executive administrator shall ensure that the mitigation measures necessary to the FONSI determination are enforceable and shall conduct appropriate monitoring of these measures. All contracts, plans, specifications, and other applicable documents used during the design and construction of the project shall contain reference to or descriptions of the mitigation measures included in the FONSI, as required by this subchapter.

(f) Dissemination of information about mitigation measures. The executive administrator may provide written notification describing the outcome of the mitigation measure proposed in an environmental finding to interested agencies and public groups.

§371.45. Applicant Requirements: Environmental Information Document.

(a) An Applicant shall prepare an Environmental Information Document (EID) in consultation with the executive administrator for projects that have potential adverse environmental impacts and the significance of those impacts is not known. The executive administrator will provide guidance on the format and contents of the EID prior to the initiation of planning for the proposed project or as soon as practicable upon receipt of an application. An EID is not required when:

(1) the project is eligible for a CE or requires the preparation of an EIS;

(2) the Applicant submits a previous environmental finding that meets DWSRF program requirements, including compliance with the NEPA; or

(3) the Applicant prepares and submits a draft EIS and supporting documents that meet DWSRF program requirements, including compliance with the NEPA.

(b) Coordination. The Applicant shall prepare the EID in coordination with the appropriate federal agencies, state, and local governments, Indian tribes, and other potentially affected parties. The Applicant must also notify the executive administrator regarding any private entities or organizations affected by the proposed project.

(c) Contents of EID. The EID shall include, but is not limited to:

(1) a description of the project;

(2) the need for the proposed project;

(3) the alternatives to the project, including the no action alternative;

(4) the affected environment, including baseline conditions that may be impacted by the proposed project and the alternatives;

(5) the environmental impacts of the proposed action and alternatives, including unresolved conflicts concerning alternative uses of available resources;

(6) potential impacts on resources protected by the federal environmental cross-cutters;

(7) documentation showing that requisite regulatory agencies have been consulted;

(8) proposed mitigation measures supporting the issuance of a FONSI;

(9) documentation showing that the requisite public participation requirements have been satisfied; and

(10) any other information required by the executive administrator.

§371.46. Environmental Impact Statements.

(a) Purpose and applicability. An EIS examines impacts from the proposed project that are significantly affecting the human environment, requires close coordination with the Board and other agencies, and is the primary basis for the Board's issuance of a Record of Decision.

(b) Required EIS. An EIS shall be prepared for:

(1) new regional water supply systems for a community with a population greater than 100,000;

(2) actions likely to have a significant adverse effect on:

(A) local ambient air quality;

(B) local ambient noise levels;

(C) surface water reservoirs or navigation projects;

(D) the environment due to the releases of radioactive, hazardous, or toxic substances or biota;

(E) federal or state natural landmarks or any property eligible for the national or state register of historic places; or

(F) environmentally important natural resources such as wetland, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat;

(3) actions inconsistent with federal, state, local, or Indian tribe environmental, resources protection, or land use laws or approved land use plans or regulations;

(4) actions likely to significantly affect the pattern and type of land use or growth and distribution of population, including altering the character of residential areas;

(5) actions that in conjunction with federal, state, local, or Indian tribe projects are likely to produce significant cumulative impacts; and

(6) actions with uncertain environmental effects or highly unique environmental risks that are likely to be significant.

§371.47. Decision to Prepare an Environmental Impact Statement: Notice of Intent.

(a) Notice of Intent (NOI) to prepare an EIS. When the executive administrator recommends the issuance of an EIS, a NOI will be

published in the Texas Register in order to provide the public with the opportunity to participate in a scoping meeting.

(b) Contents of NOI. The NOI shall contain information about a scoping meeting which shall be held no sooner than fifteen days after the publication of the notice of intent. The public comment period for the proposed scope of the EIS shall be at least forty-five days.

§371.48. Board's Environmental Finding: Record of Decision.

(a) General. A Record of Decision (ROD) results from an extensive environmental review of a proposed project's potential environmental impacts as detailed in an EIS.

(b) Contents of ROD. A ROD must include the following components:

(1) a brief description of the proposed project and the alternatives considered in the EIS as well as the environmental factors considered and the project's impacts;

(2) commitments to implement mitigation measures;

(3) an explanation if the environmentally preferred alternative was not selected;

(4) responses to substantive comments on the final EIS;

(5) the executive administrator's statement that the Applicant has committed to the mitigation measures and that the Applicant has the ability and the authority to fulfill the commitment to the measures; and

(6) the date of issuance and the signature of the executive administrator.

(c) Issuance of the ROD. The issuance of a ROD allows the Applicant to proceed with the proposed action subject to mitigation measures described in the ROD. The ROD shall be made available to the public.

(d) Monitoring of mitigation measures. The executive administrator shall ensure that adequate monitoring of the mitigation measures occurs throughout the construction of the project. Additionally all contracts, plans, specifications, and other applicable documents used during the planning, design, and construction of the project shall contain reference to or descriptions of the mitigation measures.

(e) Dissemination of information about mitigation measures. The executive administrator may provide written notification describing the outcome of the mitigation measures proposed in an environmental finding to interested agencies and public groups.

§371.49. Applicant Requirements: Environmental Impact Statement.

(a) Third party contractor. The Applicant shall contract with a third-party contractor at its own expense to prepare an EIS and any associated documents required for consideration by the executive administrator.

(b) Executive administrator approval. The executive administrator must approve of and participate in the Applicant's selection of the third-party contractor. The third party contractor shall be selected on the basis of its qualifications to prepare the EIS, including experience with data collection and analyses as well as with the clear presentation of information and data. The third-party contractor shall be responsible for providing technical advice to the Applicant and for receiving and incorporating technical advice from the executive administrator.

(c) The third-party contractor shall not have any financial or other interest in the proposed project and must submit a disclosure statement to the executive administrator documenting the fact that it has no financial or other interest in the project.

(d) Contract with third party. The Applicant and the executive administrator must agree to the creation and terms of a contract with the third party jointly selected by them to prepare the EIS. The contract terms must ensure that the third party does not have recourse to the Board or the EPA for financial or other claims arising under the contract.

(e) The third-party contractor shall cooperate with the executive administrator and shall provide draft documents, analyses, and conclusions that adequately assess the relevant environmental issues for review, comment, and direction from the executive administrator. The executive administrator shall have sole responsibility to ensure that the EIS and any associated documents adequately address the relevant environmental issues.

§371.50. Proposed Project Alterations.

(a) Proposed project changes during review. The Applicant must notify the executive administrator if during the environmental review process, the Applicant:

- or
- (1) changes its plans for the project as originally submitted;
  - (2) changes its schedule for the project from the originally submitted schedule.

(b) Alterations of proposed project. Any alteration to a project after the issuance of an environmental finding requires the Applicant to notify the executive administrator in writing in a timely manner. The Applicant shall briefly describe the reasons for the alterations in the proposed project.

(c) The executive administrator shall examine the contract documents, application, and other related documents to evaluate the proposed alterations to ensure consistency with the environmental finding. The executive administrator's review of proposed project alterations may result in:

- (1) a notation to the file that the proposed alterations are minor in nature as described in subsection (d) of this section;
- (2) the issuance of a SOF to confirm that project alterations are within the scope of the original environmental finding and do not require preparation of a new EID;
- (3) the issuance of a FONSI when a CE has been revoked, or the issuance of a public notice that the preparation of an EIS will be required;
- (4) the issuance of an amendment to a FONSI, or the revocation of a FONSI and the issuance of a public notice that the preparation of an EIS will be required; or
- (5) the issuance of a supplement to a ROD, or the revocation of the ROD and issuance a public notice that financial assistance for the proposed project will not be provided.

(d) Minor changes to the proposed or reviewed project that do not create previously unconsidered adverse environmental impacts usually will not affect the ability of the proposed project alterations to proceed without additional formal environmental review.

(e) Major changes to the proposed or reviewed project that are previously unexamined and that have the potential to create adverse environmental impacts may result in a decision to revoke a CE or a FONSI and to proceed with a more detailed level of environmental review consistent with this subchapter.

§371.51. Use of Previously Prepared Environmental Findings.

(a) Adoption of a previous environmental finding. Previous environmental findings issued by the EPA and other agencies may be

adopted in accordance with this section, provided that the finding was produced through procedures in compliance with the NEPA. The executive administrator must re-evaluate the proposed financial assistance application as well as environmental conditions and public comment to determine whether to conduct a supplemental environmental review of the action and complete an appropriate document in compliance with the NEPA, or to reaffirm the original finding.

(b) Previously required mitigation measures. Any and all mitigation measures specified in the previous finding for the applicable project components shall be applied as conditions of the commitment and closing for financial assistance documents and shall be consistent with the requirements of this subchapter.

(c) Method of adoption of a previous environmental finding. The previous finding will be adopted through the issuance of a Statement of Findings when the proposed project and its previous finding will be adopted without substantial modifications. The previous finding may also be adopted in a FONSI.

(d) Validity of previous environmental findings and re-evaluation. An environmental finding shall be re-evaluated if it was issued five years or more prior to the executive administrator's environmental review and if:

- (1) the proposed project has not yet been implemented;
- (2) there has been substantial change in the proposed infrastructure project that is relevant to environmental concerns; and
- (3) there are significant new circumstances or information relevant to environmental impacts of the proposed action.

(e) Dissemination of information about mitigation measures. The executive administrator may provide written notification describing the outcome of the mitigation measures proposed in an environmental finding to interested agencies and public groups.

§371.52. Emergency Relief Project Procedures.

(a) If an Applicant requests funding for an emergency relief project, the executive administrator shall review all information relevant to the emergency, proposed project, status of environmental review of the proposed project, known issues with the natural or cultural environment of the project area, and availability of funding.

(b) If an emergency condition described in §371.40(3) of this title (relating to Definitions) is present, the Board may authorize funding for the emergency relief project, subject to availability of funds, without full preparation or public review of NEPA review documentation (including a CE finding, EA, or EIS) if the executive administrator determines that:

- (1) delaying commencement of project construction during the period it would take to prepare, review, and circulate NEPA documentation, would increase the imminent peril to public health, safety, environment, or welfare; and
- (2) consultations required by the Endangered Species Act and National Historic Preservation Act have been completed.

(c) Special conditions appropriate to minimize any potential for adverse impact due to abbreviated or expedited review may be required.

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

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TRD-201601313

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**SUBCHAPTER F. ENGINEERING REVIEW  
AND APPROVAL**

**31 TAC §§371.60 - 371.62**

**STATUTORY AUTHORITY**

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

*§371.60. Engineering Feasibility Report.*

(a) Applicant shall submit an engineering feasibility report signed and sealed by a professional engineer registered in the State. The report, based on guidelines provided by the executive administrator, shall provide:

- (1) a description and purpose of the project;
- (2) the names of the entities to be served, along with the current and future population;
- (3) the cost of the project;
- (4) a description of the alternatives considered and reasons for selection of the project proposed;
- (5) sufficient information to evaluate the engineering feasibility;
- (6) maps and drawings as necessary to locate and describe the project area;
- (7) sufficient detail to document how ~~that~~ the project will remedy the drinking water issues and problems that were evaluated for rating on the IUP;
- (8) information showing that the project is cost effective; and for projects that implement new systems or significantly alter current systems, a detailed cost-effective analysis, including detailed operation and maintenance costs, may be requested to document program eligibility;
- (9) a detailed project schedule with timelines for each phase of the project and the milestones within each phase of the project; and
- (10) any other information or data necessary to evaluate the proposed project. The Applicant must submit any additional information requested by the executive administrator to document the project's eligibility for funding by the program.

(b) Approval of engineering feasibility report. The executive administrator will approve the engineering feasibility report when:

- (1) the items listed in subsection (a) of this section have been completed, including requests for additional information or data;
- (2) the appropriate environmental findings ~~[determinations]~~ have been completed in accordance with this chapter and the Applicant has agreed to incorporate into project documents, including contracts, all mitigation measures as a result of the environmental review; and

(3) the project and alternatives to the project have been analyzed and the proposed project is cost effective.

(c) Request for project amendment. A request for an amendment, after the approval of the engineering feasibility report, to a project shall be granted only if implementation of the amendment does not affect the original purpose of the project. The implementation of a project amendment must remedy the problems and issues identified in the Applicant's original project information form. Significant amendments to a project require previous approval by the executive administrator. The Applicant shall:

- (1) provide a description of and the need for an amendment;
- (2) submit additional engineering or environmental information as requested by the executive administrator;
- (3) provide an estimate of any increase or decrease in total project costs resulting from the proposed amendment; and
- (4) certify that the proposed amendment will not significantly alter the purpose of the project.

(d) Alternative methods of project delivery. Design build, construction manager at-risk, and other alternative methods of project delivery are eligible for available financial assistance, including combinations of planning, design and construction funding, in accordance with programmatic requirements. The executive administrator will provide written guidance regarding modifications of the type of financial assistance, and the review, approval, and release of funds processes for alternative delivery projects. The Board may specify special conditions in the commitment as appropriate to accommodate an alternative method of project delivery.

*§371.61. Contract Documents: Review and Approval.*

(a) Contract documents include ~~[mean]~~ the documents that form the construction contracts and the documents that form the contracts for alternative methods of project delivery, which may ~~[the documents that]~~ include the construction phase or ~~[and that may include]~~ other phases of the project.

(b) An Applicant shall submit three copies of proposed contract documents, including the engineering plans and specifications, which shall be as detailed as would be required for submission to contractors bidding on the work. The Applicant shall provide the executive administrator with all contract documents proposed for bid advertising. The executive administrator shall review contract documents:

- (1) to ensure consistency with the approved engineering feasibility report and with approved environmental planning documents;
- (2) to ensure the proposed construction drawings and specifications provide adequate information so that a contractor can bid and construct the project without additional details or directions;
- (3) to ensure compliance with Commission rules at Title 30, Texas Administrative Code, Chapter 290, relating to Public Drinking Water and other applicable state and federal laws and rules;
- (4) to ensure the contract documents notify the contractor about the Board's authority to audit project files and inspect during construction; and
- (5) to ensure compliance with other requirements as provided in guidance forms and documents, including any additional documentation required by EPA.

(c) Other approvals. The Applicant shall obtain the approval of the plans and specifications from any other local, state, and federal

agencies having jurisdiction over the project. The executive administrator's approval is not an assumption of the Applicants' liability or responsibility to conform to all requirements of applicable laws relating to design, construction, operation, or performance of the project.

§371.62. *Advertising and Awarding Construction Contracts.*

(a) Applicable laws and rules. The Applicant shall comply with State procurement laws and rules and with applicable federal procurement rules.

(b) Executive administrator approval required. The Applicant shall not proceed to advertising for bids on the project without express written approval of the solicitation documents by the executive administrator. If the applicant proceeds to advertising without approval, it may affect eligibility for funding.

(c) Changes prior to award. If the Applicant needs to alter the plans, [and] specifications, or [and] contract documents after the executive administrator's approval, then the Applicant shall:

(1) provide the information and reasons relating to the changes therefore, if changes are required prior to bidding. The executive administrator must affirmatively approve any changes prior to advertising.

(2) changes that occur after advertising must be incorporated into an addendum and provided to the executive administrator for approval as part of the bidding process.

(d) Contract award. The text of a construction contract or a contract containing construction phase work submitted for approval prior to advertising shall contain the same language and provisions as the contingently executed contract.

(e) Pre-construction conference. The Applicant shall conduct a preconstruction conference on significant construction contracts to address the contents of the executed contract documents with the project owner, the project engineer, the prime contractor, and other appropriate parties in attendance. The Applicant shall provide the executive administrator with at least 10 [five] days advance notice of the date, time, and location of the conference.

(f) Notice to proceed. The executive administrator shall review the executed contract documents, including any additional documentation required by EPA and upon acceptance of same shall advise the Applicant that a notice to proceed may be issued to the contractor.

(g) No liability. The executive administrator and the Board shall have no liability for any event arising out of or in any way related to the contracts for or construction of the project.

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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Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§371.70 - 371.74

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

§371.70. *Financial Assistance Secured by Bonds or Other Authorized Securities.*

(a) Applicability and required documents. This section applies to closings for financial assistance with entities issuing bonds or other authorized securities. The following documents are required for closing financial assistance secured by bonds or other authorized securities:

(1) evidence that applicable requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) a certified copy of the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board that is acceptable to the executive administrator. The ordinance or resolution shall have sections providing as follows:

(A) if financial assistance proceeds are to be deposited into an escrow account at the time of closing then an escrow account shall be created that shall be separate from all other accounts and funds, as follows:

(i) the account shall be maintained by an escrow agent as defined in §371.1 of this title (relating to Definitions);

(ii) funds shall not be released from the escrow account without prior written approval from the executive administrator who shall issue written authorization for the release of funds;

(iii) upon request of the executive administrator, escrow account statements shall be provided to the executive administrator;

(iv) the investment of any financial assistance proceeds deposited into an approved escrow account shall be handled in a manner that complies with the Public Funds Investment Act, Government Code, Chapter 2256; and

(v) the escrow account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the project and that complies with the Public Funds Collateral Act, Government Code, Chapter 2257;

(B) that the Applicant shall fix and maintain rates, in accordance with state law, and collect charges to provide adequate operation and maintenance of the project;

(C) that a construction account shall be created which shall be kept separate from all other accounts and funds of the Applicant;

(D) that bonds shall be closed in book-entry-only form;

(E) the use of a paying agent/registrant that is a Depository Trust Company (DTC) participant;

(F) that the payment of all DTC closing fees assessed by the Board's custodian bank be directed to the Board's custodian bank by the Applicant;

(G) evidence that one fully registered bond has been sent to the DTC or to the Applicant's paying agent/registrant prior to closing;

(H) that all payments, including the origination fee, are made to the Board via wire transfer at no cost to the Board;

(I) that the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(J) that insurance coverage be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(K) that the Applicant, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the Applicant's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the Board and the beneficial owner of the political subdivision's obligations, if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution shall also contain any other requirements of the SEC or the IRS relating to arbitrage, private activity bonds, or other relevant requirements regarding the securities held by the Board;

(L) the maintenance of current, accurate, and complete records and accounts in accordance with generally accepted accounting principles to demonstrate compliance with requirements in the financial assistance documents;

(M) that the Applicant shall annually submit an audit, prepared by a certified public accountant in accordance with generally accepted auditing standards;

(N) that the Applicant shall submit a final accounting within 60 days of the completion of the project;

(O) that the Applicant shall document the adoption and implementation of an approved water conservation program for the duration of the financial assistance;

(P) ~~that~~ the Applicant's agreement to comply with special environmental conditions specified in the Board's environmental finding ~~[determination]~~ as well as with any applicable Board laws or rules relating to use of the financial assistance;

(Q) that the Applicant shall establish a dedicated source of revenue for repayment of the financial assistance;

(R) that interest payments shall commence no later than one year after the date of closing; ~~and~~

(S) that annual principal payments will commence no later than one year after completion of project construction; and

(T) ~~[(S)]~~ any other recitals mandated by the executive administrator;

(3) unqualified approving opinions of the attorney general of Texas and, if bonds or other authorized securities are issued, a certification from the comptroller of public accounts that such debt has been registered in that office;

(4) an unqualified approving opinion by a recognized bond attorney;

(5) assurances that the Applicant will comply with any special conditions specified by the Board's environmental finding ~~[determination until all financial obligations to the State have been discharged]~~;

(6) if the project will result in the development of surface water or groundwater resources, the Applicant shall provide information showing that it has the legal right to use the water that the project

will provide. Upon receipt of the information, the executive administrator shall prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights to the water that the project will provide prior to any release of funds for planning, land acquisition, and design activities. Prior to the release of funds for construction, a written water rights certification shall be prepared by the executive administrator. The certification shall be based upon the Applicant's information showing the necessary water rights have been acquired;

(7) evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(8) a Private Placement Memorandum containing a detailed description of the issuance of the debt to be sold to the Board. The Applicant shall submit a draft Private Placement Memorandum at least 30 days prior to the closing of the financial assistance; a final electronic version of the Memorandum shall be submitted no later than seven days before closing;

(9) when any portion of the financial assistance is to be held in an escrow account, the Applicant shall execute an escrow agreement, approved as to form and substance by the executive administrator;

(10) if applicable, a home rule municipality pursuant to Chapter 104, Local Government Code, shall execute a Certification of Trust as defined in §371.1 of this title (relating to Definitions); and

(11) any additional information specified in writing by the executive administrator.

(b) Certified bond transcript. Within 60 days of closing the financial assistance, the Applicant shall submit a transcript of proceedings relating to the debt purchased by the Board which shall contain those instruments normally furnished by a purchaser of debt.

(c) Phased closing. The executive administrator may determine that closing the financial assistance in phases is appropriate when:

(1) the project has distinct phases for planning, design, acquisition, and ~~for~~ construction or if any one of the phases can be logically and practically divided into discrete sections;

(2) the project utilizes the design-build or construction manager-at-risk process or any process wherein there is simultaneous design and construction;

(3) there are limitations on the availability of funds;

(4) additional oversight is required due to the financial condition of the Applicant or the complexity of the project; or

(5) due to any unique facts arising from the particular transaction.

(d) Financial assistance consisting of 100 percent principal forgiveness. Notwithstanding subsection (a) of this section, the following documents are required for closing financial assistance consisting of 100 percent principal forgiveness:

(1) evidence that applicable requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) an executed principal forgiveness agreement adopted by the governing body that is acceptable to the executive administrator. The agreement shall have the following sections:

(A) if financial assistance proceeds are to be deposited into an escrow account at the time of closing then an escrow account

shall be created that shall be separate from all other accounts and funds, as follows:

(i) the account shall be maintained by an escrow agent as defined in §371.1 of this title (relating to Definitions);

(ii) funds shall not be released from the escrow account without prior written approval from the executive administrator, who shall issue written authorization for the release of funds;

(iii) upon request of the executive administrator, escrow account statements shall be provided to the executive administrator;

(iv) the investment of any financial assistance proceeds deposited into an approved escrow account shall be handled in a manner that complies with the Public Funds Investment Act, Government Code, Chapter 2256; and

(v) the escrow account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the project and that complies with the Public Funds Collateral Act, Government Code, Chapter 2257;

(B) that the Applicant shall fix and maintain rates, in accordance with state law, and collect charges to provide adequate operation and maintenance of the project;

(C) that a construction account shall be created which shall be kept separate from all other accounts and funds of the Applicant;

(D) that insurance coverage be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(E) that the Applicant, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the Applicant's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the Board and the beneficial owner of the political subdivision's obligations, if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution shall also contain any other requirements of the SEC or the IRS relating to arbitrage, private activity bonds, or other relevant requirements regarding the securities held by the Board;

(F) the maintenance of current, accurate, and complete records and accounts in accordance with generally accepted accounting principles to demonstrate compliance with requirements in the financial assistance documents;

(G) that the Applicant shall annually submit an audit, prepared by a certified public accountant in accordance with generally accepted auditing standards;

(H) that the Applicant shall submit a final accounting within 60 days of the completion of the project;

(I) that the Applicant shall document the adoption and implementation of an approved water conservation program for the duration of the financial assistance;

(J) the Applicant's agreement to comply with special environmental conditions specified in the Board's environmental find-

ing as well as with any applicable Board laws or rules relating to use of the financial assistance;

(3) assurances that the Applicant will comply with any special conditions specified by the Board's environmental finding;

(4) if the project will result in the development of surface water or groundwater resources, the Applicant shall provide information showing that it has the legal right to use the water that the project will provide. Upon receipt of the information, the executive administrator shall prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights to the water that the project will provide prior to any release of funds for planning, land acquisition, and design activities. Prior to the release of funds for construction, a written water rights certification shall be prepared by the executive administrator. The certification shall be based upon the Applicant's information showing the necessary water rights have been acquired;

(5) evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(6) when any portion of the financial assistance is to be held in an escrow account, the Applicant shall execute an escrow agreement, approved as to form and substance by the executive administrator;

(7) if applicable, a home rule municipality pursuant to Chapter 104, Local Government Code, shall execute a Certification of Trust as defined in §371.1 of this title (relating to Definitions); and

(8) any additional information specified in writing by the executive administrator.

*§371.71. Financial Assistance Secured by Promissory Notes and Deeds of Trust.*

(a) Applicability. This section contains closing requirements for a water supply corporation, an eligible NPNC, or an eligible private Applicant or other Applicant that [who] is not authorized to issue bonds or other securities. This section applies to financial assistance for either pre-design or construction funding.

(b) Use of consultants. The executive administrator may recommend, but not require, that the entity engage the services of a financial advisor [adviser] or other consultant to ensure the appropriateness of the proposed debt and to provide advice to the entity.

(c) Documents required for closing. The executive administrator shall ensure that the following documents have been submitted prior to closing financial assistance secured by promissory notes and deeds of trust:

(1) evidence that applicable requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) an executed promissory note and loan agreement in a form approved by the executive administrator;

(3) a Deed of Trust and Security Agreement that shall contain a first mortgage lien evidenced by a deed of trust on all the real and personal property of the water system; provided, however, these are not needed if the financial assistance consists of 100 percent principal forgiveness;

(4) an owner's title insurance policy for the benefit of the Board covering all the real property identified in the deed of trust; provided, however, these are not needed if the financial assistance consists of 100 percent principal forgiveness;

(5) evidence that the rates on which the Applicant intends to rely for repayment of the financial assistance have received final and binding approval from the Utility Commission and, for Applicants required to utilize a surcharge account, evidence that the approval of the Utility Commission was conditioned on the creation of a surcharge account;

(6) a certified copy of the resolution adopted by the governing body authorizing the indebtedness and a certificate from the secretary of the governing body attesting to adoption of the resolution in accordance with the by-laws or rules of the governing body and in compliance with the Open Meetings Act, if applicable;

(7) a legal opinion from Applicant's counsel that provides:

(A) that the entity has the legal authority to enter into the loan agreement and to execute a promissory note;

(B) that the entity is not in breach or default of any state or federal order, judgment, decree, or other instrument which would have a material effect on the loan transaction;

(C) that there is no pending suit, action, proceeding, or investigation by a public entity that would materially adversely affect the enforceability or validity of the required financial assistance documents;

(D) evidence that the entity is in good standing with the Texas Office of the Secretary of State; and

(E) a statement relating to any other issues deemed relevant by the executive administrator.

(8) evidence that an approved water conservation plan has been adopted and will be implemented through the life of the project;

(9) evidence of the Applicant's agreement to comply with special environmental conditions contained in the Board's environmental finding [determination];

(10) evidence that the Applicant has adopted final water rates and charges that are not subject to appeal to the Utility Commission;

(11) copies of executed service and revenue contracts;

(12) evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(13) if the project will result in the development of surface or groundwater resources, the Applicant shall demonstrate that it has the right to use the quantity of water necessary for project effectiveness and efficiency. Upon receipt of the information, the executive administrator shall prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights necessary for project implementation prior to any release of funds for planning, land acquisition, and design activities. A written water rights certification must be prepared by the executive administrator before funds can be released for construction activities based upon a showing by the Applicant that the necessary water rights have been acquired;

(14) when any portion of the financial assistance is to be held in an escrow account, the Applicant shall execute an escrow agreement, approved as to form and substance by the executive administrator; and

(15) any other documents relevant to the particular transaction.

(d) if in the event that financial assistance proceeds are to be deposited into an escrow account at the time of closing the financial assistance, then an escrow account shall be created that shall be separate from all other accounts and funds, as follows:

(1) the account shall be maintained by an escrow agent as defined in §371.1 of this title (relating to Definitions);

(2) funds shall not be released from the escrow account without prior written approval of the executive administrator who shall issue written authorization for the release of funds;

(3) upon request of the executive administrator, escrow account statements shall be provided on a monthly basis to the executive administrator;

(4) the investment of any financial assistance proceeds deposited into an approved escrow account, shall be handled in a manner that complies with the Public Funds Investment Act, Government Code, Chapter 2256; and

(5) the escrow account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the project and that complies with the Public Funds Collateral Act, Government Code, Chapter 2257.

(e) Construction account. A construction account shall be created which shall be kept separate from all other accounts and funds of the Applicant.

(f) Phased closing. The executive administrator may determine that closing the financial assistance in phases is appropriate when:

(1) the project has distinct phases for planning, design, acquisition, and for construction or if any one of the phases can be logically and practically divided into discrete sections;

(2) the project utilizes the design-build or construction manager-at-risk process or any process wherein there is simultaneous design and construction;

(3) there are limitations on the availability of funds;

(4) additional oversight is required due to the financial condition of the Applicant or the complexity of the project; or

(5) due to any unique facts arising from the particular transaction.

§371.72. *Disbursement of Funds.*

(a) Escrow of funds. The executive administrator may deposit funds into an escrow account at the time of closing of the financial assistance. Releases from an escrow account shall occur sequentially as described in subsection (c) of this section or in accordance with phasing required for the applicable project. The Applicant shall submit outlays for all expenses incurred.

(b) Reimbursement method of accessing funds. DWSRF financial assistance is available for disbursement under a reimbursement method unless the executive administrator approves the deposit of funds into an escrow account at the closing of the financial assistance, as appropriate. The executive administrator shall reimburse the Applicants' expenditures upon the receipt of an outlay report supported by detailed invoices of expenditures or the executive administrator may issue a written authorization for the release of funds from an escrow account based on the receipt of outlay reports supported by detailed invoices of expenditures. The outlays and the releases from an escrow account shall be consistent with the approved project schedule.

(c) Sequence of availability of funds. Financial assistance shall be available for disbursement in the following sequence:

(1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase, and after approval of a water conservation plan;

(2) for design costs, after receipt of executed contracts for design, after approval of an engineering feasibility report, and after completion [the Board's approval] of the environmental review; and

(3) for construction costs, after issuance of any applicable permits, after acquisition documents and contract documents~~[-]~~ (including plans and specifications) are approved and executed, and after the executive administrator has approved the issuance of a Notice to Proceed ~~[construction documents are contingently awarded]~~.

(d) Outlay reports. Applicants shall submit outlay reports supported by detailed invoices for incurred costs as the project progresses in accordance with the project schedule. Applicants shall submit outlay reports, in a form determined by the executive administrator, as follows:

(1) for financial assistance for planning, acquisition, and design, quarterly; and

(2) for financial assistance for construction, monthly.

~~[(e) Environmental affirmation. Prior to the executive administrator's approval of the release of financial assistance for design, acquisition, and construction or for a pre-design funding option project, the executive administrator shall summarize the project's environmental review and inform the Board of any environmentally related mitigation measures recommended for the project. The Board may elect to affirm or alter the conditions of the original commitment or withdraw the commitment to the Applicant based upon the environmental review and mitigation measures. The executive administrator may withhold or limit the release of financial assistance pending satisfactory completion of the project's environmental review.]~~

~~(e) [(f)] Consistency for project schedules and outlays. The executive administrator shall require that projects proceed in accordance with approved project schedules as closely as possible, and that outlays are submitted as required in subsection (d) of this section.~~

#### §371.73. *Remaining Unused Funds.*

(a) Remaining unused funds are those funds unspent after the original approved project is completed. Remaining unused funds may be spent for enhancements to the original project that are explicitly approved by the executive administrator, including green components.

(b) If there are no enhancements authorized, the Applicant shall be required to submit a final accounting and disposition of unused [surplus] funds.

#### §371.74. *Surcharge.*

For eligible private Applicants and eligible NPNC Applicants that are not also eligible public Applicants, the establishment of a surcharge and creation of a surcharge account~~[-]~~ as those terms are defined by the ~~commission~~ is required. If the executive administrator determines that the use of a surcharge and surcharge account is not available to an Applicant through the Utility Commission ~~[commission]~~, the executive administrator may recommend that the Board consider other sources of revenue available to an Applicant for repayment of financial assistance from the Board.

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

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Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061

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## SUBCHAPTER H. CONSTRUCTION AND POST-CONSTRUCTION REQUIREMENTS

### 31 TAC §§371.80 - 371.82, 371.85 - 371.88

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §371.80. *Inspection During Construction.*

(a) Applicant's inspection. The Applicant shall provide for the adequate qualified inspection of the project under the supervision of a registered engineer and shall require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans, ~~[and]~~ specifications, and other engineering design or permit documents, approved alterations or changes, and in accordance with the requirements in the environmental ~~finding~~ ~~[determination]~~ applicable to the project, and to the sound engineering principles and construction practices.

(b) Board's inspection. The executive administrator may, at his discretion, inspect the construction and materials of any project at any time. The purpose of the inspection is to determine whether the contractor is substantially complying with the approved engineering plans of the project and is constructing the project in accordance with ~~[sound engineering principles and]~~ the approved project schedule. The inspection by the Board does not subject the state to any civil liability.

(c) Scope of inspections. Inspections may include, but are not limited to:

(1) ~~on-site observations~~, review of the ~~[physical]~~ conditions at the construction sites, including compliance with environmental mitigation measures;

(2) review of documents related to the construction projects, including but not limited to:

(A) payroll, daily attendance, and any other records relating to person employed during the construction, and records relating to the Davis Bacon Act and related federal laws and regulations relating to prevailing wage rates;

(B) invoice, receipts for materials, accounting ledgers, and any other documents related to expenditure of funds to facilitate tracking project's progress;

(C) evidence of testing of installed materials and equipment;

(D) deviations from approved plans and specifications;

(E) change orders and supporting documents; and

(F) review of any other documents to ensure compliance with the terms of the approved contract documents and the Board's rules.

(d) ~~The executive administrator~~ ~~[Inspectors]~~ may document issues to ensure compliance with applicable laws, rules, and contract

documents, and may recommend to the owner that certain corrective actions occur to ensure compliance with laws, rules, and approved plans and specifications.

(e) The Applicant shall provide the executive administrator [~~inspectors~~] with a response to the issues relating to compliance.

§371.81. *Alterations During Construction.*

(a) Changes after approval of engineering feasibility report. Applicant shall notify the executive administrator of any changes to the project that occur after the approval of the report but prior to the start of construction. The executive administrator shall review the proposed changes and notify the Applicant if additional engineering or other information is required. For facilities required to have Commission approval, the Commission must give its approval before any substantial or material changes are made in the plans. No changes may be implemented without the express written approval of the executive administrator.

(b) Changes during construction. Any proposed change to the construction contract must be submitted to the executive administrator in the form of a formal change order; the change will be reviewed for compliance with program requirements and applicable Commission rules. Depending upon the scope and complexity of the proposed change, approval by the executive administrator also may require amendments to other engineering and environmental documents and coordination with the Commission for issues involving variances to Commission rules.

§371.82. *Force Account.*

The executive administrator expects that all significant elements of a project shall be constructed with skilled laborers and mechanics obtained through the competitive bidding process. Notwithstanding that expectation, the Applicant, with the prior approval of the executive administrator, may utilize its own employees and equipment for inspection or minor construction upon [a] showing that it possesses the necessary competence required to accomplish such work and that the work can be accomplished more economically by the use of the force account method.

§371.85. *Final Accounting.*

(a) Within 60 [~~sixty~~] days of Applicant's receipt of the certificate of approval for the final prime construction contract and the final inspection report, the Applicant shall submit a final accounting and a final funds requisition form.

(b) After the final accounting, the executive administrator shall notify the Applicant if remaining surplus funds exist and advise the Applicant that the remaining surplus funds may be used, as specified in any applicable bond ordinance, for:

- (1) payment of bonds in inverse order of maturity;
- (2) deposit into the interest and sinking fund; or
- (3) deposit to a reserve fund.

§371.86. *Records Retention.*

The Applicant shall retain all documents, records, and invoices [~~invoice, and records~~] whether in electronic form or otherwise relating to the expenditure of all financial assistance from the DWSRF for a period of three full state fiscal years after the completion of the project and the final certificate of approval.

§371.87. *Release of Retainage.*

(a) Retainage. The Applicant will withhold a minimum of five percent [~~5%~~] of each progress payment throughout the course of the construction contract.

(b) Full release of retainage. The executive administrator will approve the full release of retainage on a contract when:

- (1) the Applicant's engineer approves the contractor's request for release of retainage; and
- (2) the Applicant's governing body approves the release of retainage; and[-]
- (3) the executive administrator issues the Certificate of Approval.

(c) Partial release of retainage. If a project is substantially complete, the executive administrator may approve a partial release of retainage.

§371.88. *Responsibilities of Applicant.*

After the satisfactory completion of the project, the Applicant remains responsible for compliance with applicable laws and rules relating to the project and to the financial assistance documents including, but not limited to, submission of an annual audit, implementation and enforcement of the approved water conservation program and other assurances made to the Board. The Board has a continuing interest in the State's investment and therefore, the Applicant shall be subject to the continuing authority of the Board and the executive administrator through final payment of the financial assistance.

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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Les Trobman

General Counsel

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## CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB" or "board") proposes to repeal 31 Texas Administrative Code (TAC) §§371.3, 371.4, and 371.43 - 371.51.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB proposes to repeal provisions of 31 TAC Chapter 371 in order to reorganize certain information to provide greater clarity and to streamline TWDB processes for implementation of the Drinking Water State Revolving Fund (DWSRF). The specific provisions being repealed and the reasons for the repeals are discussed in more detail below.

### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Section 371.3 and §371.4 are repealed in order to combine relevant language and delete language that is no longer necessary. These changes are made to provide greater clarity and to ensure consistency with state and federal DWSRF requirements.

Sections 371.43 - 371.51 are repealed in order to provide greater clarity regarding the environmental requirements for the DWSRF. These changes will provide greater clarity on which

documents are prepared by the Applicant, which documents are prepared by the TWDB, and which documents are prepared by a third party. These changes will also provide greater clarity on the timing of required environmental documentation. The repeal of these sections is proposed in order to reorganize and renumber this subchapter for greater clarity.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed repeal. For the first five years the repeal is in effect, there is no expected additional cost to state or local governments resulting from their administration.

There is no change in costs because there are no direct costs associated with the proposed repeal. This repeal is not expected to have any impact on state or local revenues. The repeal does not require any increase in expenditures for state or local governments as a result of administering the repeal. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the repeal.

#### PUBLIC BENEFITS AND COSTS.

Ms. Demers also has determined that for each year of the first five years the proposed repeal is in effect, the public will benefit from the repeal as it provides clarity regarding the TWDB's Drinking Water State Revolving Fund program.

#### LOCAL EMPLOYMENT IMPACT STATEMENT.

The board has determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this repeal. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the repeal as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION.

The board reviewed the proposed repeal in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the repeal is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this repeal is to provide greater clarity regarding the Drinking Water State Revolving Fund and ensure consistency with state and federal requirements for that fund.

Even if the proposed repeal were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this repeal because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law;

3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This repeal does not meet any of these four applicability criteria because it: 1) does not exceed the Federal Safe Drinking Water Act or any other federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather it is also proposed under authority of Texas Water Code §15.605. Therefore, this proposed repeal does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT.

The board evaluated this proposed repeal and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this repeal is to more closely align the TWDB's rules related to the Drinking Water State Revolving fund to state statutes and federal requirements and to provide greater clarity. The proposed repeal would substantially advance this stated purpose by reflecting the current state and federal requirements for the Drinking Water State Revolving Fund.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed repeal because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the Drinking Water State Revolving Fund for the State of Texas.

Nevertheless, the board further evaluated this proposed repeal and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed repeal would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this repeal does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this repeal requires compliance with state and federal laws and rules regarding the Drinking Water State Revolving Fund. These requirements will not burden, restrict, or limit an owner's right to property. Therefore, the proposed repeal does not constitute a taking under Texas Government Code, Chapter 2007.

#### SUBMISSION OF COMMENTS.

Written comments on the proposed repeal may be submitted by mail to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

### 31 TAC §§371.3, §371.4

#### STATUTORY AUTHORITY.

This repeal is proposed under the authority of Texas Water Code §15.605.

The proposed repeal affects Chapter 15 of the Texas Water Code.

§371.3. *Land Costs.*

§371.4. *Other Authorized Securities: Source Water Protection and Technical Assistance.*

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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Les Trobman

General Counsel

Texas Water Development Board

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## SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

### 31 TAC §§371.43 - 371.51

#### STATUTORY AUTHORITY.

This repeal is proposed under the authority of Texas Water Code §15.605.

The proposed repeal affects Chapter 15 of the Texas Water Code.

§371.43. *Types of Environmental Determinations: Finding of No Significant Impact.*

§371.44. *Environmental Information Document: Applicant Requirements.*

§371.45. *Decision to Prepare an Environmental Impact Statement: Notice of Intent.*

§371.46. *Types of Environmental Determinations: Record of Decision.*

§371.47. *Environmental Impact Statements.*

§371.48. *Environmental Impact Statement: Applicant Requirements.*

§371.49. *Proposed Project Alterations.*

§371.50. *Use of Environmental Determinations Prepared by Other Entities.*

§371.51. *Emergency Relief Project Procedures.*

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

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## CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB" or "board") proposes amendments to 31 Texas Administrative Code (TAC) §§375.1, 375.2, 375.10 - 375.19, 375.30 - 375.34, 375.40 - 375.44, 375.60 - 375.62, 375.81 - 375.83, 375.90, 375.91, 375.101 - 375.104, 375.106 - 375.109, 375.201, 375.203, and 375.206 relating to the TWDB's administration of the Clean Water State Revolving Fund (CWSRF). TWDB also proposes new §§375.3, 375.45, 375.63 - 375.71, and 375.92 - 375.94. Repeals of existing §§375.50 - 375.56, 375.63 - 375.70, 375.92, and 375.93 are simultaneously proposed elsewhere in this issue of the *Texas Register*.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENTS AND NEW RULES.

Pursuant to the Water Resources Reform and Development Act of 2014 (WRRDA), the TWDB proposes to amend numerous provisions in 31 TAC Chapter 375. Various amendments are proposed to implement changes to the federal requirements for the CWSRF. Various other amendments are proposed to provide greater clarity in this chapter of TWDB rules or to update rule provisions pursuant to TWDB practice. The specific provisions being amended and the reasons for the amendments are discussed in more detail below.

### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS AND NEW RULES.

#### *Subchapter A. General Program Requirements.*

##### *Section 375.1. Definitions.*

The definition of "Acquisition" is added to discuss eligible project costs, federal requirements regarding acquisition of land. It is also used to describe a phase of the project.

The definition of "Applicant" is revised for clarity to focus on the repayment of the debt rather than ownership of the project.

The definition of "Application" is revised to expand the focus from solely forms to forms and other information that is submitted to the TWDB.

The definition of "Authorized representative" is revised to provide greater clarity.

The definition of "Bypass" is revised to incorporate the specific reasoning for passing over a higher ranked project in favor of a lower ranked project.

The definition of "Commitment" is revised for clarity to refer directly to the Board resolution that constitutes the commitment rather than to the applicant's fulfillment of the conditions.

The definition of "Commitment term" is deleted because it is no longer needed with the added definition of "Expiration date," which provides more clarity.

The definition of "Construction" is revised to match the definition found in 33 U.S.C. §1292(1).

The definition of "Construction phase" is added to provide greater clarity.

The definition of "Cost and Effectiveness Analysis" is added to implement provisions of WRRDA. The term "analysis" includes both the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity and the final selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation.

The definition of "Design" is revised for clarity.

The definition of "Disadvantaged Community" is revised to incorporate the affordability criteria required in WRRDA.

The definition of "Disaster" is revised to add extreme heat.

The definition of "Eligible Applicant" is revised to implement provisions of WRRDA, explicitly mention eligibility of a special purpose district that finances on behalf of its members' waste disposal projects, and provide greater clarity.

The definition of "Environmental affirmation" is deleted because it is no longer needed.

The definition of "Expiration date" is added to provide greater clarity regarding the TWDB's offer of financial assistance and is used to clarify the timeframe allowed for the applicant to submit a request to extend the Board's commitment.

The definition of "Financial assistance" is revised to provide greater clarity.

The definition of "Fiscal Sustainability Plan" is added to implement provisions of WRRDA.

The definition of "Invited Projects List" is retitled "Initial Invited Projects List" to be consistent with the terminology used in the TWDB's Intended Use Plan.

The definition of "Lending rate" is revised for greater clarity to distinguish between financial assistance, which must be repaid and accrues interest, and principal forgiveness, which is not repaid and does not accrue interest.

The definition of "Municipality" is revised to better reflect the definition in federal law.

The definition of "Non-equivalency project" is revised to provide clarity through a reference to equivalency projects.

The definition of "Planning" is added to implement provisions of WRRDA.

The definition of "Political subdivision" is revised to conform to the Texas Water Code.

The definition of "Population" is revised to specify that the data used must be the latest data available from the U.S. Census Bureau, such as the American Community Survey data released annually, rather than the decennial census.

The definition of "Principal forgiveness" is added to specify the type of additional subsidization that is being offered for the program.

The definition of "Project" is revised to reference the language in the Federal Water Pollution Control Act and provide greater clarity.

The definition of "Project information form" is retitled as "Project Information Form (PIF)" and is revised to clarify that the information submitted must conform to the agency's requirements.

The definition of "Project Priority List" is revised for clarity to reference the specific list found in the Intended Use Plan that contains the projects eligible for funding ranked according to their rating criteria score.

The definition of "Ready to proceed" is revised for clarification purposes.

The definition of "Small and Medium-sized Publicly Owned Treatment Works" is added to implement provisions of WRRDA.

The definition of "Subsidy" is revised to reference only a reduction in the interest rate from the market interest rate rather than principal forgiveness.

The definition of "Treatment works" is added to implement provisions of WRRDA.

The definition of "Utility Commission" is added to delineate between the Public Utility Commission of Texas and the Texas Commission on Environmental Quality because of new powers and duties of the Public Utility Commission.

Other non-substantive, grammatical changes are made for clarification and grammatical purposes. Subsections are renumbered to reflect added and removed definitions.

#### *Section 375.2. Projects and Activities Eligible for Assistance.*

Section 375.2 is revised to add new projects and activities that are eligible under the Federal Water Pollution Control Act in accordance with WRRDA. While all projects and activities eligible under federal law are listed, the specific projects and activities eligible for assistance under the Texas CWSRF program for a particular funding year would be established annually in the CWSRF's Intended Use Plan. This will allow greater flexibility to adjust the CWSRF program based on needs and capacity.

#### *Section 375.3. Federal Requirements.*

Section 375.3 is added to list the new federal requirements for the CWSRF instituted or made permanent through WRRDA. Also, TWDB is proposing to include EPA's new policy on providing "signage" options to enhance public awareness for equivalency projects.

#### *Subchapter B. Financial Assistance.*

#### *Section 375.10. Types of Financial Assistance.*

Section 375.10 is revised to state that the executive administrator shall determine the type of financial assistance in accordance with the types of financial assistance authorized by the Federal Water Pollution Control Act ("the Act").

#### *Section 375.11. Refinancing.*

Section 375.11 is revised to require the project to meet programmatic requirements.

#### *Section 375.12. Financing of Planning, Acquisition, and Design Phase.*

Section 375.12 is revised to reflect a change in terminology regarding the phases of projects. It is revised to state that applicants may request financial assistance for planning, acquisition, and design without a readiness to proceed determination. It also deletes the reference to applicants who have completed the planning, acquisition, and design for a proposed project within

three years of the closing date for financial assistance receiving priority for construction phase funding of the project in the next available IUP if the project is ready to proceed. This priority is retained elsewhere in §375.31(c).

*Section 375.13. Construction Phase Funding and Section 375.14. Pre-Design Funding Option.*

Section 375.13 and §375.14 are revised to reflect a change in terminology regarding the phases of projects.

*Section 375.15. Lending Rates.*

Section 375.15 is revised to make private and taxable entities eligible for the interest rate reduction. As part of the revision on eligibility for the reduction, TWDB is proposing to consolidate and revise the method of establishing the fixed rate scale and determining the amount of adjustment from the market interest rate for both the equivalency and non-equivalency borrowers. TWDB is not proposing to alter the interest rate reduction a borrower would have received under the current program practices. For consistency, the point in time for determining the total fixed lending rate reduction will be set at 30 days from the proposed date the application will be presented to the Board for approval. Other wording changes were made to provide greater clarity. In addition, references to the maximum reduction level have been removed to allow greater flexibility in establishing a significant interest rate reduction consistent with projections of the long-term financial health of the CWSRF. The interest rate reduction will instead be established annually in CWSRF's Intended Use Plan.

*Section 375.16. Fees for Financial Assistance.*

Section 375.16 is revised to allow greater flexibility to make annual adjustment to the CWSRF program based on needs and projected financial conditions. To accomplish this, the amount of any administrative loan origination fee, up to the maximum specified amount, would be established in the CWSRF's Intended Use Plan. The title is revised from "Fees of Financial Assistance" to "Fees for Financial Assistance." Other non-substantive changes are made.

*Section 375.17. Term of Financial Assistance.*

Section 375.17 is revised to be consistent with the requirement of WRRDA. The TWDB is proposing to revise the requirement that the term offered may not exceed the "expected design" life of an eligible project to the "projected useful" life.

*Section 375.18. Principal Forgiveness.*

Section 375.18 is revised based on new requirements established through WRRDA.

*Subchapter C. Intended Use Plan.*

*Section 375.30. Submission of Project Information Forms.*

Section 375.30 is revised to clarify the requirements for submission of project information forms. It specifically references submission of Project Information Forms to be included on an amended Project Priority List within the Intended Use Plan. It also establishes that the required information that must be in a Project Information Form will be specified in TWDB guidance. It clarifies that a registered engineer must properly affix the engineer's seal, signature, and date of execution to the project information form if the amount requested from the program is equal to or greater than \$100,000.

*Section 375.31. Rating Process.*

Section 375.31 is revised to amend the rating criteria to incorporate additional projects and activities that are eligible based on WRRDA. In addition, consistent with the overall goals of the Federal Water Pollution Control Act, TWDB is proposing to consider enforcement action, innovative or alternative technology or approaches, and effective management as rating criteria. It is further revised for greater clarity.

*Section 375.32. Public Notice.*

Section 375.32 is revised to better reflect TWDB processes whereby the executive administrator, not the Board members, hold public hearings. The rule would state that the executive administrator may make amendments to the Project Priority List after a 14-day public comment period without any public hearing.

*Section 375.33. Criteria and Methods for Distribution of Funds.*

Section 375.33 is revised to reflect a change in terminology and to provide greater clarity. It revises "subsidiaries" to "principal forgiveness" and "Invited Projects List" to "Project Priority List" to be consistent with other sections as well as the terminology in the Intended Use Plan. Other non-substantive changes are made.

*Section 375.34. Changes to Project.*

Section 375.34 is revised to adjust permitted changes in a proposed project listed in the Intended Use Plan without requiring a re-ranking of the project. First, the applicant for a proposed project may change provided the project itself does not change. Second, the fundable amount of a proposed project may not increase by more than 10% of the amount listed in the approved IUP. The rule is revised to allow the executive administrator to waive the 10% limit to not only incorporate additional elements to the project, but also increased project costs. Further, the section is revised to specify that any principal forgiveness awarded may not exceed the amount in the original Intended Use Plan. Other non-substantive changes are made.

*Subchapter D. Application for Assistance.*

*Section 375.40. Pre-Application Conferences.*

Section 375.40 is revised to allow individuals to participate in the conference without being in attendance.

*Section 375.41. Timeliness of Application and Required Application Information.*

Section 375.41 is revised to base the due date for curing a deficiency on the date of the notice to the applicant rather than the date the applicant receives the notice. This will allow enhanced tracking for program administration. This section specifies that the application must include a copy of any actual or proposed contracts covering revenues for the project for a duration specified by the agency. To allow additional flexibility to the agency, the rule would permit an alternative method of establishing a reliable accounting of the financial records of the applicant if approved by the executive administrator. The rule would clarify the listing within the application of all the funds used for the project. It is revised to include the Public Utility Commission in the list of agencies in relation to the Applicant's affidavit. This section is revised to list the application requirements for eligible private applicants.

*Section 375.42. Review of Applications.*

Section 375.42(c) is deleted because it is no longer necessary. New §375.42(c) is added to establish commitment timeframes for projects that qualify and have been designated to receive

principal forgiveness. Due to the high demand and limited availability of subsidized funding, it is imperative that applicants offered principal forgiveness proceed in a timely manner.

*Section 375.43. Required Water Conservation Plan and Water Loss Audit.*

Section 375.43 is revised to incorporate new statutory requirements. According to §16.0121(g), Water Code, a retail public utility providing potable water that receives financial assistance from the TWDB is required to use a portion of that financial assistance, or any additional financial assistance provided by TWDB, to mitigate the utility's system water loss if, based on a water audit filed by the utility, the water loss meets or exceeds the threshold established by TWDB rule. In accordance with §16.0121(g), Water Code, as amended by H.B. 949, 84th Legislative Session, §375.43 is revised to allow the TWDB, at the request of the retail public utility, to waive this requirement. TWDB rules regarding this waiver are located in 31 TAC §358.6. In accordance with §16.0121(h), Water Code, the TWDB shall adopt rules regarding the use of financial assistance from the TWDB as required by §16.0121(g) to mitigate system water loss. Section 375.43 is revised to incorporate the statutory requirements of §16.0121, Water Code, and to specify that use of financial assistance must be in accordance with the Act and the applicable Intended Use Plan.

*Section 375.44. Board Approval of Funding.*

Section 375.44 is revised to remove the commitment expiration timeframes from the rules and establish the expiration timeframes through the annual Intended Use Plan applicable to the project in order to provide greater flexibility in administering the program. Section 375.44 will allow multiple extensions instead of one extension and the language is revised to better instruct applicants on the procedure for requesting an extension.

*Section 375.45. Multi-year Commitments.*

Section 375.45 is added to implement multi-year commitments to provide a reliable source of capital based on a commitment structure that meets the annual capital requirements of the project. In order to provide a reliable source of capital based on a commitment structure that meets the annual capital requirements of the project, the TWDB is proposing to offer multi-year commitments. Multi-year commitments should assist entities that need to fund large projects over a period of time. Further, to assist in providing for long-term financial planning, the minimum interest rate reduction for the multi-year commitments will be established and locked for the five-year period based on the interest rate reduction prescribed in the IUP for the first year's commitment.

*Subchapter E. Environmental Reviews and Determinations.*

*Section 375.60. Definitions.*

The definition of "Affected community" is revised to clarify its meaning in the context of its use within the subchapter.

The definitions of "Categorical Exclusion," "Environmental Assessment," "Environmental Impact Statement," "Environmental Information Document," "Finding of No Significant Impact," "Record of Decision," and "Statement of Finding" are added to provide greater clarity on what is included in these various documents, which party prepares the documents, and their use.

The definitions of "Federal Environmental Cross-cutters" and "Human environment" are added to clarify terminology utilized within the subchapter.

The definition of "Mitigation" is revised to better reflect the federal definition by adding fuller explanations of the avoidance, minimization, and rectification aspects of mitigation. Therefore, because it is no longer necessary to retain separate definitions of "Avoidance" and "Minimization," they have been deleted.

*Section 375.61. Environmental Review Process.*

Section 375.61 is revised to add subsection (e) to establish a key difference in the environmental review process between equivalency and non-equivalency projects. For equivalency projects, TWDB will inform EPA when consultation or coordination by EPA with other federal agencies is necessary to resolve issues regarding compliance with applicable federal authorities. Section 375.61 is revised to delete references to avoidance and minimization, which are both included in the definition of mitigation. In addition, disbursement of funds information was removed as this information is already provided in §375.93, relating to Disbursement of Funds. Section 375.61 is further revised to add more details on the timing and preparation of different environmental documents in order to provide greater clarity. Certain terminology is revised in order to avoid confusion between state and federal environmental documents. Other non-substantive and grammatical changes are made for clarification purposes.

*Section 375.62. Board's Environmental Finding: Categorical Exclusions.*

The title of §375.62 is revised from "Types of Environmental Determinations: Categorical Exclusion" to "Board's Environmental Finding: Categorical Exclusion" in order to provide greater clarity on which party is responsible for evaluating eligibility and issuing the Categorical Exclusion. It is further revised to clarify when a project can be categorically excluded from a full environmental review. Subsection (f) is deleted in order to move this information to new §375.63 in order to further separate and clarify Applicant versus TWDB responsibilities.

*Section 375.63. Applicant Requirements: Categorical Exclusions.*

New §375.63 is added in order to delineate between the Applicant's and the TWDB's responsibilities regarding a Categorical Exclusion. New §375.63 contains the Applicant's responsibilities. This change was made to provide greater clarity.

*Section 375.64. Board's Environmental Finding: Findings of No Significant Impact.*

New §375.64 is added to reorganize and revise previous provisions on the Finding of No Significant Impact in order to provide greater clarity on each party's responsibilities regarding this document. Language from previous §375.63 is added here and is revised to remove the statement that an environmental assessment is required for proposed projects involving new construction. This is because some minor new construction elements are eligible for a CE, which does not require an environmental assessment. The previous language is further revised to reflect the fact that an environmental assessment is not required if the action is categorically excluded or if the executive administrator has decided that an environmental impact statement is required. It is revised to require that all contracts, plans, specifications, or other applicable documents used during the design and construction of the project include reference to or descriptions of the mitigation measures. References to avoidance and minimization were deleted because both are included in the definition of mitigation. Other minor revisions were made to provide greater clarity.

*Section 375.65. Applicant Requirements: Environmental Information Document.*

New §375.65 is added to reorganize and revise previous provisions on the Environmental Information Document in order to provide greater clarity on each party's responsibilities regarding this document. Language from previous §375.64 is added here and revised to provide greater clarity. An Applicant must prepare an Environmental Information Document for projects that have potential environmental impacts and the significance of those impacts is unknown. New §375.65 provides greater clarity on when an Environmental Information Document is needed, which party prepares the document, and what the document must include.

*Section 375.66. Environmental Impact Statements.*

New §375.66 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.67 is added here and non-substantive changes to that language are made for clarity purposes.

*Section 375.67. Decision to Prepare an Environmental Impact Statement: Notice of Intent.*

New §375.67 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.65 is added here and non-substantive changes to that language are made for clarity purposes.

*Section 375.68. Board's Environmental Finding: Record of Decision.*

New §375.68 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.66 is added here and non-substantive changes to that language are made for clarity purposes. That language is revised to delete references to avoidance and minimization because both are included in the definition of mitigation. The language is further revised to clarify that the TWDB may provide written notification regarding the outcome of the mitigation measures rather than issue a statement of findings.

*Section 375.69. Applicant Requirements: Environmental Impact Statement.*

New §375.69 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.68 is added here and non-substantive changes to that language are made for clarity purposes.

*Section 375.70. Proposed Project Alterations.*

New §375.70 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.69 is added here and revised to state that the executive administrator's review of proposed project alterations may result in a notation to the file when the alterations are minor. It is further revised for clarity to explain the process of confirming that project alterations are within the scope of the original environmental finding.

*Section 375.71. Use of Previously Prepared Environmental Findings.*

New §375.71 is added here to reorganize Subchapter E for greater clarity. The language from previous §375.70 is added here and revised to allow the executive administrator to adopt previous environmental findings issued by other agencies, not just federal agencies, provided that the finding is compliant with NEPA. It is also revised to clarify that only mitigation measures from the previous findings that are applicable to the proposed

project components will be applied as conditions of the financial assistance. It is revised to state that the executive administrator may provide written notification of the outcome of the mitigation measure proposed in an environmental finding to interested agencies and public groups. References to avoidance and minimization were deleted because both are included in the definition of mitigation. Certain wording from previous language is revised in order to provide greater clarity.

*Subchapter F. Engineering Review and Approval.*

*Section 375.81. Engineering Feasibility Report.*

Section 375.81 is revised to require the engineering feasibility report to show how the project will remedy the drinking water issues and problems instead of simply that they will remedy the problems and issues. Other non-substantive changes are made for clarity purposes.

*Section 375.82. Contract Documents: Review and Approval.*

Section 375.82 is revised to provide greater clarity on what the term "contract documents" include for the purposes of this section and to reference the TWDB's authority to audit project files.

*Section 375.83. Advertising and Awarding Construction Contracts.*

Section 375.83 is revised to extend the required notification period for pre-construction conferences from five to ten days to ensure TWDB staff will be able to attend if desired.

*Subchapter G. Loan Closing and Availability of Funds.*

*Section 375.90. Applicability.*

Section 375.90 is revised to correct a past drafting error that failed to specify that this subchapter applies to both equivalency and non-equivalency projects.

*Section 375.91. Financial Assistance Secured by Bonds or Other Authorized Securities.*

Section 375.91 is revised to require the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board to include a statement that all payments, including the origination fee, are made to the Board via wire transfer at no cost to the Board. Further, §375.91(a)(5) is revised to still require assurances that the Applicant will comply with any special conditions specified by the Board's environmental finding, but to delete the requirement that this assurance last until all financial obligations to the state have been discharged. Other non-substantive and grammatical changes are made for clarification purposes.

*Section 375.92. Financial Assistance Secured by Promissory Notes and Deeds of Trust.*

Section 375.92 is added to establish closing requirements for water supply corporations, eligible private Applicants, and other Applicants that are not authorized to issue bonds or other securities.

*Section 375.93. Disbursement of Funds.*

Section 375.93 is added and the language of former §375.92 is revised to amend subsection (b), describing the current method of releasing funds to the recipient's construction account for principal forgiveness. These revisions are made to provide greater clarity. It is also revised to eliminate the environmental affirmation by the Board but still require the environmental review to be completed before release of funds for design.

*Section 375.94. Remaining Unused Funds.*

Section 375.94 is added and the language of former §375.93 is revised to use the term "unused funds" instead of "surplus funds" for consistency purposes.

*Subchapter H. Construction and Post Construction Requirements.*

*Section 375.101. Inspection During Construction.*

Section 375.101 is revised to eliminate the reference to "sound engineering principles" for consistency with §17.185 of the Texas Water Code. Further, on-site observations were added to the scope of inspections as part of TWDB's actions to confirm ongoing compliance with all applicable requirements. Other minor revisions were made to provide greater clarity.

*Section 375.102. Alterations During Construction.*

Section 375.102 is revised to include the requirement in §17.186 of the Texas Water Code that the Texas Commission on Environmental Quality must give its approval before any substantial or material changes are made in any previously approved plans for wastewater treatment plants or other facilities.

*Section 375.106. Final Accounting.*

Section 375.106 is revised to specify that remaining surplus funds may be used as specified in any applicable bond ordinance for certain purposes.

*Section 375.108. Release of Retainage.*

Section 375.108 is revised to clarify that the TWDB must issue a Certificate of Approval prior to approving the full release of retainage on a contract. Other non-substantive changes are made.

Non-substantive or grammatical changes are made to the following sections for clarification and grammatical purposes: §§375.19, 375.103, 375.104, 375.107, 375.109, 375.201, 375.203, and 375.206.

**FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.**

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

There is no change in costs because there are no direct costs associated with the proposed amendment. No state or local governments are required to engage in the CWSRF program. Therefore, no state or local governments are required to expend funds because of these rules. This rule is not expected to have any impact on state or local revenues. The rule does not require any increase in expenditures for state or local governments as a result of administering the rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the rule.

**PUBLIC BENEFITS AND COSTS.**

Ms. Demers also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it provides clarity regarding the TWDB's Clean Water State Revolving Fund program and is consistent with changes made at the federal level for the Clean Water State Revolving Fund.

**LOCAL EMPLOYMENT IMPACT STATEMENT.**

The board has determined that a local employment impact statement is not required because the proposal does not adversely affect a local economy in a material way for the first five years that the proposal is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

**DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION.**

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to provide greater clarity regarding the Clean Water State Revolving Fund and to implement changes to federal requirements for that fund.

Even if the proposal were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed the Federal Water Pollution Control Act or any other federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather it is also proposed under authority of Texas Water Code §15.605. Therefore, this proposed rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

**TAKINGS IMPACT ASSESSMENT.**

The board evaluated this proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to more closely align the TWDB's rules related to the Clean Water State Revolving fund to state statutes and federal requirements. The proposed rulemaking would substantially ad-

vance this stated purpose by clarifying rules related to the Clean Water State Revolving fund, incorporating applicable language from state and federal laws and rules, and reflecting the current state and federal requirements for the Clean Water State Revolving Fund.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the Clean Water State Revolving Fund for the State of Texas.

Nevertheless, the board further evaluated these proposed rules and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rule-making does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rulemaking requires compliance with state and federal laws and rules regarding the Clean Water State Revolving Fund. These requirements will not burden, restrict, or limit an owner's right to property. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

#### SUBMISSION OF COMMENTS.

Written comments on the proposed rulemaking may be submitted by mail to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until the 5:00 p.m. of the 31st day following publication the *Texas Register*.

### SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

#### 31 TAC §§375.1 - 375.3

#### STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §375.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Chapter 15 of the Texas Water Code and not defined here shall have the meanings provided by Chapter 15.

(1) Acquisition--The Applicant obtaining interests in land that are necessary for construction or land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land.

(2) [(4)] Act--The Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.

(3) [(2)] Applicant--The entity applying for financial assistance from the CWSRF including:

(A) the entity that receives the financial assistance; and[-]

(B) the entity legally responsible to repay the debt. [that owns the project funded under this chapter or an entity authorized to act on behalf of another eligible Applicant.]

(4) [(3)] Application--The information and supporting documentation submitted by or on behalf of the Applicant that may be used in consideration for financial assistance from the CWSRF or that [forms provided by] the executive administrator determines [that] must be completed for consideration for financial assistance from the CWSRF.

(5) [(4)] Authorized representative--The signatory agent [of the Applicant] authorized and directed by the Applicant's governing body to file the application and to sign documents relating to the project, on behalf of the Applicant.

(6) [(5)] Board--The Texas Water Development Board.

(7) [(6)] Bonds--All bonds, notes, certificates of obligation, and book-entry obligations authorized to be issued by any political subdivision.

(8) [(7)] Bypass--To pass over a higher ranked project in favor of a lower ranked project to ensure that funds available are utilized in a timely manner, to select an interrelated project, or to meet statutory and capitalization grant requirements as [The selection of a project for funding independent of the project's ranking based on factors] delineated in the applicable IUP.

(9) [(8)] Capitalization grant--The federal grant funds awarded annually by the EPA to the State for capitalization of the CWSRF.

(10) [(9)] Certification of Trust--An instrument executed by a home rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the financial assistance proceeds in accordance with §114.086, Texas Property Code.

(11) [(10)] Clean Water State Revolving Fund (CWSRF)--The financial assistance program authorized by Texas Water Code, Chapter 15, Subchapter J in accordance with the Act.

(12) [(11)] Closing--The exchange of the Applicant's approved debt instruments for CWSRF financial assistance.

(13) [(12)] Commission--The Texas Commission on Environmental Quality.

(14) [(13)] Commitment--An offer by the Board to provide financial assistance to an Applicant as evidenced by [who timely fulfills the conditions in] a Board resolution.

[(14) Commitment term--The amount of time, after the Board commitment, within which the commitment for financial assistance must be elapsed.]

(15) Construction--Any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative wastewater treatment processes and techniques meeting guidelines promulgated under 33 U.S.C. §1314(d)(3), or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works or the inspection or supervision of any of the foregoing items. [The erection, acquisition, alteration, remodel, rehabilitation, improvement, extension or other man-made change necessary for an eligible project or activity.]

(16) Construction account--A separate account created and maintained for the deposit of financial assistance and utilized by the Applicant to pay eligible expenses of the project.

(17) Construction phase--The erection, acquisition, alteration, remodel, rehabilitation, improvement, extension, or other man-made change necessary for an eligible project or activity.

(18) [(17)] Contract documents--The engineering documentation relating to the project including engineering drawings, maps, technical specifications, design reports, instructions, and other contract conditions and forms that are in sufficient detail to allow contractors to bid on the work.

(19) Cost and Effectiveness Analysis--The study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity; and the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation; taking into account (i) the cost of constructing the project or activity, (ii) the cost of operating and maintaining the project or activity over the life of the project or activity, and (iii) the cost of replacing the project or activity.

(20) [(18)] Davis Bacon Act--The federal statute at 40 U.S.C. §§3141 et seq. and in conformance with the U.S. Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) and 29 CFR Part 3 (Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from the United States).

(21) [(19)] Debt--All bonds or other documents issued or to be issued by any political subdivision or eligible Applicant pledging repayment of the Board's financial assistance.

(22) [(20)] Design--The project phase during which the [Applicant prepares the] project design documents are prepared by the Applicant. Documents may include [including] design surveys, plans, working drawings, specifications and any procedures and protocols to be used during the construction phase of the project.

(23) [(21)] Disadvantaged community--A community that meets the affordability criteria based on income, unemployment rates, and population trends. Specifically, the service area of an eligible applicant, the service area of a community that is located outside the entity's service area, or a portion within the entity's service area if the proposed project is providing new service to existing residents in unserved areas; and meets the following affordability criteria: (a) has an annual median household income that is no more than 75 percent of the state median household income using an acceptable source of socioeconomic data, and (b) the household cost factor that considers income, unemployment rates, and population trends must be greater than or equal to one percent if only water or sewer service is provided or greater than or equal to two percent if both water and sewer service are provided. The required data and calculations of the household cost factor are specified in the Intended Use Plan under which the project would receive funding. [The service area or portion of a service area that has an adjusted median household income that is no more than 75% of the State median household income for the most recent year for which statistics are available; and if the service area is only charged for one type of service, water or sewer, with a household cost factor for water or sewer rates that is greater than or equal to one percent; or if the service area is charged for both water and sewer services, with a combined household cost factor for water and sewer rates that is greater than or equal to two percent. The Board may provide financial assistance to an entity that

cannot otherwise afford financial assistance under the CWSRF based on considerations other than household cost factors if such considerations clearly warrant financial assistance.]

(24) [(22)] Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency as defined in Texas Government Code, §418.004.

(25) [(23)] Eligible Applicant--Any of the following entities:

(A) a waste treatment management agency including any interstate agencies, or any city, commission, county, district, river authority, or other public body created by or pursuant to state law that has authority to dispose of sewage, industrial wastes, or other waste, or a special purpose district that finances, on behalf of its members, waste disposal projects;

(B) an authorized Indian tribal organization;

(C) any person applying for financial assistance to build a nonpoint source pollution control project pursuant to 33 U.S.C. §1329; [the Act, §319; or]

(D) any person applying for financial assistance for an estuary management project pursuant to 33 U.S.C. §1330; [the Act, §320.]

(E) any entity or person applying for financial assistance as authorized under 33 U.S.C. §1383(c); or

(F) any other entity eligible under federal law to receive funds from the CWSRF.

(26) [(24)] Engineering feasibility report--Those necessary plans and studies that directly relate to the project and that are needed in order to assure compliance with the enforceable requirements of the Act and state statutes.

[(25) Environmental affirmation--The Board's acceptance of the environmental determination made prior to the release of funds for design or construction for an equivalency project receiving pre-design financial assistance.]

(27) [(26)] EPA--The United States Environmental Protection Agency or a designated representative.

(28) [(27)] Equivalency projects--Those projects funded that must follow all federal cross cutter requirements.

(29) [(28)] Escrow account--A separate account maintained by an escrow agent until such funds are eligible for release to the construction account.

(30) [(29)] Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C;

(B) a custodian of collateral in accordance with the Texas Government Code, Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.

(31) [(30)] Estuary management plan--A plan for the conservation and management of an estuary of national significance as described in 33 U.S.C. §1330 [the Act, §320].

(32) [(31)] Estuary management project--A project to develop or implement an estuary management plan.

(33) [(32)] Executive administrator--The executive administrator of the Board or a designated representative.

(34) Expiration date--The date on which the Board's offer of financial assistance is no longer open or valid and by which a Closing must occur.

(35) [(33)] Financial assistance--Funding made available to eligible Applicants, as authorized in 33 U.S.C. §1383(d) [Loan funds], including principal forgiveness [and negative interest loans, provided to eligible Applicants].

(36) Fiscal sustainability plan--At a minimum, it includes:

(A) an inventory of critical assets that are part of the treatment works;

(B) an evaluation of the condition and performance of inventoried assets or asset groupings;

(C) a certification that the assistance recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and

(D) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

(37) [(34)] Force majeure--Acts of god, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other incapacities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

(38) [(35)] Green project--A project or components of a project that, when implemented, will result in energy efficiency, water efficiency, green infrastructure, or environmental innovation and that are characterized as green projects either categorically or by utilizing a business case as approved by the executive administrator.

(39) [(36)] Green project reserve--A federal directive requiring a specified portion of the capitalization grant to finance [be used for] green projects.

(40) Initial Invited Project List--That portion of the Project Priority List listing the eligible projects, ranked according to their rating, that will initially be invited to submit applications in accordance with procedures and deadlines as detailed in the applicable Intended Use Plan.

(41) [(37)] Intended Use Plan [use plan] (IUP)--A document prepared annually by the Board, after public review and comment, which identifies the intended uses of all CWSRF program funds and describes how those uses support the overall goals of the CWSRF.

[(38) Invited Projects List--That portion of the IUP listing eligible projects ranked according to their rating which will be invited to submit applications in accordance with procedures and deadlines as detailed in the applicable IUP.]

(42) [(39)] Lending rate--The rate of interest applicable to [a particular] financial assistance that must be repaid [under the CWSRF].

(43) [(40)] Market interest rate--Interest rates comparable to those attained for [municipal] securities in an open market offering.

(44) [(41)] Municipality--A city, town, borough, county, parish, district, association, or other public body created by or pursuant to state law, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. §1288.

(45) [(42)] Non-equivalency projects--All projects other than Equivalency projects. [Those projects funded from financial assistance that follow all state requirements and are not subject to compliance with applicable federal cross cutter requirements.]

(46) [(43)] Nonpoint source pollution plan--A plan for managing nonpoint source pollution as described in 33 U.S.C. §1329 [the Act, §319]. Nonpoint source pollution is any source of water pollution that does not enter water from a point source and includes pollution generally resulting from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification.

(47) [(44)] Nonpoint source pollution project--A project implemented pursuant to a nonpoint source pollution plan.

(48) [(45)] Outlay report--The Board's form used to report costs incurred on the project.

(49) [(46)] Permit--Any permit, license, registration, or [and] other legal document required from any local, regional, state, or federal government for construction of the project.

(50) [(47)] Person--An individual, corporation, partnership, association, State, municipality, commission, or political subdivision of the State, or any interstate body.

(51) Planning--The project phase during which the Applicant identifies and evaluates potential alternatives to meet the needs of the proposed project. It includes the cost and effectiveness analysis and environmental review described in Subchapter E of this chapter and preparation of the engineering feasibility report described in Subchapter F of this chapter.

(52) [(48)] Point source--Any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

(53) [(49)] Political subdivision--A municipality, intermunicipal, interstate, or state agency, or any other public entity eligible for assistance under Texas Water Code Chapter 16, Subchapter J, or a nonprofit water supply corporation created and operating under Texas Water Code Chapter 67, if such entity is eligible for financial assistance under federal law.

(54) [(50)] Population--The number of people who reside within the territorial boundaries of or receive wholesale or retail wastewater service from the Applicant based upon data that is acceptable to the executive administrator and which includes the following:

(A) acceptable demographic projections or other information in the engineering feasibility report or the latest official data from the U.S. Census Bureau [census] for an incorporated city; or

(B) information on the population for which the project is designed, where the Applicant is not an incorporated city or town.

(55) Principal forgiveness--A type of additional subsidization authorized by 33 U.S.C. §1383(i) or federal appropriations acts, as detailed in the Intended Use Plan and principal forgiveness agreement or bond transcript applicable to the project.

(56) [(51)] Private Placement Memorandum (PPM)--A document functionally similar to an "official statement" used in connection with an offering of municipal securities in a private placement.

(57) [(52)] Project--The planning, acquisition [of land and permits], environmental review, design, construction, and other activities designed to accomplish the objectives, goals, and policies of the Act by providing assistance for projects and activities identified in 33 U.S.C. §1383(c), which may include those projects eligible for funding under §375.2 of this title. [improve, extend, rehabilitate and construct wastewater treatment facilities and nonpoint source or national estuary program projects eligible for funding under the Act.]

(58) [(53)] Project engineer--The engineer retained by the Applicant to provide professional engineering services during any phase of a project.

(59) [(54)] Project information form (PIF)--The form that the executive administrator determines must be submitted by Applicants for rating and ranking in an IUP.

(60) [(55)] Project Priority List--A [That portion of the IUP] listing, found in the IUP, of projects eligible for funding, [projects] ranked according to their rating criteria score and that may be further prioritized as described in the applicable IUP.

(61) [(56)] Ready to proceed--A project for which available information indicates that there are no significant permitting, land acquisition, social, contractual, environmental, engineering, or financial issues that would keep the project from proceeding in a timely manner to the construction phase of a project.

(62) [(57)] Release of funds--The sequence and timing for Applicant's release of financial assistance funds from the escrow account to the construction account.

(63) Small and Medium-Sized Publicly Owned Treatment Works--A Publicly Owned Treatment Work with a design flow equal to or less than 5 million gallons per day.

(64) [(58)] Small systems--Those systems that serve a population of not more than ten thousand individuals.

(65) [(59)] State--The State of Texas.

(66) [(60)] Subsidy--A reduction in the interest rate from the market interest rate. [Any special financial terms and conditions available including loan forgiveness, negative interest rates, or other financial incentives as detailed in an IUP.]

(67) [(61)] Treatment works--Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement 33 U.S.C. §1281, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units, clear well facilities and distribution facilities for recycled or reused water; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or

will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction. The term also means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. [Any devices, facilities and systems that are used in the storage, treatment, recycling, and reclamation of waste or that are necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of, or used in connection with, the treatment process (including land used for the storage of treated water in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment; or facilities to provide for the collection, control, and disposal of waste. The term also means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff; and waste combined in storm water and sanitary sewer systems; the type of projects that often arise in response to emergency events.]

(68) Utility Commission--The Public Utility Commission of Texas.

(69) [(62)] Water conservation plan--A report outlining the methods and means by which water conservation may be achieved within a particular facilities planning area.

(70) [(63)] Water conservation program--A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.

(71) [(64)] Water quality management plan--A plan prepared and updated annually by the State and approved by the Environmental Protection Agency that determines the nature, extent, and causes of water quality problems in various areas of the State and identifies cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

§375.2. Projects [Entities] and Activities Eligible for Assistance.

The specific projects and activities eligible for assistance for a particular funding year will be established annually in the IUP based on the activities authorized by the Act, which allows the CWSRF to provide financial assistance:

(1) to any municipality or intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in 33 U.S.C. §1292);

(2) for the implementation of a management program established under 33 U.S.C. §1329;

(3) for development and implementation of a conservation and management plan under 33 U.S.C. §1330;

(4) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;

(5) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;

(6) to any municipality or intermunicipal, interstate, or State agency for measures to reduce the demand for publicly owned

treatment works capacity through water conservation, efficiency, or reuse;

(7) for the development and implementation of watershed projects meeting the criteria set forth in 33 U.S.C. §1274;

(8) to any municipality or intermunicipal, interstate, or State agency for measures to reduce the energy consumption needs for publicly owned treatment works;

(9) for reusing or recycling wastewater, stormwater, or sub-surface drainage water;

(10) for measures to increase the security of publicly owned treatment works; and

(11) to any qualified nonprofit entity that has federal tax-exempt status to provide assistance to owners and operators of small and medium-sized publicly owned treatment works:

(A) to plan, develop, and obtain financing for eligible projects, including planning, design, and associated preconstruction activities; and

(B) to assist such treatment works in achieving compliance with the Act.

[(a) Financial assistance from the CWSRF is available to eligible projects for the following:]

[(1) for the construction of or improvements to publicly-owned treatment works;]

[(2) for the implementation of a non-point source project under §319 of the Act;]

[(3) for the development and implementation of a conservation and management plan for bays and estuaries under §320 of the Act; and]

[(4) for projects which qualify as green projects based upon information provided within the submitted project information form, the application, and if necessary, the business case.]

[(b) Financial assistance from the CWSRF is available for nonpoint source pollution projects consistent with the following definitions:]

[(1) BMP—Best management practices are those practices determined to be the most efficient, practical, and cost-effective measures identified to guide a particular activity or address a particular problem.]

[(2) National Estuary Program—A program created by the Water Quality Act of 1987 and administered according to §320 of the Act.]

[(3) NPS Loan Program—Nonpoint Source Pollution Loan Program established to provide low interest loans to persons for the implementation of approved nonpoint source pollution control and abatement projects and estuary management projects.]

[(4) NPS Management Program—The most recent Texas Nonpoint Source Management Program adopted by the Commission.]

[(c) Financial assistance from the CWSRF is available for non-point source pollution projects consistent with the following eligibilities:]

[(1) The executive administrator may provide financial assistance to persons for nonpoint source pollution control projects or for national estuary program projects.]

[(2) An Applicant for financial assistance for a nonpoint source or estuary program project shall submit an application in the form and number prescribed by the executive administrator. The executive administrator shall determine the type of financial assistance available to an Applicant for a nonpoint source pollution project or a national estuary program project.]

[(3) The Board may provide financial assistance to applicants by either purchasing bonds issued by such applicant or by receiving a promissory note and entering into a loan agreement with such Applicant. If, however, an Applicant is a governmental entity that is fully authorized to issue bonds, the Applicant may not enter into a loan agreement as provided in this section.]

[(d) Financial assistance from the CWSRF is available for nonpoint source pollution control or estuary management projects consistent with the following conditions:]

[(1) an identified practice within a Water Quality Management Plan;]

[(2) a BMP listed in the NPS Management Program; or]

[(3) the National Estuary Program efforts for the State.]

### §375.3. Federal Requirements.

(a) Davis-Bacon Act Prevailing Wage Provision. The Applicant must comply with the requirements of section 513 of that Act (33 U.S.C. §1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors, and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. The Davis Bacon prevailing wage requirements, as provided in 40 U.S.C. §§141 et seq. and the Department of Labor's implementing regulations, apply to any project for the construction of treatment works that are funded by the CWSRF.

(b) National Environmental Policy Act-like environmental review. The National Environmental Policy Act provisions apply to all CWSRF assistance for the construction of treatment works. The requirements are specified in Subchapter E of this chapter.

(c) Generally Accepted Accounting Principles. Assistance recipients must maintain project accounts according to Generally Accepted Accounting Principles as issued by the Governmental Accounting Standards Board, including standards relating to the reporting of infrastructure assets.

(d) Cost and Effectiveness Analysis. A municipality or intermunicipal, interstate, or State agency that receives assistance from the CWSRF must certify that they have conducted a cost and effectiveness analysis. A cost and effectiveness analysis is an eligible cost under the CWSRF. The certification must be provided before CWSRF assistance is provided for final design or construction phase.

(e) Architectural and Engineering Contracts. For equivalency projects only, a contract to be carried out using funds directly made available by a capitalization grant for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services must be negotiated in the same manner as a contract for architectural and engineering services is negotiated under 40 U.S.C. §§1101 et seq. This applies to new solicitations, significant contractual amendments, and contract renewals.

(f) Fiscal Sustainability Plan. A recipient of a loan for a project that involves the repair, replacement, or expansion of a publicly owned treatment works must develop and implement a fiscal sustainability plan or certify that it has already developed and implemented a fiscal sustainability plan.

(g) American Iron and Steel Requirements. All of the iron and steel products used in the construction, alteration, maintenance, or repair of treatment works must be produced in the United States, as provided in 33 U.S.C §1388.

(h) Signage. Equivalency projects must comply with the EPA signage requirements implemented to enhance public awareness of CWSRF projects.

(i) Other Federal Requirements. Other federal statutory, regulatory, executive order, and/or guidance and policy authority may apply. Federal requirements are further detailed in the IUP under which a project was funded.

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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For further information, please call: (512) 463-8061



## SUBCHAPTER B. FINANCIAL ASSISTANCE

### 31 TAC §§375.10 - 375.19

#### STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §375.10. *Types of Financial Assistance.*

The executive administrator shall determine the type of financial assistance available to the Applicant based on the evaluation of the project information forms, the application, and the availability of funds in accordance with the types of assistance authorized in 33 U.S.C. §1383(d).

#### §375.11. *Refinancing.*

(a) The executive administrator may accept applications to refinance existing debt for eligible projects when sufficient funds are available. If refinancing funds are available, then the Applicant shall describe the need for the eligible project and provide other specific information detailed in the project information form or as otherwise requested by the executive administrator.

(b) An application for refinancing of existing debt shall be the same as an application for financial assistance under this chapter. The executive administrator may consider an application for refinancing when:

(1) the project meets all of the requirements under this chapter, including information evidencing that the environmental review, programmatic requirements, and engineering criteria required meets the criteria under law and this chapter for the same or similar projects; and

(2) the federal tax regulations allow such refinancing.

#### §375.12. *Financing of Planning, Acquisition, and Design Phases [Funding].*

[(a)] Applicants may request [This type of] financial assistance [is available] for the planning, acquisition [of land], and the design for a proposed project without a readiness to proceed determination.

[(b) Applicants who have completed the planning, acquisition, and design for a proposed project within three years of the closing date for financial assistance will receive priority for construction funding of the project in the next available IUP if the project is ready to proceed.]

#### §375.13. *Construction Phase Funding.*

This type of financial assistance is available for the construction phase of an eligible project that is ready to proceed.

#### §375.14. *Pre-Design Funding Option.*

This type of financial assistance is available for the planning, design, acquisition, and construction phases of a project. This option allows the commitment of construction funding where planning and design are not yet completed. This option is available only when the executive administrator recommends it to the Board based on a finding that the project is ready to proceed.

#### §375.15. *Lending Rates.*

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

(1) Average life--The number determined by dividing the sum of all [the] payment periods [of all maturities of a loan] by the total principal amount [number of maturities].

(2) Borrower--Each eligible Applicant that has received a commitment [receiving a loan] from the Board.

(3) Interest [Loan interest] rate--The individual interest rate for each maturity in an amortized debt schedule [of a loan] as identified by the executive administrator under this chapter.

(4) Market rate--The individual interest rate for each maturity in an amortized debt schedule [of a loan] payment that is the borrower's market cost of funds based on the MMD scale for the borrower as identified under subsection (c)(1) of this section.

(5) MMD--Thomson Reuters Municipal Market Data Range of Yield Curve Scales.

(6) Payment period--The number determined by multiplying the total principal amount due for an individual maturity as set forth in the debt instrument [loan] by the standard period for the debt instrument [loan].

(7) Standard period--The number identified by determining the number of days between the date of delivery of the funds to a borrower and the date of the maturity of a bond or loan payment pursuant to which the funds were provided calculated on the basis of a 360-day year composed of twelve 30-day periods and dividing that number by 360.

(8) Term--For bonds, the length of time between when the bond is issued and the final maturity in the debt instrument; for loans, the period of time any principal is outstanding.

(b) Procedure for setting fixed interest rates. [The interest rates will be determined by this section and as described in an IUP.]

(1) The executive administrator will set fixed interest rates, as described in the IUP and further determined in this section, [rates for loans] on a date that is:

(A) no earlier than five business days prior to the adoption of the political subdivision's bond ordinance or resolution or the execution of a loan agreement; and

(B) not more than 45 days before the anticipated closing of a commitment [the loan] from the Board.

(2) After 45 days from the assignment of the interest rate [on the loan], rates may be extended only with the executive administrator's approval.

(c) Fixed rates [for non-equivalency projects]. The fixed interest rates for financial assistance under this chapter will be determined as provided in this subsection. The executive administrator will identify the market rate for the borrower, determine the amount of adjustment from the market interest rate scale appropriate for the borrower, apply the identified interest rate adjustment to the market rate for each year of the borrower's scale [borrower] to determine the [loan] interest rate, and apply the [loan] interest rate to the proposed principal schedule, as more fully set forth in this subsection.

(1) Identifying [To identify] the market rate for eligible borrowers.[:]

(A) for borrowers that have a rating by a recognized bond rating entity and will not have bond insurance, the executive administrator will rely on the higher of the appropriate MMD scale for the current bond rating of the borrower or the appropriate MMD BAA scale; or

(B) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the appropriate MMD BAA scale.[: or]

[(C) for borrowers that are rated by a recognized rating entity with bond insurance or for borrowers with no rating by a recognized bond rating entity with insurance, the executive administrator will rely on the higher of the borrower's uninsured fixed rate scale or the insurer's fixed rate scale.]

(2) The fixed rate scale shall be established for each borrower using individual coupon rates for each maturity of proposed debt based on the appropriate scale.

(3) [(2)] The program is designed to provide borrowers with an interest rate [a] reduction from the fixed rate scale applicable to the borrower [not to exceed 130 basis points below the market rate] based on a level debt service schedule, or if applicable, the reduction is set at the total basis points below the fixed rate scale for borrowers as derived under paragraph (4) of this subsection. Notwithstanding the foregoing, in no event shall the [loan] interest rate as determined under this section be less than zero.

(4) For loans and bond commitments with an average life in excess of 16 years for a term of up to 20 annual maturities or years or an average life in excess of 20 years for a term of up to 30 annual maturities or years, (or a pro-rata calculation for terms between 20 and 30 annual maturities or years) and at the discretion of the Board for loans and bond commitments that have debt schedules that produce a total fixed lending rate reduction in excess of a standard loan or bond commitment structure (defined as a debt service schedule in which the first year or the maturity schedule is interest only followed by principal maturing on the basis of level debt service), the following procedures will be used to determine the total fixed lending rate reduction:

(A) The interest rate component of level debt service will be determined by using the 15th year (19th year for 30-year terms) coupon rate of the appropriate scale of the MMD scales that corresponds to the 15th year (19th year for 30-year terms) of principal of the standard loan or bond commitment structure and that is measured 30 days from the date that the application is proposed to be presented to the Board for approval.

(B) Level debt service will be calculated using the 15th year (19th year for 30-year terms) MMD Scale coupon rate as described in subparagraph (A) of this paragraph and the par amount of the loan or bond commitment according to a standard loan or bond commitment structure. For a loan or bond commitment that has been proposed for a term of years equal to a standard loan or bond commitment structure, the dates specified in the application shall be used for interest and principal calculation. For a loan or bond commitment that has been proposed for a term of years less than a standard loan or bond commitment structure or longer than a standard loan or bond commitment structure, level debt service will be calculated beginning with the dated date, will be based upon the principal and interest dates specified in the application, and will continue for the term of a standard loan or bond commitment structure.

(C) A calculation will be made to determine how much a borrower's interest would be reduced if the loan or bond commitment had been made according to the total fixed lending rate reduction provided in paragraph (4) of this subsection and based upon the principal payments calculated in subparagraph (B) of this paragraph.

(D) The Board will establish a total fixed lending rate reduction for the loan or bond commitment that will achieve the interest savings in subparagraph (C) of this paragraph based upon the principal schedule proposed by the borrower.

(5) [(3)] To determine the [loan] interest rate, the following procedures will apply:

(A) Unless otherwise requested by the borrower under subparagraph (B) of this paragraph, the [loan] interest rate will be determined based on a debt service schedule that provides interest only to be paid in the first year of the debt service schedule and in which the remaining annual debt service payments are level, as determined by the executive administrator. The executive administrator will identify the appropriate MMD scale for the borrower and identify the market rate for the maturity due each year [in the year preceding the year in which the average life is reached]. The executive administrator will reduce that market rate of each year by the number of basis points applicable according to paragraph (2) of this subsection and thereby identify a proposed [loan] interest rate scale. The proposed [loan] interest rate scale will be applied to the proposed principal repayment schedule. If the resulting debt service schedule is level to the satisfaction of the executive administrator, then the proposed [loan] interest rate will be the [loan] interest rate for the commitment [loan]. If the resulting debt service schedule is not level to the satisfaction of the executive administrator, then the executive administrator may adjust the interest rate for any or all of the maturities to identify the [loan] interest rate that as closely as possible achieves the interest savings applicable.

(B) A borrower may request a debt service schedule in which the annual debt service payments are not level through the term of the amortized debt schedule [loan], as determined by the executive administrator. [In this event, the executive administrator will approximate a level debt service schedule for the loan amount and identify a proposed loan interest rate that provides for annual debt service payments that are level for the term of the loan following the procedures set forth in paragraph (1)(A) of this subsection.] From the level debt service schedule, the executive administrator will determine the amount of the subsidy applicable to the debt service schedule provided [that would have been provided if the annual debt service payments had been level]. The executive administrator will then identify the [loan] interest rate that as closely as possible provides the borrower the identified subsidy amount for the principal schedule requested by the borrower.

[(d) Fixed rates for equivalency projects. The fixed interest rates for CWSRF loans under this subchapter are set at rates not to

exceed 195 basis points below the fixed rate scale for borrowers plus an additional reduction under paragraph (1) of this subsection, or if applicable, are set at the total basis points below the fixed rate scale for borrowers derived under paragraph (2) of this subsection. The fixed rate scale shall be established for each uninsured borrower based on the borrower's market cost of funds as they relate to the MMD or the BAA scale of the MMD for borrowers with either no rating or a rating less than investment grade, using individual coupon rates for each maturity of proposed debt based on the appropriate scale. The fixed rate scale shall be established for each insured borrower based on the higher of the borrower's uninsured fixed rate scale or the MMD AA scale.]

[(1) Under §375.16 of this title (relating to Fees of Financial Assistance) an additional reduction not to exceed 25 basis points will be used, for total fixed interest rates not to exceed 195 basis points below the fixed scale for such borrower.]

[(2) For borrowers filing applications on or after September 21, 1997 for loans with an average bond life in excess of 14 years or, at the discretion of the Board for borrowers filing applications on or after September 21, 1997 for loans that have debt schedules less than 20 years and that produce a total fixed lending rate reduction in excess of a standard loan structure (defined as a debt service schedule in which the first year of the maturity schedule is interest only followed by 20 years of principal maturing on the basis of level debt service); the following procedures will be used in lieu of the provisions of paragraph (1) of this subsection to determine the total fixed lending rate reduction.]

[(A) The interest rate component of level debt service will be determined by using the 13th year coupon rate of the appropriate scale of the MMD scales that corresponds to the 13th year of principal of the standard loan structure and that is measured from the first business day on the month the loan application will be presented to the Board for approval.]

[(B) Level debt service will be calculated using the 13th year MMD Scale coupon rate as described in subparagraph (A) of this paragraph and the par amount of the loan according to a standard loan structure. For a loan that has been proposed for a term of years equal to a standard loan structure, the dates specified in the loan application shall be used for interest and principal calculation. For a loan that has been proposed for a term of years less than a standard loan structure or longer than a standard loan structure, level debt service will be calculated beginning with the dated date and based upon the principal and interest dates specified in the application, and continuing for the term of a standard loan structure.]

[(C) A calculation will be made to determine how much a borrower's interest would be reduced if the loan had been made according to the total fixed lending rate reduction provided in paragraph (1) of this subsection and based upon the principal payments calculated in subparagraph (B) of this paragraph.]

[(D) The Board will establish a total fixed lending rate reduction for the loan that will achieve the interest savings in subparagraph (C) of this paragraph based upon the principal schedule proposed by the borrower.]

(d) [(e)] Variable Rates. The interest rate for CWSRF variable rate debt [loans] under this chapter will be set at a rate equal to the actual interest cost paid by the Board on its outstanding variable rate debt plus the cost of maintaining the variable rate debt in the CWSRF. Variable rate debt is [loans are] required to be converted to long-term fixed rate financing [loans] within 90 days of project completion unless an extension is approved in writing by the executive administrator. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the executive administrator and submittal of a resolution requesting such

conversion. The fixed lending rate will be calculated under the procedures and requirements of subsection (c) [subsections (b), (e) and (d)] of this section.

[(f) Private and taxable borrowers. The interest rate for loan agreements for those borrowers receiving financial assistance who are determined to be private or taxable issuers will be:]

[(1) for borrowers that have a rating by a recognized bond rating entity and will not have bond insurance, the executive administrator will rely on the higher of the MMD taxable scale for the current bond rating of the borrower or the MMD BAA taxable scale; or]

[(2) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the MMD BAA taxable scale; or]

[(3) for borrowers that are rated by a recognized bond rating entity with bond insurance or for borrowers with no rating by a recognized bond rating entity with insurance, the executive administrator will rely on the higher of the borrower's uninsured fixed rate taxable scale or the insurer's fixed rate taxable scale.]

(e) [(g)] Adjustments. The executive administrator may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

#### §375.16. Fees for [of] Financial Assistance.

(a) General. The Applicant will be assessed charges for the purpose of recovering administrative costs of all projects receiving CWSRF financial assistance. However, no fees or costs shall be assessed on the portion of the project that receives principal [subsidization through loan] forgiveness [or other subsidies] as detailed in the IUP.

(b) Origination [Loan origination] fee. An administrative [A loan origination] fee not to exceed [equal to] 1.85[%] percent of the project costs will be assessed, as a one-time non-refundable charge. Project costs upon which the fee will be assessed do not include the origination fee or those project costs that are funded through principal [loan] forgiveness. The fee is due and payable at the time of loan closing and may be financed as a part of the financial assistance.

#### §375.17. Term of Financial Assistance.

(a) The Board may offer financial assistance up to 30 years for the planning, acquisition, design, and/or construction phases of a project, in accordance with the Act and the IUP under which the project received funding.

(b) Notwithstanding the terms in subsection (a) of this section, the term of financial assistance offered may not exceed the projected useful [expected design] life of an eligible project, in accordance with the Act.

#### §375.18. Principal Forgiveness [Subsidies].

(a) The Board may provide principal forgiveness [subsidies] for financial assistance in accordance with 33 U.S.C. §1383(i) [for]:

(1) for an entity that meets the affordability criteria established in this chapter and in the IUP for a Disadvantaged Community; or

(2) to implement a process, material, technique, or technology [an entity that meets the criteria established in the IUP for other subsidies allowed under the federal appropriations law or the capitalization grant.]

(A) to address water-efficiency goals;

(B) to address energy-efficiency goals;

(C) to mitigate stormwater runoff; and/or

(D) to encourage sustainable project planning, design, and construction.

(b) Total amount of principal forgiveness [subsidies]. The total amount of principal forgiveness [subsidies] may not exceed the percentages established by federal law or by the capitalization grant.

§375.19. *Financial Guarantees for Political Subdivision Bonds.*

(a) Financial guarantees. The Board will consider accepting surety bonds in lieu of required cash reserve deposits and insurance policies for political subdivision bonds. At the time of loan commitment and at loan closing, only those financial guarantors that have been approved by the Board are authorized to underwrite financial guarantee policies on political subdivision bonds approved by the Board.

(b) Criteria for authorized list. The Board will maintain a list of authorized financial guarantors. In order to be considered for placement on the list, a guarantor must meet the following minimum criteria:

(1) the financial guarantor must be a nationally recognized provider of municipal bond insurance and must have a triple-A stable insurer financial strength rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.; and

(2) the financial guarantor must have a triple-A insurer financial enhancement rating with Standard & Poor's.

(c) Review of policies. The executive administrator shall review all policies of insurance submitted by authorized financial guarantors and may reject any policy of insurance or surety bond that [which] does not protect the interests of the Board's financial program or that [which] subrogates the Board's rights.

(d) Removal from authorized list. The executive administrator may remove a financial guarantor from the authorized list at any time that a change in status would cause the financial guarantor to fail to meet the minimum criteria.

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

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## SUBCHAPTER C. INTENDED USE PLAN

### 31 TAC §§375.30 - 375.34

#### STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

§375.30. *Submission of Project Information Forms.*

(a) Eligible [The executive administrator will request eligible] Applicants may [to] submit a project information form for rating and

ranking on the applicable IUP. To be included in the IUP and on the initial Project Priority List, Applicants must [Applicants shall] submit a complete and accurate project information form by the date included in the notice. As further detailed in the applicable IUP, applicants may also submit a project information form after the date included on the notice for a project to be considered for inclusion on an amended Project Priority List published after the initial IUP has been approved. The required information that must be in a project information form will be specified in Board guidance and will include, but will not be [is not] limited[.] to, the following:

(1) a detailed description of the proposed project;

(2) a county map(s) showing the location of the service area;

(3) an estimated total project cost which:

(A) for an estimated financial assistance amount greater than \$100,000, the project information form shall be sealed [certified] by a registered professional engineer; or

(B) for an estimated financial assistance amount less than \$100,000, the project information form shall be accompanied by a statement signed by the system operator establishing the basis for the estimate;

(4) an estimated project schedule;

(5) the population currently served by the Applicant;

(6) the status of the Applicant's water conservation plan;

(7) signature of the Applicant's authorized representative; and

(8) additional information, as detailed within the solicitation for project information forms, needed to establish the priority rating score.

(b) The Applicant's failure to submit all of the information requested may result in a failure to include the project in the IUP.

§375.31. *Rating Process.*

(a) Projects in an IUP will be rated based upon the information, and any supporting documentation, submitted by the Applicant on the [detailed within the submitted] project information form.

(b) Rating criteria. For projects authorized under 33 U.S.C. §1383(c)(1) (§212 projects) [the Act's §212 projects] involving the construction or improvements to publicly [publically] owned treatment works the following factors will be considered:

(1) Impacts to water quality--Projects that protect stream segments and groundwater from pollution.

(2) Unserved areas--Projects that will bring individual systems into a centralized system or projects that address on-site systems.

(3) Regionalization of treatment works--Projects that will consolidate and eliminate systems.

(4) Reduction or prevention--Projects that will reduce or prevent sewer system overflows and inflow and infiltration.

(5) Eligibility as a Disadvantaged Community--Projects located in disadvantaged communities, as defined in Subchapter A of this Chapter. [Affordability--A Project located in a disadvantaged community shall have an affordability rating factor as defined within the applicable IUP.]

(6) Enforcement action--Corrective actions imposed by judicial authority or the Commission.

(7) Innovative or alternative technology or approaches--Projects that involve innovative or alternative technology or approaches, such as providing for the reclaiming and reuse of water, otherwise eliminate the discharge of pollutants, and utilize recycling techniques, land treatment, new or improved methods of waste treatment management for municipal and industrial waste (discharged into municipal systems) and the confined disposal of pollutants, so that pollutants will not migrate to cause water or other environmental pollution.

(8) Effective Management--Whether an entity has adopted or plans to prepare an Asset Management Plan and provide training to the Applicant's governing body and employees, whether the project addresses water conservation and energy efficiency, and whether the project implements a state or regional water plan.

(9) Reduction in Demand--Whether a majority of the funds being requested from the CWSRF for the project will be used to implement measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse.

(10) Non-profits--If the Applicant is a qualified nonprofit entity that has federal tax-exempt status, whether a majority of the funds being requested from the CWSRF for the project will be used to implement assistance to owners and operators of small and medium publicly owned treatment works to either (a) plan, develop, and obtain financing for eligible CWSRF projects, including planning, design, and associated preconstruction activities; or (b) assist such treatment works in achieving compliance with the Act.

~~{(6) Emergency relief--Projects which are affected by events of natural disaster.}~~

(11) ~~[(7)]~~ Additional factors as designated within the applicable IUP [and determined by the executive administrator].

(c) Previously funded projects. Planning, acquisition, or design projects, completed within three years from the closing of the financial assistance will receive a priority for construction phase funding if there are no significant changes that affect the original project rating and the project is ready to proceed.

(d) For projects authorized under 33 U.S.C. §1383(c)(2) (§319 projects) [the Act's §319 projects] involving nonpoint source and projects authorized under 33 U.S.C. §1383(c)(3) (§320 projects) [§320 projects] involving estuary management, the following factors will be considered:

(1) Public health--Ability to improve conditions that a public health official has determined are a nuisance and are dangerous to public health and safety and that may result from water supply and sanitation problems in the area to be served by the proposed project.

(2) Groundwater--Minimization of impact of pollutants to an aquifer or groundwater.

(3) Impaired water body--Ability to improve conditions in any water body that does not meet applicable water quality standards or is threatened for one or more designated uses by one or more pollutants.

(4) Eligibility as a Disadvantaged Community--Projects located in disadvantaged communities, as defined in Subchapter A of this chapter. [Affordability--A Project located in a disadvantaged community shall have an affordability rating factor as defined within the IUP.]

(5) Additional factors as designated within the applicable IUP [and determined by the executive administrator].

(e) For all projects authorized under 33 U.S.C. §1383(c) that are made eligible in the Intended Use Plan:

(1) Whether a majority of the funds being requested from the CWSRF for the project will be used to implement innovative approaches to manage, reduce, treat, or recapture stormwater or subsurface drainage water.

(2) Whether a majority of the funds being requested from the CWSRF for the project will be used to implement reuse or recycling wastewater, stormwater, or subsurface drainage water.

(f) Emergency relief. Projects that are affected by natural disasters and according to the following requirements:

(1) The Applicant must demonstrate that a need for emergency relief from an imminent threat to public health, safety, environment, or welfare exists. The Applicant must describe the nature of the threat and provide a complete description of the proposed emergency relief project.

(2) The Board may authorize funding for the emergency relief project that meets the requirements of this title or as described in an IUP.

§375.32. *Public Notice.*

(a) In accordance with the Act, the executive administrator [Board] shall hold public hearings and allow a period for public review and comment before the Board considers [considering] the adoption and approval of the IUP and the Project Priority List.

(b) For any substantive amendments thereto, the executive administrator [Board] shall hold a public hearing and allow a period of public review and comment in accordance with the Act. The executive administrator may add projects to the Project Priority List after a 14-day public comment period without any public hearing.

§375.33. *Criteria and Methods for Distribution of Funds.*

(a) Amount of available funds. Annually, the executive administrator will determine the amount of funds available for wastewater system improvements and other projects for the fiscal year.

(b) Principal forgiveness [Subsidy] limits. The total amount of principal forgiveness [subsidies] in any fiscal year may not exceed the percentages established by federal law or by the capitalization grant.

(c) Small systems. Projects with identical combined rating scores, including rating scores of zero, will be listed in order of population. Projects serving fewer people will be listed above those projects serving a larger population.

(1) To the extent that eligible Applicants are available, a minimum of 15[%] percent of the funds will be made available to small systems.

(2) If small system projects on the Invited Projects List are less than 15[%] percent of the funds, then the executive administrator may bypass projects for systems serving larger populations to ensure inclusion of small system projects for at least 15[%] percent of available funds.

(d) Project Priority List. Available program funds will be applied to the list of projects designated to receive funding. The methods used for ranking include:

(1) Project costs. Project costs will be determined by cost estimates contained in the project information form if the executive administrator deems those costs reasonable and acceptable; the costs will also be reflected in the applicable IUP.

(2) Tie-breakers. If two or more projects receive the same rating, then the executive administrator will use the tie-breaker procedures described in the applicable IUP.

(3) Bypass procedure. The executive administrator may bypass higher rated and ranked projects if:

(A) an incomplete application is submitted as described in §375.41 of this title (relating to Timeliness of Application and Required Application Information); or

(B) a bypass is necessary to fund certain types of projects as detailed in the applicable IUP or as required by capitalization grant conditions.

(e) Projects submitted for financing will be screened for eligibility, scored, ranked, and listed on a Project Priority List. Applicants with projects on the Initial Invited Projects List will be invited to submit applications in accordance with the procedures and deadlines as detailed in the IUP. The project selection is subject to subsections (a) - (d) of this section. The Project Priority [~~Invited Projects~~] List will be reviewed periodically and additional invitations will be extended until all of the annual CWSRF funding amount is committed.

(f) Utilization of remaining funds. If there are insufficient applications for financial assistance to obligate available funds for the funding year, then the executive administrator shall utilize the remaining funds during the next funding year or at any time in combination with other Board financial assistance programs.

(g) Fund shortages. When the amount of funds required to fund all complete applications for financial assistance exceeds the amount of funds available in the funding year, a shortage of funds exists. In such an instance, the Board will fund Applicants until all funds have been utilized. The Board shall fund projects prioritized by the date and time of receipt of a complete application and the project's ability to proceed to commitment.

#### §375.34. *Changes to Project.*

Subsequent to adoption of an IUP, the Applicant for a proposed project listed within the Project Priority [~~Invited Projects~~] List may be allowed certain changes without requiring a re-ranking in the following circumstances:

(1) the Applicant for a proposed project changes but the project does not change;

(2) [(4)] the number of participants in a regional [~~consolidation~~] project changes and [~~may change provided that~~] the change does not result in a change [~~modification~~] to the rating; or [~~and~~]

(3) [(2)] the fundable [~~depending on the availability of funds; the total cost of the project may not increase in an~~] amount of a proposed project does not increase by more than 10[%] percent of the amount listed in the approved [~~adopted~~] IUP. The executive administrator may waive the 10[%] percent limit to incorporate additional elements or increased project costs; however, any principal forgiveness awarded may not exceed the original IUP amounts allocation [~~to the project~~].

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

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## SUBCHAPTER D. APPLICATION FOR ASSISTANCE

### 31 TAC §§375.40 - 375.45

#### STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §375.40. *Pre-Application Conferences.*

The Applicant must schedule an appointment and participate in a pre-application conference to be held in person or by teleconference to discuss the eligibility of the project and of the Applicant for financial assistance; the general, engineering, environmental, fiscal, and legal requirements of an application; and to assist the Applicant in completing an application. The following individuals should participate in [~~attend~~] the conference: a member of the governing body of the Applicant; the consulting engineer; and the financial advisor.

#### §375.41. *Timeliness of Application and Required Application Information.*

(a) Time to submit applications. Applications and required additional data or information must be submitted in a timely basis. The failure to timely submit the application, the information necessary to complete the application or additional requested information will result in the bypass of the project [~~on the Invited Projects List~~].

(1) Deadline to submit application. Applicants shall submit a complete application by the deadlines established by the Board as detailed in the applicable IUP or the project will be bypassed [~~ineligible for funding~~]. The Applicant will be notified when an application is administratively complete.

(2) Incomplete applications. An Applicant shall cure any deficiency in an application upon request from the executive administrator and shall submit all requested information within fourteen days from receipt of the notice of a deficiency.

(3) Additional information. The Applicant shall submit any additional or modified information or data required by the executive administrator within fourteen days of the request for same, regardless of the expiration of other applicable deadlines in this section.

(4) Extension of time. The executive administrator may grant an extension of time to complete the application or to receive additional information and data if the Applicant can show good cause for the delay or if the delay is caused by an event of force majeure. The executive administrator exercises sole discretion in determining whether and to what extent to grant a time extension.

(b) Required application information. For eligible public Applicants, an [~~An~~] application shall be in the form and number of copies [~~numbers~~] prescribed by the executive administrator and, in addition to any other information that may be required by the executive administrator or the Board, the Applicant shall provide [~~at a minimum,~~] the following documentation:

(1) a resolution from its governing body that shall:

(A) request financial assistance, identifying the amount of requested assistance;

(B) designate the authorized representative to act on behalf of the governing body; and

(C) authorize the representative to execute the application, appear before the Board on behalf of the Applicant, and submit such other documentation as may be required by the executive administrator;

(2) a notarized affidavit from the authorized representative stating that:

(A) the decision to request financial assistance from the Board was made in a public meeting held in accordance with the Open Meetings Act (Texas Government Code, Chapter 551) and after providing all such notice as is required by the Open Meetings Act or, for a corporation, that the decision to request financial assistance from the Board was made in a meeting open to all customers after providing all customers written notice at least 72 hours prior to such meeting;

(B) the information submitted in the application is true and correct according to best knowledge and belief of the representative;

(C) the Applicant has no outstanding judgments, orders, fines, penalties, taxes, assessment, or other enforcement or compliance issues of any kind or nature by EPA, the Commission, Texas Comptroller of Public Accounts, the Utility Commission, Texas Office of the Secretary of State, or any other federal, state, or local government, that would materially affect the Applicant's ability to repay its debt, or identifying such judgments, orders, fines, penalties, taxes, assessment, or other enforcement or compliance issue as may be outstanding for the Applicant;

(D) the Applicant warrants compliance with the representations made in the application in the event that the Board provides the financial assistance; and

(E) the Applicant will comply with all applicable federal laws, rules, and regulations as well as the laws of this State and the rules and regulations of the Board;

(3) copies of the following project documents:

(A) any draft or executed contracts for consulting services to be used by the Applicant in applying for financial assistance or constructing the proposed project, including but not limited to, financial advisor, engineer, and bond counsel; and

(B) contracts for engineering services should include the scope of services, level of effort, costs, project schedules, and other information necessary for adequate review by the executive administrator. A project schedule shall be provided with the contract; the schedule must provide firm timelines for the completion of each phase of a project and note the milestones within the phase of the project;

(4) a citation to the specific legal authority in the Texas Constitution and statutes under which the Applicant is authorized to provide the service for which the Applicant is receiving financial assistance as well as the legal documentation identifying and establishing the legal existence of the Applicant;

(5) if the Applicant provides or will provide wastewater service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing;

(6) documentation of the ownership interest, with supporting legal documentation, for the property on which the proposed project shall be located, or if the property is to be acquired, certification that the Applicant has the necessary legal power and authority to acquire the property;

(7) if financing of the project will require a contractual loan agreement or the sale of bonds to the Board payable either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts, for a duration specified by the executive administrator, under which the Applicant's gross income is expected to accrue. Before the financial assistance is closed, an Applicant shall submit executed copies of such contracts to the executive administrator;

(8) if the bonds to be sold to the Board are revenue bonds secured by a subordinate lien, a copy of the authorizing instrument of the governing body for all prior and outstanding bonds shall be furnished;

(9) if a bond election is required by law to authorize the issuance of bonds to finance the project, the executive administrator may require Applicant to provide the election date and election results necessary for the issuance of the bonds as part of the application or prior to closing;

(10) an audit of the Applicant for the preceding year prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, unless an alternative method of establishing a reliable accounting of the financial records of the Applicant is approved by the executive administrator; and

(11) a listing of all the funds used for the project, including funds already expended from sources other than financial assistance offered from the Board, such as from participating local government entities or prior-issued debt. [if additional funds are necessary to complete the project, or if the applicant has applied for and/or received a commitment from any other source for the project or any aspect of the project, a listing of those sources, including total project costs, financing terms, and current status of the funding requests.]

(c) For eligible private Applicants, an application shall be in the form and number of copies prescribed by the executive administrator, and, in addition to any other information that may be required by the executive administrator or the Board, such Applicant shall provide:

(1) the legal documentation identifying and establishing the legal existence of the Applicant, including articles of incorporation with certificate of account status or partnership agreements;

(2) the documentation identifying and establishing full legal and equitable ownership interests of the real and personal property that constitute the water system held by the Applicant;

(3) the Applicant shall provide:

(A) identification of any affiliated interests or affiliates;  
and

(B) a notarized statement from the sole proprietor or each entity holding an ownership interest:

(i) identifying an individual whom may act as the representative on behalf of the sole proprietor or each legal entity which has been identified as maintaining an ownership interest in the Applicant;

(ii) authorizing such representative to submit an application and such other documentation as may be required by the executive administrator;

(4) identification of the authority to provide the service for which the assistance is requested which shall include:

(A) a map of the area served acceptable to the executive administrator;

(B) if the Applicant provides or will provide wastewater collection or treatment service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing; and

(C) for utilities, as defined pursuant to Utility Commission rules, the Certificate of Convenience and Necessity number and a service area map;

(5) a notarized affidavit by the designated representative of the Applicant:

(A) requesting financial assistance and identifying the amount of requested assistance;

(B) stating that the information submitted in the application is true and correct according to belief and knowledge of the representative;

(C) stating that the Applicant or any of its affiliates or affiliated interests has no outstanding judgments, orders, fines, penalties, taxes, assessment, or other enforcement or compliance issue of any kind or nature by EPA, the Commission, Texas Comptroller of Public Accounts, Utility Commission, Texas Office of the Secretary of State, or any other federal, state, or local government, that would materially affect the Applicant's ability to repay its debt, or identifying such judgments, orders, fines, penalties, taxes, assessment, or other enforcement or compliance issue as may be outstanding against the Applicant or any of its affiliates or affiliated interests;

(D) stating that each entity with an ownership interest warrants compliance with representations made in the application in the event that the Board provides the financial assistance;

(E) for eligible private Applicants, stating that the decision to request financial assistance from the Board was made in accordance with any applicable bylaws or charter of the Applicant; and

(F) assuring compliance with all applicable federal laws, rules, and regulations as well as the laws of this State and the rules and regulations of the Board;

(6) copies of the following project documents:

(A) any draft or executed contracts for consulting services to be used by the Applicant in applying for financial assistance or constructing the proposed project, to include, but not limited to, financial advisor, engineer, and bond counsel; and

(B) contracts for engineering services should include the scope of services, level of effort, costs, project schedules, and other information necessary for adequate review by the executive administrator. A project schedule shall be provided with the contract; the schedule must provide firm timelines for the completion of each phase of a project and note the milestones within the phase of the project;

(7) a business plan that:

(A) identifies by month for the next 18 months, or for the time period of project construction, whichever is longer, anticipated revenues, including any anticipated rate increases, and anticipated expenditures; and

(B) provides five year historical data on system revenue and expenditures;

(8) copies of the federal income tax returns for the Applicant for the two previous tax years;

(9) documentation of any bankruptcy proceedings for the Applicant or any affiliated interests or affiliates for the preceding five years or a sworn statement that the Applicant or any affiliated interests or affiliates has not been a party to a bankruptcy proceeding for the preceding five years;

(10) if any part of the community water system has been pledged or otherwise used as security for any other indebtedness of the Applicant or an affiliate or affiliated interest, a copy of the outstanding indebtedness;

(11) if financing of the project will require a contractual loan agreement or the sale of bonds to the Board payable either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts, for a duration specified by the executive administrator, under which Applicant's gross income is expected to accrue. Before the financial assistance is closed, an Applicant shall submit executed copies of such contracts to the executive administrator;

(12) if the Applicant is required to utilize a surcharge or otherwise intends to rely on an increase in the rate that it is charging in order to repay the requested financial assistance, a copy of the acknowledgment from the Utility Commission that the proposed rate change filing has been received;

(13) an audit of the Applicant for the preceding year prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, unless an alternative method of establishing a reliable accounting of the financial records of the Applicant is approved by the executive administrator; and

(14) if additional funds are necessary to complete the project, or if the Applicant has applied for and/or received a commitment from any other source for the project or any aspect of the project, a listing of those sources, including total project costs, financing terms, and current status of the funding requests.

#### *§375.42. Review of Applications.*

(a) Review of applications. The executive administrator will review the application to ensure that sufficient information has been provided to support the eligibility of the Applicant and the project. The executive administrator may request that the information or data for any portion of the application be modified or supplemented.

(b) Submittal of requested information. If the Applicant fails to submit information or data requested within the established time period, then the executive administrator may notify the Applicant that the application is incomplete and will be bypassed.

(c) If an applicant does not proceed through the application process and obtain a commitment within the application timeframes established within the applicable IUP, the principal forgiveness may be re-allocated to another eligible project. An extension of time for obtaining a commitment may be granted at the discretion of the executive administrator.

{(e) If the applicant has received an obligation of federal funds by the United States Department of Agriculture-Rural Development that would duplicate funding from the board for the same project, as evidenced in writing from the United States Department of Agriculture-Rural Development, or if the applicant has canceled such an obligation, the executive administrator shall not submit the application to the board and shall notify the applicant that its application will no longer be considered for this reason, unless good cause is shown that the application should be submitted to the board.]

#### *§375.43. Required Water Conservation Plan and Water Loss Audit.*

(a) Water Conservation Plan. An Applicant shall submit a water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan).

(b) Water Loss Audit. An Applicant that is a retail public utility that provides potable water shall submit its most recent water loss audit in accordance with §358.6 of this title (relating to Water Loss Audits), unless it has previously been submitted.

(c) If a retail public utility's total water loss meets or exceeds the threshold for that utility in accordance with §358.6 of this title, the retail public utility must use a portion of any new financial assistance, or any other financial assistance provided by the Board, for projects costs that are eligible under the Act and the applicable IUP to mitigate the utility's water loss. However, at the request of a retail public utility, the Board may waive this requirement in accordance with §358.6 of this title.

§375.44. *Board Approval of Funding.*

(a) Presentation to Board. The Board must consider each application at a public meeting. The executive administrator will notify the Applicant when the Board's consideration of the application is scheduled for a public meeting.

(b) Action by Board. After considering the executive administrator's recommendation and comments from the Applicant and other interested persons, the Board may:

(1) resolve to approve an application only when it finds that the revenue or taxes or both revenue and taxes pledged by the Applicant will be sufficient to meet all obligations that will be assumed by the Applicant;

(2) resolve to disapprove or amend the proposed conditions for the financial assistance;

(3) request additional information related to the eligibility of the Applicant or the project or withdraw the application for consideration at another time; and

(4) approve an application for pre-design funding despite a negative recommendation from the executive administrator.

(c) Board's resolution. The Board's approval of an application and award of a commitment is recorded through the issuance of a resolution.

(d) Expiration of Board commitment. The Board's commitment for financial assistance expires on the date noted in the commitment, as delineated in the IUP applicable to the project. [~~or if no date is noted then the commitment expires after:~~]

~~{(1) 12 months for a commitment for financial assistance that includes construction, including financial assistance under the pre-design funding option; or}~~

~~{(2) six months for a commitment for financial assistance for planning, acquisition and design.}~~

(e) Extension of expiration date. Upon [commitment. The Board is not required to approve the request for an extension of time to close the commitment for financial assistance. The Board is released from its offer to provide financial assistance for the project when the commitment expires. However, upon] good cause shown or upon a showing that an event of [a] force majeure, as defined in this chapter, [event] caused the Applicant's failure to [close the commitment] timely close the commitment, then an extension of the expiration date may be granted at the discretion of the Board. [the Applicant may receive one extension of time by:]

(1) The Applicant must submit [submitting] a written request, at least 45 [30] days prior to the expiration date, except in the event of force majeure, as defined in this chapter, that contains [containing] an explanation of the need for the extension and a request for a specific date for closing.; and]

(2) The [the] Board may, but is not required to, approve the request for an [approves the] extension of time [by minute order or resolution] and may allow a longer extension as appropriate to the circumstances in the event of force majeure.

§375.45. *Multi-year Commitments*

(a) Commitment periods may be set for a period of up to five years. The minimum interest rate reduction for the multi-year commitments will be established for the five year period based on the interest rate reduction prescribed in the IUP for the first year's commitment.

(b) This option is only available for projects that do not receive principal forgiveness based on the affordability criteria. However, the entity receiving a multi-year commitment may receive principal forgiveness for the other eligible options, such as principal forgiveness for green projects, for the amount of funds committed for the initial year.

(c) Any entity receiving a multi-year commitment must annually re-confirm its anticipated funding commitments established with the initial commitment.

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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General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



SUBCHAPTER E. ENVIRONMENTAL  
REVIEWS AND DETERMINATIONS  
DIVISION 2. FEDERAL PROJECTS

**31 TAC §§375.60 - 375.71**

STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

§375.60. *Definitions [for Equivalency Projects].*

Unless specifically defined differently within this subchapter, the following terms and acronyms, used in this subchapter, mean:

(1) Affected community--A community potentially impacted by the proposed project. [where the proposed project is expected to result in environmental impacts or potential human health or environmental effects including minority communities, low-income communities or federally-recognized Indian tribal communities.]

(2) Categorical Exclusion (CE)--An environmental finding issued by the Board for projects that would not individually or cumulatively have a significant adverse effect on the human environment and

for which, therefore, the Applicant is not required to prepare an Environmental Information Document or an Environmental Impact Statement.

(3) Environmental Assessment--A public document prepared by the executive administrator for projects that may result in adverse environmental impacts and the significance of those impacts is not known. The Environmental Assessment, based primarily on the Environmental Information Document, must provide sufficient evidence and analysis to determine whether to prepare a Finding of No Significant Impact or an Environmental Impact Statement.

(4) Environmental Impact Statement (EIS)--A detailed written statement prepared by a third-party contractor, in close coordination with the executive administrator, that analyzes environmental impacts of project alternatives for projects with significant adverse impacts on the quality of the human environment. An EIS is required for projects that do not qualify for a Finding of No Significant Impact. An EIS provides the most comprehensive and detailed information about potential environmental impacts and mitigation required to comply with the NEPA. It is the basis for the Record of Decision issued by the Board.

(5) Environmental Information Document (EID)--A written analysis prepared by the Applicant that provides sufficient information, including appropriate regulatory agency correspondence and public participation documentation, for the executive administrator to undertake an environmental review and determine if the project qualifies for a Finding of No Significant Impact or if an Environmental Impact Statement will be required. An EID is not always necessary to determine if the project will require preparation of an EIS.

(6) Federal Environmental Cross-cutters--Federal environmental statutes, laws and Executive Orders that apply to projects and activities with a federal nexus, including the receipt of federal financial assistance.

(7) Finding of No Significant Impact (FONSI)--An environmental finding issued by the Board when the environmental assessment prepared for the project supports the determination that the project will not have a significant adverse effect on the human environment and therefore, does not require the preparation of an environmental impact statement.

(8) Human environment--The natural and physical environment and the relationship of people with that environment.

(9) Indian tribes--Federally recognized Indian tribes.

[(2) Avoidance--Avoiding the impact altogether by not taking a certain action or parts of an action during project implementation.]

[(3) NEPA--The federal National Environmental Policy Act, 42 U.S.C. §§4321 et seq.]

[(4) Indian tribes--Federally recognized Indian tribes.]

[(5) Minimization--Minimizing impacts by limiting the degree or magnitude of the action during project implementation.]

(10) [(6)] Mitigation--

(A) avoiding the impact altogether by not taking a certain action or parts of an action;

(B) minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(C) rectifying the [an] impact by repairing, rehabilitating, or restoring the affected environment;

(D) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the project; and

(E) compensating for the impact by replacing or providing substitute resources or environments.

(11) NEPA--The Federal National Environmental Policy Act, 42 U.S.C. §§4321 et seq.

(12) Record of Decision (ROD)--An environmental finding issued by the Board that identifies the selected project alternative, presents the basis for the decision, identifies all the alternatives considered, specifies the environmentally preferable alternative, and provides information on the adopted means to mitigate for environmental impacts. The ROD is based on the conclusions of the EIS.

(13) Statement of Finding (SOF)--An environmental finding issued by the Board to correct, clarify, modify, or adopt a previous environmental finding, issued by the Board or other agency.

§375.61. Environmental Review Process.

(a) Policy and purpose. This subchapter governs the environmental review of projects funded in whole or in part by the CWSRF. Environmental review of all proposed infrastructure projects is a condition of the use of CWSRF financial assistance and is subject to annual audits by the EPA. This subchapter follows the procedures established by the EPA for implementing the National Environmental Policy Act [NEPA] set forth at 40 CFR Part 6. The environmental review [must be completed prior to the release of funds for design and construction and the review] is subject to public comment. The Applicant, at all times throughout the design, construction, and operation of the project, shall comply with the findings [determinations] resulting from the environmental review.

(b) Timing. The environmental review process is a component of the planning phase and must be completed prior to the executive administrator's approval of the Applicant's engineering feasibility report.

(c) [(b)] Types of environmental findings. At [determinations. An environmental determination is issued by the executive administrator at] the culmination of the environmental review process described in this subchapter[- After gathering and reviewing relevant information and data, soliciting comments from state and federal agencies and receiving and analyzing public comments], the Board [executive administrator] will issue one of the following findings [determinations]:

(1) a Categorical Exclusion:[;]

(A) based on review [submission] of information submitted by [from] the Applicant; and

(B) the eligibility criteria described in §375.62 of this subchapter.

(2) a Finding of No Significant Impact:[;]

(A) based on review of the Applicant's Environmental Information Document; and

(B) the executive administrator's [Board's] Environmental Assessment; [or]

(3) a Record of Decision:[;] based on review of the [an] Environmental Impact Statement prepared by the Applicant's third party contractor; or[-]

(4) a Statement of Findings:

(A) based on review of a previous environmental finding for the proposed project;

(B) based on review of proposed project modifications for consistency with a previous environmental finding; and/or

(C) to correct, clarify, or modify an environmental finding.

(d) [(e)] General review by the executive administrator.

(1) The executive administrator shall ensure that [conduet] an inter-disciplinary, inter-agency, and public review is conducted consistent with the NEPA. The purpose of this review is to ensure that the proposed project will comply with the applicable local, state, and federal laws and regulations relating to the identification of potential [the] environmental impacts of a proposed project and the necessary steps required to [avoid, minimize and, if necessary,] mitigate such impacts. The scope of the environmental review will depend upon the type of proposed action, the reasonable alternatives, and the type of environmental impacts.

(2) For all environmental findings [determinations] that are five years old or older, and for which the proposed infrastructure project has not yet been implemented, the executive administrator must re-evaluate the proposed financial assistance application as well as the environmental conditions and public comment to determine whether to conduct a supplemental environmental review in compliance with the NEPA, or to reaffirm the original finding [determination]. If there has been substantial change in the proposed infrastructure project that is relevant to environmental concerns, or if there are significant new circumstances, changes in federal environmental cross-cutter requirements that affect the environmental finding, or information relevant to environmental concerns, the executive administrator must conduct a supplemental environmental review and complete an appropriate finding [determination] in compliance with the NEPA. The executive administrator may consider environmental findings [determinations] issued by other entities.

(e) Equivalency projects. The Board will inform EPA when consultation or coordination by EPA with other federal agencies is necessary to resolve issues regarding compliance with applicable federal authorities.

§375.62. Board's Environmental Finding [Types of Environmental Determinations]: Categorical Exclusions.

(a) A proposed project can be categorically excluded from a full environmental review if the proposed project:

(1) fits within the category of action that is eligible for exclusion, as listed in subsection (b) of this section;

(2) [Categorical Exclusions may be available for projects that] will not result in significant impacts on the quality of the human environment; and

(3) does [that do] not involve extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section.

(b) Projects that may be eligible for a categorical exclusion include the following actions on existing systems:

(1) those that involve upgrades that are minor;

(2) minor expansion of system capacity;

(3) the rehabilitation, including functional replacement of the existing system and system components; and

(4) the construction of new minor ancillary facilities located adjacent to or on the same property as existing facilities.

(c) Projects not eligible for a CE include:

(1) projects that would otherwise be eligible for a CE but due to extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, are not eligible for a CE;

(2) projects that involve new or relocated discharges to surface or ground water;

(3) projects that will likely result in the substantial increase in the volume or the loading of a pollutant to the receiving water;

(4) projects that will provide capacity to serve a population 30[%] percent greater than the existing population;

(5) projects that are not supported by the state, or other regional growth plan or strategy; and

(6) projects that directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

(d) Extraordinary circumstances may become known at any time during the planning, design, or construction of a project and may cause the project to be ineligible for a CE. Extraordinary circumstances include, but are not limited to, the following known or expected impacts:

(1) potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time;

(2) disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities;

(3) a significant effect on federal or state-listed threatened or endangered species or their critical habitat;

(4) a significant effect on national or state natural landmarks or property with nationally significant or state historic, architectural, prehistoric, archeological, or cultural value;

(5) a significant effect on environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat;

(6) a significant adverse air quality effect;

(7) a significant effect on the pattern and type of land use or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans;

(8) significant public controversy about a potential environmental impact of the proposed project; and

(9) conflict with federal, state, or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

(e) Upon the discovery of extraordinary circumstances, the executive administrator may deny a CE or rescind an existing CE.

~~[(f) An Applicant shall submit sufficient information to demonstrate why the project is eligible for a CE including, but not limited to the following documentation:]~~

~~[(1) a brief but complete description of the project;]~~

~~[(2) plan maps or maps of the project depicting the location of all construction areas, the planning area boundaries, and any known environmentally important natural areas;]~~

~~[(3) information regarding the eligibility of the project for a CE under the criteria listed in subsection (b) of this section; and]~~

~~[(4) any information that may be helpful to determine whether any extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, apply to the project.]~~

~~(f) [(g)] The executive administrator shall review the information submitted by the Applicant and may request additional information as needed to complete the finding [determination] regarding the eligibility of a proposed project for a categorical exclusion.~~

~~(g) [(h)] The Board's finding [executive administrator's determination] relating to a CE shall be subject to public notice, which shall be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice in a newspaper of general circulation in the county or counties of the affected community.~~

§375.63. Applicant Requirements: Categorical Exclusions.

(a) Projects that qualify to be categorically excluded from a full environmental review fit into a category of actions, identified by the EPA, that do not individually or cumulatively have a significant effect on the human environment and do not involve extraordinary circumstances. This determination is based upon the criteria established in §375.62 of this subchapter (relating to Board's Environmental Finding: Categorical Exclusions).

(b) An Applicant shall submit sufficient information to demonstrate why the project is eligible for a CE including, but not limited to the following documentation:

(1) a brief but complete description of the project;

(2) plan maps or maps of the project depicting the location of all construction areas, the planning area boundaries, and any known environmentally important natural areas;

(3) information regarding the eligibility of the project for a CE under the criteria listed in §375.62 of this subchapter;

(4) any information that may be helpful to determine whether any extraordinary circumstances, as listed in §375.62 of this subchapter, apply to the project; and

(5) any information that may be helpful to determine if mitigation measures are required to ensure the project will not individually or cumulatively have a significant adverse impact on the human environment. This includes, but is not limited to, coordination with applicable regulatory agencies regarding resources within their jurisdiction that may be adversely impacted by the project.

§375.64. Board's Environmental Finding: Finding of No Significant Impact.

(a) Purpose and applicability. A Finding of No Significant Impact (FONSI) may be issued if the proposed action will not have a significant effect on the human environment. A FONSI shall be based upon the information submitted by the Applicant and upon the environmental assessment (EA) prepared by the executive administrator.

(b) Environmental Assessment. An Environmental Assessment is required when the proposed project is expected to result in environmental impacts and the significance of those impacts is not known. When the executive administrator preliminarily determines that the impacts will not be significant and may be addressed by ordinary mitigation measures, then an Environmental Assessment will be prepared. An Environmental Assessment is not required if the proposed action is categorically excluded or if an Environmental Impact Statement is required.

(c) Contents of an Environmental Assessment.

(1) An Environmental Assessment shall include a brief discussion of the following:

(A) the purpose and need for the proposed project and an estimate of cost of the project;

(B) the alternatives considered, including the no action alternative, and the reasons for the rejection or acceptance of the alternatives;

(C) the affected environment, including baseline conditions that may be impacted by the proposed actions and the alternatives;

(D) the environmental impacts of the proposed project and the alternatives, including any unresolved conflicts concerning alternative use of available resources; and

(E) applicable environmental laws and executive orders.

(2) The form of the Environmental Assessment generally shall include:

(A) a listing or summary of coordination and consultation undertaken with any federal, state, local, or Indian tribe government regarding compliance with applicable environmental laws and executive orders;

(B) identification and description of the mitigation measures considered, including mitigation measures that must be adopted to ensure the proposed project will not have significant impacts; and

(C) incorporation of documents by reference, including the Environmental Information Document submitted by the Applicant.

(d) Contents of a FONSI. When the Environmental Assessment supports a finding that the proposed project will not have a significant effect on the human environment, then the Board may issue a FONSI. The FONSI must include the following components:

(1) an Environmental Assessment;

(2) a brief description of the reasons why there are no significant impacts;

(3) any commitments to mitigation measures that are essential to render the impacts of the proposed project insignificant;

(4) the date of issuance and signature of the executive administrator; and

(5) the executive administrator's statement that the Applicant has committed to the mitigation measures and that the Applicant has the ability and the authority to fulfill the commitment to mitigation;

(e) Public comments and the issuance of a FONSI.

(1) The executive administrator shall make the Environmental Assessment and preliminary FONSI available on the Board's website for review and public comment for a period of at least thirty (30) days.

(2) If no substantive comments are received, the executive administrator may proceed with the proposed project subject to the mitigation measures identified in the FONSI. If substantive comments are received, then the executive administrator shall respond to the comments and revise the FONSI accordingly, if necessary.

(3) The executive administrator shall ensure that the mitigation measures necessary to the FONSI determination are enforceable and shall conduct appropriate monitoring of these measures. All contracts, plans, specifications, and other applicable documents used during the design and construction of the project shall contain reference to

or descriptions of the mitigation measures included in the FONSI, as required by this subchapter.

(f) Dissemination of information about mitigation measures. The executive administrator may provide written notification describing the outcome of the mitigation measure proposed in an environmental finding to interested agencies and public groups.

§375.65. Applicant Requirements: Environmental Information Document.

(a) An Applicant shall prepare an Environmental Information Document (EID) in consultation with the executive administrator for projects that have potential adverse environmental impacts and the significance of those impacts is not known. The executive administrator will provide guidance on the format and contents of the EID prior to the initiation of planning for the proposed project or as soon as practicable upon receipt of an application. An EID is not required when:

(1) the project is eligible for a CE or requires the preparation of an EIS;

(2) the Applicant submits a previous environmental finding that meets CWSRF program requirements, including compliance with the NEPA; or

(3) the Applicant prepares and submits a draft EIS and supporting documents that meet CWSRF program requirements, including compliance with the NEPA.

(b) Coordination. The Applicant shall prepare the EID in coordination with the appropriate federal agencies, state, and local governments, Indian tribes, and other potentially affected parties. The Applicant must also notify the executive administrator regarding any private entities or organizations affected by the proposed project.

(c) Contents of EID. The EID shall include, but is not limited to:

(1) a description of the project;  
(2) the need for the proposed project;  
(3) the alternatives to the project, including the no action alternative;

(4) the affected environment, including baseline conditions that may be impacted by the proposed project and the alternatives;

(5) the environmental impacts of the proposed action and alternatives, including unresolved conflicts concerning alternative uses of available resources;

(6) potential impacts on resources protected by the federal environmental cross-cutters;

(7) documentation showing that requisite regulatory agencies have been consulted;

(8) proposed mitigation measures supporting the issuance of a FONSI;

(9) documentation showing that the requisite public participation requirements have been satisfied; and

(10) any other information required by the executive administrator.

§375.66. Environmental Impact Statements.

(a) Purpose and applicability. An EIS examines impacts from the proposed project that are significantly affecting the human environment, requires close coordination with the Board and other agencies, and is the primary basis for the Board's issuance of a Record of Decision.

(b) Required EIS. An EIS shall be prepared for:

(1) new regional water supply systems for a community with a population greater than 100,000;

(2) actions likely to have a significant adverse effect on:

(A) local ambient air quality;

(B) local ambient noise levels;

(C) surface water reservoirs or navigation projects;

(D) the environment due to the releases of radioactive, hazardous, or toxic substances or biota;

(E) federal or state natural landmarks or any property eligible for the national or state register of historic places; or

(F) environmentally important natural resources such as wetland, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat;

(3) actions inconsistent with federal, state, local, or Indian tribe environmental, resources protection, or land use laws or approved land use plans or regulations;

(4) actions likely to significantly affect the pattern and type of land use or growth and distribution of population, including altering the character of residential areas;

(5) actions that in conjunction with federal, state, local, or Indian tribe projects are likely to produce significant cumulative impacts; and

(6) actions with uncertain environmental effects or highly unique environmental risks that are likely to be significant.

§375.67. Decision to Prepare an Environmental Impact Statement: Notice of Intent.

(a) Notice of Intent (NOI) to prepare an EIS. When the executive administrator recommends the issuance of an EIS, a NOI will be published in the *Texas Register* in order to provide the public with the opportunity to participate in a scoping meeting.

(b) Contents of NOI. The NOI shall contain information about a scoping meeting which shall be held no sooner than fifteen days after the publication of the notice of intent. The public comment period for the proposed scope of the EIS shall be at least forty-five days.

§375.68. Board's Environmental Finding: Record of Decision.

(a) General. A Record of Decision (ROD) results from an extensive environmental review of a proposed project's potential environmental impacts as detailed in an EIS.

(b) Contents of ROD. A ROD must include the following components:

(1) a brief description of the proposed project and the alternatives considered in the EIS as well as the environmental factors considered and the project's impacts;

(2) commitments to implement mitigation measures;

(3) an explanation if the environmentally preferred alternative was not selected;

(4) responses to substantive comments on the final EIS;

(5) the executive administrator's statement that the Applicant has committed to the mitigation measures and that the Applicant has the ability and the authority to fulfill the commitment to the measures; and

(6) the date of issuance and the signature of the executive administrator.

(c) Issuance of the ROD. The issuance of a ROD allows the Applicant to proceed with the proposed action subject to mitigation measures described in the ROD. The ROD shall be made available to the public.

(d) Monitoring of mitigation measures. The executive administrator shall ensure that adequate monitoring of the mitigation measures occurs throughout the construction of the project. Additionally all contracts, plans, specifications, and other applicable documents used during the planning, design, and construction of the project shall contain reference to or descriptions of the mitigation measures.

(e) Dissemination of information about mitigation measures. The executive administrator may provide written notification describing the outcome of the mitigation measures proposed in an environmental finding to interested agencies and public groups.

§375.69. Applicant Requirements: Environmental Impact Statement.

(a) Third party contractor. The Applicant shall contract with a third-party contractor at its own expense to prepare an EIS and any associated documents required for consideration by the executive administrator.

(b) Executive administrator approval. The executive administrator must approve of and participate in the Applicant's selection of the third-party contractor. The third party contractor shall be selected on the basis of its qualifications to prepare the EIS, including experience with data collection and analyses as well as with the clear presentation of information and data. The third-party contractor shall be responsible for providing technical advice to the Applicant and for receiving and incorporating technical advice from the executive administrator.

(c) The third-party contractor shall not have any financial or other interest in the proposed project and must submit a disclosure statement to the executive administrator documenting the fact that it has no financial or other interest in the project.

(d) Contract with third party. The Applicant and the executive administrator must agree to the creation and terms of a contract with the third party jointly selected by them to prepare the EIS. The contract terms must ensure that the third party does not have recourse to the Board or the EPA for financial or other claims arising under the contract.

(e) The third-party contractor shall cooperate with the executive administrator and shall provide draft documents, analyses, and conclusions that adequately assess the relevant environmental issues for review, comment, and direction from the executive administrator. The executive administrator shall have sole responsibility to ensure that the EIS and any associated documents adequately address the relevant environmental issues.

§375.70. Proposed Project Alterations.

(a) Proposed project changes during review. The Applicant must notify the executive administrator if during the environmental review process, the Applicant:

(1) changes its plans for the project as originally submitted;  
or

(2) changes its schedule for the project from the originally submitted schedule.

(b) Alterations of proposed project. Any alteration to a project after the issuance of an environmental finding requires the Applicant to notify the executive administrator in writing in a timely manner. The

Applicant shall briefly describe the reasons for the alterations in the proposed project.

(c) The executive administrator shall examine the contract documents, application, and other related documents to evaluate the proposed alterations to ensure consistency with the environmental finding. The executive administrator's review of proposed project alterations may result in:

(1) a notation to the file that the proposed alterations are minor in nature as described in subsection (d) of this section;

(2) the issuance of a SOF to confirm that project alterations are within the scope of the original environmental finding and do not require preparation of a new EID;

(3) the issuance of a FONSI when a CE has been revoked, or the issuance of a public notice that the preparation of an EIS will be required;

(4) the issuance of an amendment to a FONSI, or the revocation of a FONSI and the issuance of a public notice that the preparation of an EIS will be required; or

(5) the issuance of a supplement to a ROD, or the revocation of the ROD and issuance a public notice that financial assistance for the proposed project will not be provided.

(d) Minor changes to the proposed or reviewed project that do not create previously unconsidered adverse environmental impacts usually will not affect the ability of the proposed project alterations to proceed without additional formal environmental review.

(e) Major changes to the proposed or reviewed project that are previously unexamined and that have the potential to create adverse environmental impacts may result in a decision to revoke a CE or a FONSI and to proceed with a more detailed level of environmental review consistent with this subchapter.

§375.71. Use of Previously Prepared Environmental Findings.

(a) Adoption of a previous environmental finding. Previous environmental findings issued by the EPA and other agencies may be adopted in accordance with this section, provided that the finding was produced through procedures in compliance with the NEPA. The executive administrator must re-evaluate the proposed financial assistance application as well as environmental conditions and public comment to determine whether to conduct a supplemental environmental review of the action and complete an appropriate document in compliance with the NEPA, or to reaffirm the original finding.

(b) Previously required mitigation measures. Any and all mitigation measures specified in the previous finding for the applicable project components shall be applied as conditions of the commitment and closing for financial assistance documents and shall be consistent with the requirements of this subchapter.

(c) Method of adoption of a previous environmental finding. The previous finding will be adopted through the issuance of a Statement of Findings when the proposed project and its previous finding will be adopted without substantial modifications. The previous finding may also be adopted in a FONSI.

(d) Validity of previous environmental findings and re-evaluation. An environmental finding shall be re-evaluated if it was issued five years or more prior to the executive administrator's environmental review and if:

(1) the proposed project has not yet been implemented;

(2) there has been substantial change in the proposed infrastructure project that is relevant to environmental concerns; and

(3) there are significant new circumstances or information relevant to environmental impacts of the proposed action.

(e) Dissemination of information about mitigation measures. The executive administrator may provide written notification describing the outcome of the mitigation measures proposed in an environmental finding to interested agencies and public groups.

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

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Texas Water Development Board

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For further information, please call: (512) 463-8061



## SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

### 31 TAC §§375.81 - 375.83

#### STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §375.81. *Engineering Feasibility Report.*

(a) The Applicant shall submit an engineering feasibility report signed and sealed by a professional engineer registered in the State. The report, based on guidelines provided by the executive administrator, shall provide:

- (1) a description and purpose of the project;
- (2) the names of the entities to be served, along with the current and future population;
- (3) the cost of the project;
- (4) a description of the alternatives considered and reasons for selection of the project proposed;
- (5) sufficient information to evaluate the engineering feasibility;
- (6) maps and drawings as necessary to locate and describe the project area;
- (7) sufficient detail to document how ~~that~~ the project will remedy the issues and problems that were evaluated for rating on the IUP;
- (8) information showing the project is cost effective, and for projects that implement new systems or significantly alter current systems a detailed cost-effective analysis, including detailed operation and maintenance costs, may be requested to document program eligibility;
- (9) a detailed project schedule with timelines for each phase of the project and the milestones within each phase of the project; and

(10) any other information or data necessary to evaluate the proposed project. The Applicant must submit any additional information requested by the executive administrator to document the project's eligibility for funding by the program.

(b) Approval of engineering feasibility report. The executive administrator will approve the engineering feasibility report when:

(1) the items listed in subsection (a) of this section have been completed, including requests for additional information or data;

(2) the appropriate environmental findings ~~[determinations]~~ have been completed in accordance with this chapter and the Applicant has agreed to incorporate into project documents, including contracts, all mitigation measures as a result of the environmental review; and

(3) the project and alternatives to the project have been analyzed and the proposed project is cost effective.

(c) Request for project amendment. A request for an amendment, after the approval of the engineering feasibility report, to a project shall be granted only if implementation of the amendment does not affect the original purpose of the project. The implementation of the project amendment must remedy the problems and issues identified in the Applicant's original project information form. Significant amendments to a project require previous approval by the executive administrator. The Applicant shall:

- (1) provide a description of and the need for amendment;
- (2) submit additional engineering or environmental information as requested by the executive administrator;
- (3) provide an estimate of any increase or decrease in total project costs resulting from the proposed amendment; and
- (4) certify that the proposed amendment will not significantly alter the purpose of the project.

(d) Alternative methods of project delivery. Design build, construction manager at risk<sub>2</sub> and other alternative methods of project delivery are eligible for available financial assistance, including combinations of planning, design<sub>2</sub> and construction funding, in accordance with programmatic requirements. The executive administrator will provide written guidance regarding modifications of the type of financial assistance<sub>2</sub> and the review, approval<sub>2</sub> and release of funds processes for alternative delivery projects. The Board may specify special conditions in the commitment as appropriate to accommodate an alternative method of project delivery.

#### §375.82. *Contract Documents: Review and Approval.*

(a) Contract documents include ~~mean~~ the documents that form the construction contracts and the documents that form the contracts for alternative methods of project delivery, which ~~[the documents that include construction and that]~~ may include the construction phase or other phases of the project.

(b) An Applicant shall submit three copies of proposed contract documents, including the engineering plans and specifications, which shall be as detailed as would be required for submission to contractors bidding on the work. The Applicant shall provide the executive administrator with all contract documents proposed for bid advertising. The executive administrator shall review contract documents:

- (1) to ensure consistency with the approved engineering feasibility report and with approved environmental planning documents;

(2) to ensure the proposed construction drawings and specifications provide adequate information so that a contractor can bid and construct the project without additional details or directions;

(3) to ensure compliance with Commission rules at 30 TAC Chapter 217 (relating to Design Criteria for Domestic Wastewater Systems) and other applicable state and federal laws and rules;

(4) to ensure the contract documents notify the contractor about the Board's authority to audit project files and inspect during construction; and

(5) to ensure compliance with other requirements as provided in guidance forms and documents, including any additional documentation required by EPA for equivalency projects.

(c) Other approvals. The Applicant shall obtain the approval of the plans and specifications from any other local, state, and federal agencies having jurisdiction over the project. The executive administrator's approval is not an assumption of the Applicants' liability or responsibility to conform to all requirements of applicable laws relating to design, construction, operation, or performance of the project.

§375.83. *Advertising and Awarding Construction Contracts.*

(a) Applicable laws and rules. The Applicant shall comply with State procurement laws and rules and with applicable federal procurement rules depending on the equivalency requirements for the financial assistance.

(b) Executive administrator approval required. The Applicant shall not proceed to advertising for bids on the project without express written approval of the solicitation documents by the executive administrator. If the applicant proceeds to advertising without approval, it may affect eligibility for funding.

(c) Changes prior to award. If the Applicant needs to alter the plans, ~~and~~ specifications, or ~~and~~ contract documents after the executive administrator's approval, then the Applicant shall:

(1) provide the information and reasons relating to the changes if changes are required prior to bidding. The executive administrator must affirmatively approve any changes prior to advertising.

(2) Changes that occur after advertising must be incorporated into an addendum and provided to the executive administrator for approval as part of the bidding process.

(d) Contract award. The text of a construction contract or a contract containing construction phase work submitted for approval prior to advertising shall contain the same language and provisions as the contingently executed contract.

(e) Pre-construction conference. The Applicant shall conduct a pre-construction conference on significant construction contracts to address the contents of the executed contract documents with the project owner, the project engineer, the prime contractor, and other appropriate parties in attendance. The Applicant shall provide the executive administrator with at least 10 ~~five~~ days advance notice of the date, time and location of the conference.

(f) Notice to proceed. The executive administrator shall review the executed contract documents, including any additional documentation required by EPA for equivalency projects, and upon acceptance of same shall advise the Applicant that a notice to proceed may be issued to the contractor.

(g) No liability. The executive administrator and the Board shall have no liability for any event arising out of or in any way related to the contracts for or construction of the project.

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

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## SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

### 31 TAC §§375.90 - 375.94

#### STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §375.90. *Applicability.*

This subchapter applies to financial assistance for non-equivalency and equivalency projects.

#### §375.91. *Financial Assistance Secured by Bonds or Other Authorized Securities.*

(a) Applicability and required documents. This section applies to closings for financial assistance with entities issuing bonds or other authorized securities. The following documents are required for closing financial assistance secured by bonds or other authorized securities:

(1) evidence that applicable requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) a certified copy of the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board that is acceptable to the executive administrator. The ordinance or resolution shall have sections providing as follows:

(A) if financial assistance proceeds are to be deposited into an escrow account at the time of closing, then an escrow account shall be created that shall be separate from all other accounts and funds, as follows:

(i) the account shall be maintained by an escrow agent as defined in §375.1 of this title (relating to Definitions);

(ii) funds shall not be released from the escrow without prior written approval from the executive administrator who shall issue written authorization for the release of the funds;

(iii) upon request of the executive administrator, escrow account statements shall be provided to the executive administrator;

(iv) the investment of any financial assistance proceeds deposited into an approved escrow account shall be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code, Chapter 2256; and

(v) the escrow account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the project

in a manner that complies with the Public Funds Collateral Act; Texas Government Code, Chapter 2257;

(B) that the Applicant shall fix and maintain rates, in accordance with state law, and collect charges to provide adequate operation and maintenance of the project;

(C) that a construction account shall be created which shall be kept separate from all other accounts and funds of the Applicant;

(D) that bonds shall be closed in book-entry-only form;

(E) the use of a paying agent/registrar that is a Depository Trust Company (DTC) participant;

(F) that the payment of all DTC closing fees assessed by the Board's custodian bank be directed to the Board's custodian bank by the Applicant;

(G) evidence that one fully registered bond has been sent to the DTC or to the Applicant's paying agent/registrar prior to closing;

(H) that all payments, including the origination fee, are made to the Board via wire transfer at no cost to the Board;

(I) that the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(J) that insurance coverage be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(K) that the Applicant, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the Applicant's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the Board and the beneficial owner of the political subdivision's obligations, if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution shall also contain any other requirements of the SEC or the IRS relating to arbitrage, private activity bonds or other relevant requirements regarding the securities held by the Board;

(L) the maintenance of current, accurate, and complete records and accounts in accordance with generally accepted accounting principles to demonstrate compliance with requirements in the financial assistance documents;

(M) that the Applicant shall annually submit an audit, prepared by a certified public accountant in accordance with generally accepted auditing standards;

(N) that the Applicant shall submit a final accounting within 60 days of the completion of the project;

(O) that the Applicant shall document the adoption and implementation of an approved water conservation program for the duration of the financial assistance;

(P) the Applicant's agreement to comply with special environmental conditions specified in the Board's environmental finding [determination] as well as with any applicable Board laws or rules relating to use of the financial assistance;

(Q) that the Applicant shall establish a dedicated source of revenue for repayment of the financial assistance;

(R) that interest payments shall commence no later than one year after the date of closing; ~~and~~

(S) that annual principal payments will commence no later than one year after completion of project construction; and

(T) ~~(S)~~ any other recitals mandated by the executive administrator;

(3) unqualified approving opinions of the attorney general of Texas and, if bonds or other authorized securities are issued, a certification from the comptroller of public accounts that such debt has been registered in that office;

(4) an unqualified approving opinion by a recognized bond attorney;

(5) assurances that the Applicant will comply with any special conditions specified by the Board's environmental finding [determination until all financial obligations to the State have been discharged];

(6) a Private Placement Memorandum containing a detailed description of the issuance of debt to be sold to the Board. The Applicant shall submit a draft Private Placement Memorandum at least 30 days prior to the closing of the financial assistance; a final electronic version of the Memorandum shall be submitted no later than seven days before closing;

(7) when any portion of the financial assistance is to be held in an escrow account, the Applicant shall execute an escrow agreement, approved as to form and substance by the executive administrator;

(8) if applicable, a home rule municipality pursuant to Chapter 104, Local Government Code, shall execute a Certification of Trust as defined in §375.1 of this title; and

(9) any additional information specified in writing by the executive administrator.

(b) Certified bond transcript. Within sixty (60) days of closing the financial assistance, the Applicant shall submit a transcript of proceedings relating to the debt purchased by the Board which shall contain those instruments normally furnished by a purchaser of debt.

(c) Phased closing. The executive administrator may determine that closing the financial assistance in phases is appropriate when:

(1) the project has distinct phases for planning, design, acquisition, and ~~for~~ construction or if any one of the phases can be logically and practically divided into discrete sections;

(2) the project utilizes the design-build or construction manager-at-risk process or any process wherein there is simultaneous design and construction;

(3) there are limitations on the availability of funds;

(4) additional oversight is required due to the financial condition of the Applicant or the complexity of the project; or

(5) due to any unique facts arising from the particular transaction.

§375.92. Financial Assistance Secured by Promissory Notes and Deeds of Trust.

(a) Applicability. This section contains closing requirements for a water supply corporation or an eligible private Applicant or other Applicant that is not authorized to issue bonds or other securities. This

section applies to financial assistance for either pre-design or construction funding.

(b) Use of consultants. The executive administrator may recommend, but not require, that the entity engage the services of a financial advisor or other consultant to ensure the appropriateness of the proposed debt and to provide advice to the entity.

(c) Documents required for closing. The executive administrator shall ensure that the following documents have been submitted prior to closing financial assistance secured by promissory notes and deeds of trust:

(1) evidence that applicable requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) an executed promissory note and loan agreement in a form approved by the executive administrator;

(3) a Deed of Trust and Security Agreement that shall contain a first mortgage lien evidenced by a deed of trust on all the real and personal property of the water system;

(4) an owner's title insurance policy for the benefit of the Board covering all the real property identified in the deed of trust;

(5) evidence that the rates on which the Applicant intends to rely for repayment of the financial assistance have received final and binding approval from the Utility Commission and, for Applicants required to utilize a surcharge account, evidence that the approval of the Utility Commission was conditioned on the creation of a surcharge account;

(6) a certified copy of the resolution adopted by the governing body authorizing the indebtedness and a certificate from the secretary of the governing body attesting to adoption of the resolution in accordance with the by-laws or rules of the governing body and in compliance with the Open Meetings Act, if applicable;

(7) a legal opinion from Applicant's counsel that provides:

(A) that the entity has the legal authority to enter into the loan agreement and to execute a promissory note;

(B) that the entity is not in breach or default of any state or federal order, judgment, decree, or other instrument which would have a material effect on the loan transaction;

(C) that there is no pending suit, action, proceeding, or investigation by a public entity that would materially adversely affect the enforceability or validity of the required financial assistance documents;

(D) evidence that the entity is in good standing with the Texas Office of the Secretary of State; and

(E) a statement relating to any other issues deemed relevant by the executive administrator.

(8) evidence that an approved water conservation plan has been adopted and will be implemented through the life of the project;

(9) evidence of the Applicant's agreement to comply with special environmental conditions contained in the Board's environmental finding;

(10) evidence that the Applicant has adopted final water rates and charges that are not subject to appeal to the Utility Commission;

(11) copies of executed service and revenue contracts;

(12) when any portion of the financial assistance is to be held in an escrow account, the Applicant shall execute an escrow agreement, approved as to form and substance by the executive administrator; and

(13) any other documents relevant to the particular transaction.

(d) If in the event that financial assistance proceeds are to be deposited into an escrow account at the time of closing the financial assistance, then an escrow account shall be created that shall be separate from all other accounts and funds, as follows:

(1) the account shall be maintained by an escrow agent as defined in §375.1 of this title (relating to Definitions);

(2) funds shall not be released from the escrow account without prior written approval of the executive administrator who shall issue written authorization for the release of funds;

(3) upon request of the executive administrator, escrow account statements shall be provided on a monthly basis to the executive administrator;

(4) the investment of any financial assistance proceeds deposited into an approved escrow account, shall be handled in a manner that complies with the Public Funds Investment Act, Government Code, Chapter 2256; and

(5) the escrow account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the project and that complies with the Public Funds Collateral Act, Government Code, Chapter 2257.

(e) Construction account. A construction account shall be created that shall be kept separate from all other accounts and funds of the Applicant.

(f) Phased closing. The executive administrator may determine that closing the financial assistance in phases is appropriate when:

(1) the project has distinct phases for planning, design, acquisition, and for construction or if any one of the phases can be logically and practically divided into discrete sections;

(2) the project utilizes the design-build or construction manager-at-risk process or any process wherein there is simultaneous design and construction;

(3) there are limitations on the availability of funds;

(4) additional oversight is required due to the financial condition of the Applicant or the complexity of the project; or

(5) due to any unique facts arising from the particular transaction.

§375.93. Disbursement of Funds.

(a) Escrow of funds. The executive administrator may deposit funds into an escrow account at the time of closing of the financial assistance. Releases from an escrow account shall occur on a reimbursement method as described in subsection (b), sequentially based on milestones as described in subsection (c) of this section, or in accordance with phasing required for the applicable project. The Applicant must submit outlays for all expenses incurred.

(b) Method of release of funds to construction account. There are two methods for the release of funds from the escrow account to the construction account depending on whether there is a principal forgiveness component. If there is no principal forgiveness, then the funds are released from the escrow account to the construction account when the Applicant has achieved the project milestones described in subsec-

tion (c) of this section or has completed the phases as approved by the Board, and requests in writing a release of funds. If there is a principal forgiveness component, then funds are released on a reimbursement method. The executive administrator may issue a written authorization for the release of funds from an escrow account based on the receipt of outlay reports supported by detailed invoices of expenditures. The outlays and the releases from an escrow account must be consistent with the approved project schedule. In addition, for all financial assistance the executive administrator may approve the deposit of funds for certain costs into the construction account at the time of closing on the financial assistance.

(c) Sequence of availability of funds. Financial assistance shall be available for disbursement in the following sequence:

(1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase, and after approval of a water conservation plan and a project schedule;

(2) for design costs, after receipt of executed contracts for the design, after approval of an engineering feasibility report, and after completion of the environmental review; and

(3) for construction costs, after issuance of any applicable permits, after acquisition documents and contract documents (including plans and specifications) are approved and executed, and after the executive administrator has approved the issuance of a Notice to Proceed.

(d) Outlay reports. Applicants shall submit outlay reports supported by detailed invoices for incurred costs as the project progresses in accordance with the project schedule. Applicants shall submit outlay reports, in a form determined by the executive administrator, as follows:

(1) for financial assistance for planning, acquisition, and design, quarterly; and

(2) for financial assistance for construction, monthly.

(e) Consistency for project schedules and outlays. The executive administrator shall require that projects proceed in accordance with approved project schedules as closely as possible, and that outlays are submitted as required in subsection (d) of this section.

#### §375.94. Remaining Unused Funds.

(a) Remaining unused funds are those funds unspent after the original approved project is completed. Remaining unused funds may be spent for enhancements to the original project that are explicitly approved by the executive administrator, including green components.

(b) If there are no enhancements authorized, the Applicant shall be required to submit a final accounting and disposition of any unused funds.

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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Les Trobman

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## SUBCHAPTER H. CONSTRUCTION AND POST CONSTRUCTION REQUIREMENTS

### 31 TAC §§375.101 - 375.104, 375.106 - 375.109

#### STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### *§375.101. Inspection During Construction.*

(a) Applicant's inspection. The Applicant shall provide for the adequate qualified inspection of the project under the supervision of a registered engineer and shall require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans, [and] specifications, and other engineering design or permit documents, approved alterations or changes, and in accordance with the requirements in the environmental finding [determination] applicable to the project, and to the sound engineering principles and construction practices.

(b) Board's inspection. The executive administrator may, at his discretion, inspect the construction and materials of any project at any time. The purpose of the inspection is to determine whether the contractor is substantially complying with the approved engineering plans of the project and is constructing the project in accordance with [sound engineering principles and] the approved project schedule. The inspection by the Board does not subject the state to any civil liability.

(c) Scope of inspections. Inspections may include, but are not limited to:

(1) on-site observations, review of the [physical] conditions at the construction sites, including compliance with environmental mitigation measures;

(2) review of documents related to the construction projects, including but not limited to:

(A) payroll, daily attendance, and any other records relating to person employed during the construction, and records relating to the Davis Bacon Act and related federal laws and regulations relating to prevailing wage rates;

(B) invoices, receipts for materials, accounting ledgers, and any other documents related to expenditure of funds to facilitate tracking project's progress;

(C) evidence of testing of installed materials and equipment;

(D) deviations from approved plans and specifications;

(E) change orders and supporting documents; and

(F) review of any other documents to ensure compliance with the terms of the approved contract documents and the Board's rules.

(d) The executive administrator [inspectors] may document issues to ensure compliance with applicable laws, rules, and contract documents, and may recommend to the owner that certain corrective actions occur to ensure compliance with laws, rules, and approved plans and specifications.

(e) The Applicant shall provide the executive administrator [inspectors] with a response to the issues relating to compliance.

#### *§375.102. Alterations During Construction.*

(a) Changes after approval of engineering feasibility report. The Applicant shall notify the executive administrator of any changes to the project that occur after the approval of the report but prior to the start of construction. The executive administrator shall review the proposed changes and notify the Applicant if additional engineering or other information is required. For wastewater treatment plants or other facilities required to have Commission approval, the Commission must give its approval before any substantial or material changes are made in the plans. No changes may be implemented without the express written approval of the executive administrator.

(b) Changes during construction. Any proposed change to the construction contract must be submitted to the executive administrator in the form of a formal change order; the change order will be reviewed for compliance with program requirements. Depending upon the scope and complexity of the proposed change, approval by the executive administrator also may require amendments to other engineering and environmental documents.

§375.103. *Force Account.*

Force Account Policy. The executive administrator expects that all significant elements of a project shall be constructed with skilled laborers and mechanics obtained through the competitive bidding process. Notwithstanding that expectation, the Applicant, with the prior approval of the executive administrator, may utilize its own employees and equipment for inspection or minor construction upon [a] showing that it possesses the necessary competence required to accomplish such work and that the work can be accomplished more economically by the use of the force account method.

§375.104. *As Built Plans.*

After a project is completed, the Applicant shall notify the executive administrator [that] of the receipt of a complete set of as-built drawings of the project from the project construction engineer.

§375.106. *Final Accounting.*

(a) Within 60 [sixty] days of Applicant's receipt of the certificate of approval for the final prime construction contract and the final inspection report, the Applicant shall submit a final accounting and a final funds requisition form.

(b) After the final accounting, the executive administrator shall notify the Applicant if remaining surplus funds exist and advise the Applicant that the remaining surplus funds may be used, as specified in any applicable bond ordinance, for:

- (1) payment of bonds in inverse order of maturity;
- (2) deposit into the interest and sinking fund; or
- (3) deposit to a reserve fund.

§375.107. *Records Retention.*

The Applicant shall retain all documents, records, and invoices [~~invoice, and records~~] whether in electronic form or otherwise relating to the expenditure of all financial assistance from the CWSRF for a period of three full state fiscal years after the completion of the project and the final certificate of approval.

§375.108. *Release of Retainage.*

(a) Retainage. The Applicant will withhold a minimum of five percent [5%] of each progress payment throughout the course of the construction contract.

(b) Full release of retainage. The executive administrator will approve the full release of retainage on a contract when:

- (1) the Applicant's engineer approves the contractor's request for release of retainage; ~~and~~

(2) the Applicant's governing body approves the release of retainage; ~~and~~[-]

(3) the executive administrator issues the Certificate of Approval.

(c) Partial release of retainage. If a project is substantially complete, the executive administrator may approve a partial release of retainage.

§375.109. *Responsibilities of Applicant.*

After the satisfactory completion of the project, the Applicant remains responsible for compliance with applicable laws and rules relating to the project and to the financial assistance documents required by the Board resolution or the bond ordinance or resolution including but not limited to submission of an annual audit, implementation and enforcement of the approved water conservation program, and other assurances made to the Board. The Board has a continuing interest in the State's investment and therefore, the Applicant shall be subject to the continuing authority of the Board and the executive administrator through final payment of the financial assistance.

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## SUBCHAPTER I. NONPOINT SOURCE POLLUTION LINKED DEPOSITS PROGRAM

### 31 TAC §§375.201, 375.203, 375.206

#### STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §15.605.

The proposed rulemaking affects Chapter 15 of the Texas Water Code.

#### §375.201. *Definitions.*

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

(1) Eligible lending institution--A financial institution that makes commercial loans, is either [a] designated as an [a] official state depository by the Texas comptroller of public accounts, herein referred to as a state depository, or an institution of the Farm Credit System headquartered in this state, agrees to participate in a linked deposit program established under §15.611 of the Water Code, and is willing to agree to provide collateral equal to the amount of linked deposits placed with it.

(2) Individual water quality management plan--An approved land management plan that considers site-specific characteristics (such as soil types, slope, climate, vegetation, and land usage) to improve or conserve water resources.

(3) Linked deposit--A deposit governed by a linked deposit agreement between the Board and an eligible lending institution that requires that:

(A) the eligible lending institution pay interest to the Board on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution requesting a linked deposit agreement;

(B) the state not withdraw any part of the deposit except as according to the terms of the linked deposit agreement and the terms of this division; and

(C) the eligible lending institution agrees to lend the value of the deposit to a person at a rate not to exceed the interest paid by the eligible lending institution to the Board plus four percent.

(4) Linked deposit agreement--A written agreement between the Board, acting through the executive administrator, and an eligible lending institution providing for the deposit by the Board of an amount of funds from the CWSRF program account with the eligible lending institution executed pursuant to the authority and according to the conditions of this subchapter.

(5) Pledged security--Means the securities authorized by these rules and the linked deposit agreement negotiated to secure the Board's deposit of funds with the eligible lending institution.

§375.203. *Conditions Prior to Execution.*

(a) Before the executive administrator may execute a linked deposit agreement, a lending institution shall submit to the executive administrator:

(1) the application of a person determined by the eligible lending institution to be eligible and creditworthy to receive a loan according to the criteria of the institution;

(2) a draft loan agreement with such person that:

(A) identifies the principal amount of the loan that shall not exceed \$250,000;

(B) identifies the interest rate to be paid by the borrower that shall not exceed the interest rate paid by the eligible lending institution to the Board plus four percent;

(C) includes a repayment schedule that identifies the dates on which payments are due from the loan recipient to the lending institution;

(D) limits the use of the loan funds to the project which is certified pursuant to this subchapter; and

(E) contains all such other terms and conditions determined by the eligible lending institution in its sole discretion to be reasonable for the purposes of a private loan agreement;

(3) a certification:

(A) from the eligible lending institution of the interest rate applicable to the proposed loan;

(B) for proposed project as identified under this subchapter; and

(4) such other information or documentation as determined by the executive administrator to be reasonable and necessary to fulfill the objectives of this division.

(b) Before the executive administrator executes a linked deposit agreement, the executive administrator shall review the information submitted in this section to determine if:

(1) the lending institution is an eligible lending institution as defined in §375.302 of this subchapter;

(2) the documents submitted by the lending institution comply with the requirements of this division; and

(3) execution of the linked deposit agreement fulfills the purposes and intent of this subchapter, the Clean Water Act, and the public interest.

§375.206. *Lending Institutions Obligations in Linked Deposits.*

(a) Upon execution of a linked deposit agreement and receipt of funds from the Board, the lending institution shall:

(1) provide collateral as required in this subchapter;

(2) lend the value of the deposit being provided by the Board substantially according to the terms and conditions of the draft loan agreement submitted by the lending institution to the executive administrator;

(3) pay to the Board interest on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement;

(4) submit compliance reports to the executive administrator annually providing information on loans made, the performance of the terms of the loan by the person receiving the loan from the lending institution, and such other information or documents as specified in the linked deposit agreement;

(5) return the amount of funds provided as a linked deposit as specified in the linked deposit agreement; and

(6) perform such other terms and conditions as specified in the linked deposit agreement, this subchapter, the rules of the Board, and applicable federal and state law.

(b) A delay in payment or a default on a loan by the recipient of the loan from the lending institution does not affect the validity of the deposit agreement or the repayment of the deposit in accordance with the terms of the deposit agreement.

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## CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB" or "board") proposes to repeal 31 Texas Administrative Code (TAC) Chapter 375, §§375.50 - 375.56, §§375.63 - 375.70, and §375.92 and §375.93.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB proposes to repeal various sections of 31 TAC Chapter 375 in order to implement new federal requirements imposed by the Water Resources Reform and Development Act of 2014 (WRRDA), to provide greater clarity, and to streamline TWDB processes for implementation of the Clean Water State Revolving Fund (CWSRF). The TWDB proposes to repeal provisions that are no longer needed and to repeal other provisions in order to relocate them in other locations of 31 TAC Chapter 375 for clarification purposes. The specific provisions being repealed and the reasons for the repeals are discussed in more detail below.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

##### *Subchapter E, Environmental Reviews and Determinations, Division 1, State Projects.*

Division 1 (State Projects) of Subchapter E (Environmental Reviews and Determinations), which includes §§375.50 - 375.56, is repealed. In accordance with WRRDA, National Environmental Policy Act (NEPA)-like environmental reviews are now required for all CWSRF assistance for the construction of treatment works, not just the equivalency projects. Therefore, TWDB is proposing to delete Division 1 of Subchapter E covering environmental reviews and determinations for state projects that was previously applied to the non-equivalency projects. The "Division 2 Federal Projects" title is therefore no longer necessary for the remaining provisions of the subchapter.

##### *Subchapter E, Environmental Reviews and Determinations, Division 2, Federal Projects.*

Sections 375.63 - 375.70 are repealed in order to provide greater clarity regarding the environmental requirements for the CWSRF. These changes will provide greater clarity on which documents are prepared by the Applicant, which documents are prepared by the TWDB, and which documents are prepared by a third party. These changes will also provide greater clarity on the timing of required environmental documentation. The repeal of these sections is proposed in order to reorganize and renumber this subchapter for greater clarity.

##### *§375.92, Disbursement of Funds, and §375.93, Remaining Unused Funds*

Section 375.92 and §375.93 are repealed in order to relocate them within 31 TAC Chapter 375 for greater clarity.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed repeal. For the first five years the repeal is in effect, there is no expected additional cost to state or local governments resulting from their administration.

There is no change in costs because there are no direct costs associated with the proposed repeal. This repeal is not expected to have any impact on state or local revenues. The repeal does not require any increase in expenditures for state or local governments as a result of administering the repeal. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the repeal.

#### PUBLIC BENEFITS AND COSTS.

Ms. Cindy Demers also has determined that for each year of the first five years the proposed repeal is in effect, the public will ben-

efit from the repeal as it provides clarity regarding the TWDB's Clean Water State Revolving Fund program and is consistent with changes made at the federal level for the Clean Water State Revolving Fund.

#### LOCAL EMPLOYMENT IMPACT STATEMENT.

The board has determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this repeal. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the repeal as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION.

The board reviewed the proposed repeal in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the repeal is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this repeal is to provide greater clarity regarding the Clean Water State Revolving Fund and to implement changes to federal requirements for that fund.

Even if the proposed repeal were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this repeal because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This repeal does not meet any of these four applicability criteria because it: 1) does not exceed the Federal Water Pollution Control Act or any other federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather it is also proposed under authority of Texas Water Code §15.605. Therefore, this proposed repeal does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT.

The board evaluated this proposed repeal and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this repeal is to more closely align the TWDB's rules related to the Clean Water State Revolving fund to state statutes and federal requirements. The proposed repeal would substantially advance this stated purpose by reflecting the current state and federal requirements for the Clean Water State Revolving Fund.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed repeal because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the Clean Water State Revolving Fund for the State of Texas.

Nevertheless, the board further evaluated this proposed repeal and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed repeal would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this repeal does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this repeal requires compliance with state and federal laws and rules regarding the Clean Water State Revolving Fund. These requirements will not burden, restrict, or limit an owner's right to property. Therefore, the proposed repeal does not constitute a taking under Texas Government Code, Chapter 2007.

#### SUBMISSION OF COMMENTS.

Written comments on the proposed repeal may be submitted by mail to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until the 5:00 p.m. of the 31st day following publication the *Texas Register*.

### SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

#### DIVISION 1. STATE PROJECTS

##### 31 TAC §§375.50 - 375.56

###### STATUTORY AUTHORITY.

This repeal is proposed under the authority of Texas Water Code §15.605.

The proposed repeal affects Chapter 15 of the Texas Water Code.

- §375.50. *Definitions for Non-Equivalency Projects.*
- §375.51. *Environmental Review Process.*
- §375.52. *Types of Environmental Determinations: Categorical Exclusions.*
- §375.53. *Types of Environmental Determinations: Full Review.*
- §375.54. *Environmental Assessment: Applicant Requirements.*
- §375.55. *Environmental Determinations Affected by Proposed Project Alterations.*
- §375.56. *Use of Environmental Determinations Prepared by Other Entities.*

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 March 21, 2016.

TRD-201601317

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 463-8061



#### DIVISION 2. FEDERAL PROJECTS

##### 31 TAC §§375.63 - 375.70

###### STATUTORY AUTHORITY.

This repeal is proposed under the authority of Texas Water Code §15.605.

The proposed repeal affects Chapter 15 of the Texas Water Code.

- §375.63. *Types of Environmental Determinations: Finding of No Significant Impact.*
- §375.64. *Environmental Information Document: Applicant Requirements.*
- §375.65. *Decision to Prepare an Environmental Impact Statement: Notice of Intent.*
- §375.66. *Types of Environmental Determinations: Record of Decision.*
- §375.67. *Environmental Impact Statements.*
- §375.68. *Environmental Impact Statement: Applicant Requirements.*
- §375.69. *Proposed Project Alterations.*
- §375.70. *Use of Environmental Determinations Prepared by Other Entities.*

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 March 21, 2016.

TRD-201601318

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 463-8061



#### SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

##### 31 TAC §§375.92, §375.93

###### STATUTORY AUTHORITY.

This repeal is proposed under the authority of Texas Water Code §15.605.

The proposed repeal affects Chapter 15 of the Texas Water Code.

§375.92. *Disbursement of Funds.*

§375.93. *Remaining Unused Funds.*

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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Les Trobman

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## TITLE 34. PUBLIC FINANCE

### PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 71. CREDITABLE SERVICE

##### 34 TAC §71.31

The Employees Retirement System of Texas (ERS) proposes an amendment to 34 Texas Administrative Code (TAC) §71.31, concerning Credit Purchase Option for Certain Waiting Period Service.

Between 2003 and 2015, §812.003, Texas Government Code, required a 90-day wait for new employees to become contributing members of ERS. Members were also permitted to purchase that service at actuarial cost. ERS adopted §71.31 to govern the service purchase process.

Section 71.31 is proposed to be amended to remove the requirement that a person must be a contributing member to purchase waiting period service. This change will allow employee class members who have left state service, but kept their account at ERS, to purchase waiting period service.

Ms. Paula A. Jones, General Counsel and Chief Compliance Officer, has determined that for the first five-year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule. To Ms. Jones' knowledge, there are no known anticipated economic costs to persons who are required to comply with the rule as proposed other than to pay the required cost of purchasing waiting period service credit. And, to Ms. Jones' knowledge, small businesses should not be affected by the rule amendment.

Ms. Jones also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule would be to permit non-contributing members of the retirement system to purchase waiting period service at actuarial cost and allow more members to purchase service.

Comments on the proposed rule amendment may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may e-mail Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is Monday, May 2, 2016, at 10:00 a.m.

The amendment is proposed under the Texas Government Code, §815.102, which provides authorization for the ERS

Board of Trustees to adopt rules for eligibility of membership in the retirement system.

No other statutes are affected by the proposed amendment.

§71.31. *Credit Purchase Option for Certain Waiting Period Service.*

(a) An eligible employee class member may establish service credit for service performed during the waiting period as authorized by §813.514, Texas Government Code, and as provided in this section. The provisions of §71.14 of this title (relating to Payments to Establish or Reestablish Service Credit) do not apply to service credit established under this section.

(b) An employee class [A] member is eligible to establish service credit under this section if the member:

~~(1)~~ holds a position in the employee class;

~~(1)~~ ~~(2)~~ has completed the waiting period;

~~(2)~~ ~~(3)~~ has made a retirement contribution in accordance with §813.201, Texas Government Code; and

~~(3)~~ ~~(4)~~ makes application for the establishment of service credit and payment of the required contributions in accordance with procedures developed by ERS.

(c) An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the service credit established under this section. The tables recommended by the system's actuary and adopted by the board shall be used to determine the actuarial present value. The waiting period service credit tables are adopted by reference and made a part of this rule for all purposes. The 2009 waiting period service credit tables apply to service purchase calculations performed on or after September 1, 2009, and are those tables adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 waiting period service credit tables apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2(c) of this title (relating to Determination of Date of Hire for Retirement Benefit Eligibility). The 2010 waiting period service credit tables apply to service purchase calculations performed on or after September 1, 2010, and are those tables adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 waiting period service credit tables apply to service purchase calculations performed on or after September 1, 2014, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. For service purchase calculations performed prior to September 1, 2014, the previously adopted tables apply. Copies of these tables are available from the System's executive director, Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.

(d) Actuarial present value shall be based on:

(1) the member's age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing service credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the system's actuary and adopted by the board.

(e) Waiting period service credit shall be established in increments of one month.

(f) This section does not apply to service credit transferred as authorized by Texas Government Code, Chapter 805.

(g) A member who withdraws contributions and cancels service credit established under this section may not reestablish such credit under §813.102, Texas Government Code, but may again establish credit only as provided by this section.

(h) Credit established under this section may not be used to determine average monthly compensation for the purpose of computing an annuity.

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 March 18, 2016.

TRD-201601287

Paula A. Jones

General Counsel and Chief Compliance Officer  
Employees Retirement System of Texas

Earliest possible date of adoption: May 1, 2016

For further information, please call: (877) 275-4377



## CHAPTER 85. FLEXIBLE BENEFITS

### 34 TAC §§85.1, 85.3, 85.5

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 85 concerning Flexible Benefits, §85.1 (Introduction and Definitions), §85.3 (Eligibility and Participation), and §85.5 (Benefits).

ERS administers a program delivering various benefits called the TexFlex Program. It includes a flexible spending account (FSA) program. An FSA allows an employee to set aside, in a pre-tax process, a portion of earnings to pay or be reimbursed for certain qualifying expenses, such as dependent care and health care expenses. An FSA that is for all types of health care expenses is called a general purpose FSA.

In 2015, the Texas Legislature added Subchapter J to Chapter 1551, Texas Insurance Code. The new subchapter requires ERS to offer employees the option to enroll in a "consumer-directed health plan" (CDHP) within the HealthSelect<sup>SM</sup> of Texas managed care plan beginning in the 2016 plan year. This CDHP includes a high deductible health plan with a health savings account (HSA). The HSA is an account described by §223, Internal Revenue Code, as amended.

An HSA is a different type of pre-tax health account than an FSA, although both are used to reimburse certain qualifying medical expenses. Under the Internal Revenue Code, an employee may contribute to both accounts, but the FSA must be limited so that it may only be used for the limited purpose of reimbursing dental and vision expenses. This is considered a "limited purpose" FSA.

ERS has determined that the proposed amendments to §§85.1, 85.3, and 85.5 would benefit TexFlex program participants in a manner permitted by the Internal Revenue Code. The proposed amendments would also conform the TexFlex program to facilitate participation in the new CDHP while also allowing participants to enroll in a limited purpose FSA. Participation in a general purpose FSA is incompatible with contributing to an HSA account under federal law. The proposed amendments provide

a limited purpose FSA that is compatible for use for those enrolled in the CDHP.

Section 85.1 (Introduction and Definitions) is proposed to be amended to add a definition for a general purpose health care reimbursement account and for a limited purpose health care reimbursement account.

Section 85.3 (Eligibility and Participation) is proposed to be amended to allow participants in the CDHP to participate only in the limited purpose FSA program, in conformance with the Internal Revenue Code. Currently, unexpended balances over \$500 in the FSA are automatically carried over into an employee's general purpose FSA for the following plan year. An employee with any monetary balance in a general purpose FSA, or who attempts to contribute to both an HSA and a general purpose FSA simultaneously would violate the Internal Revenue Code, as the employee would be ineligible to contribute to an HSA. The proposed amendment provides that any monetary balance remaining in an FSA account on August 31 of a plan year or any carryover that might otherwise be permitted for an employee who chooses to enroll in the CDHP for the following plan year would go into a limited purpose FSA, subject to IRS maximums or be forfeited.

Section 85.5 (Benefits) is proposed to be amended to clarify that only qualifying dental and vision expenses may be reimbursed through a limited purpose FSA.

Ms. Paula A. Jones, General Counsel and Chief Compliance Officer, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rules. To Ms. Jones' knowledge, there are no known anticipated economic costs to persons who are required to comply with the rules as proposed, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules include the reasons stated above, and also better serve and benefit state employees by permitting tax-advantaged reimbursement of dental and vision expenses, and preventing employees participating in the CDHP from being ineligible for contributions to an HSA.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may e-mail Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is May 2, 2016, at 10:00 a.m.

The amendments are proposed under the Texas Insurance Code, §1551.052 and §1551.206, which provide authorization for the ERS Board of Trustees to develop, implement, and administer a cafeteria plan, and to adopt necessary rules.

No other statutes are affected by the proposed amendments.

#### §85.1. *Introduction and Definitions.*

(a) Summary. The purpose of these rules is to govern the flexible benefits program. These rules constitute the Plan document for the State of Texas Employees Flexible Benefit Program (TexFlex). The flexible benefits plan (the plan) includes reimbursement account arrangements with optional benefits available for selection by participants as described in the plan and these rules. The plan is intended to be qualified under the Internal Revenue Code (the Code), §125, as amended from time to time, and is intended to continue as long as it

qualifies under §125 and is advantageous to the state and institutions of higher education employees. Optional benefits offered under the plan for individual selection consist only of a choice between cash and certain statutory nontaxable fringe benefits as defined in the Code, §125, and regulations promulgated under the Code, §125. The plan may also include separate benefits as defined in the Code, §132, and regulations promulgated under the Code, §132, separate from the cafeteria plan, and governed by individual plan documents.

(b) Applicability of rules.

(1) These rules are applicable only to employees as defined in these rules, and terminated employees, as described in §85.3(b)(1)(B) and (C) of this title (relating to Eligibility and Participation).

(2) An employee who retired or separated from employment prior to September 1, 1988, shall not be entitled to benefits under the provisions of the plan and these rules, unless the employee is rehired and then becomes eligible for benefits.

(c) Definitions. The following words and terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1) Act--The state law that authorized the establishment of a flexible benefits plan and is designated in the Texas Insurance Code, Chapter 1551, as amended.

(2) Account--A record keeping account established by the Employees Retirement System of Texas or its designee in the name of each participant for the purpose of accounting for contributions made to the account and benefits paid to a participant.

(3) Active duty--The expenditure of time and energy in the service of an employer as defined in these rules. An employee will be considered to be on active duty on each day of a regular paid vacation or on a non-work day, on which the employee is not disabled, if the employee was on active duty on the last preceding work day.

(4) Board of trustees--The board of trustees of the Employees Retirement System of Texas (ERS).

(5) Code--The Internal Revenue Code, as amended from time to time.

(6) Compensation--A participant's base salary, including amounts that would otherwise qualify as compensation but are not received directly by the participant pursuant to a good faith, voluntary, written or electronic salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under this plan, plus longevity and hazardous duty pay and including non-monetary compensation, the value of which is determined by the Employees Retirement System of Texas, but excluding overtime pay.

(7) Debit Card--A bank issued convenience card or similar technology approved by the plan administrator and permitted to be used by participants as an optional method to pay for eligible transactions. Use of the card is governed by the plan administrator and issuing financial institution. The card is referred to as the Flex Debit Card.

(8) Dependent--An individual who qualifies as a dependent under the Code, §152, and when applicable taking into account the Code, §105, or any individual who is:

(A) a dependent of the participant who is under the age of 13 and with respect to whom the participant is entitled to an exemp-

tion under the Code, §151, or, is otherwise, a qualifying individual as provided in the Code, §21; or

(B) a dependent or spouse of the participant who is physically or mentally incapable of caring for himself or herself.

(9) Dependent care reimbursement account--The book-keeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.

(10) Dependent care reimbursement plan--A separate plan under the Code, §129, adopted by the board of trustees, and designed to provide payment or reimbursement for dependent care expenses as described in §85.5(c) of this title (relating to Benefits).

(11) Dependent care expenses--Expenses incurred by a participant which:

(A) are incurred for the care of a dependent of the participant;

(B) are paid or payable to a dependent care service provider or to the participant as reimbursement for such expenses; and

(C) are incurred to enable the participant to be gainfully employed for any period for which there are one or more dependents with respect to the participant. Dependent care expenses shall not include expenses incurred for the services outside the participant's household for the care of a dependent, unless such dependent is a dependent under the age of 13 with respect to when the participant is entitled to a tax deduction under the Code, §151, or a dependent who is physically or mentally incapable of self support. In the event that the expenses are incurred outside the dependent's household, the dependent must spend at least eight hours each day in the participant's household. Dependent care expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.

(12) Dependent care service provider--A person or a dependent care center (as defined in the Code, §21) who provides care or other services described in the definition of "dependent care expenses" in this section, but shall not include:

(A) a related individual described in the Code, §129; or

(B) a dependent care center which does not meet the requirements of the Code, §21.

(13) Effective date of the plan--September 1, 1988.

(14) Election form--A paper or electronic form provided by the Employees Retirement System of Texas that is an agreement by and between the employer and the participant, entered into prior to an applicable period of coverage, in which the participant agrees to a reduction in compensation for purposes of purchasing benefits under the plan.

(15) Eligible employee--An employee who has satisfied the conditions for eligibility to participate in the plan in accordance with the plan and §85.3(a)(1), and (b)(1) of this title (relating to Eligibility and Participation), and, to the extent necessary, a retired or terminated employee who is entitled to benefit payments under the plan.

(16) Employee--A person who is eligible to participate in the Texas Employees Group Benefits Program as an employee.

(17) Employer--The State of Texas, its agencies, commissions, institutions of higher education, and departments, or other governmental entity whose employees are authorized to participate in the Texas Employees Group Benefits Program.

(18) Expenses incurred--Expenses for services received or performed and for which the participant is legally responsible.

(19) Executive director--The executive director of the Employees Retirement System of Texas.

(20) Flexible benefit dollars--The dollars available to a participant which may be used for purposes of purchasing benefits under the plan.

(21) General purpose health care reimbursement account--  
The account described in §85.5(b)(1).

(22) [(21)] Grace period--A two (2) month and 15 day period, adopted by the TexFlex plan pursuant to IRS Notice 2005-42, immediately following the end of the plan year during which participants may continue to incur expenses for reimbursement from the prior year account balance. The grace period does not apply to a health care reimbursement plan year that begins on or after September 1, 2014, but does apply to the dependent care reimbursement plan.

(23) [(22)] Health care expenses--Any expenses incurred by a participant, or by a spouse or dependent of such participant, for health care as described in or authorized in accordance with the Code, §105 and §213, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense by insurance or other means. The types of expenses include, but are not limited to, amounts paid for hospital bills, doctor bills, prescription drugs, hearing exams, vision exams, and eye exams.

(24) [(23)] Health care reimbursement account--The book-keeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.

(25) [(24)] Health care reimbursement plan--A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5(b) of this title (relating to Benefits).

(26) [(25)] Institution of higher education--All public community/junior colleges, senior colleges or universities, or any other agency of higher education within the meaning and jurisdiction of the Education Code, Chapter 61, except the University of Texas System and the Texas A&M University System.

(27) [(26)] Leave of absence without pay--The status of an employee who is certified monthly by an agency or institution of higher education administrator to be absent from duty for an entire calendar month, and who does not receive any compensation for that month.

(28) Limited purpose health care reimbursement account--  
The account described in §85.5(b)(3).

(29) [(27)] Option--Any specific benefit offering under the plan.

(30) [(28)] Participant--An eligible employee who has elected to participate in the plan for a period of coverage.

(31) [(29)] Period of coverage--The plan year during which coverage of benefits under the plan is available to and elected by a participant; however, an employee who becomes eligible to participate during the plan year may elect to participate for a period lasting until the end of the current plan year. In such case, the interval commencing on such employee's entry date and ending as of the last day of the current period of coverage shall be deemed to be such participant's period of coverage.

(32) [(30)] Plan--The flexible benefits plan established and adopted by the board of trustees pursuant to the laws of the state of

Texas and any amendments which may be made to the plan from time to time. The plan is referred to herein as TexFlex, and is comprised of a dependent care reimbursement plan, a health care reimbursement plan, an insurance premium conversion plan, and a qualified transportation benefit plan.

(33) [(31)] Plan administrator--The board of trustees of the Employees Retirement System of Texas or its designee.

(34) [(32)] Plan year--A 12-month period beginning September 1 and ending August 31.

(35) [(33)] Run-out period--The period following the end of the plan year between September 1 and December 31, during which participants may file claims for reimbursement of expenses incurred during the plan year.

(36) [(34)] Statutory nontaxable benefit--A benefit provided to a participant under the plan, which is not includable in the participant's taxable income by reason of a specific provision in the Code and is permissible under the plan in accordance with the Code, §125.

(37) [(35)] Spouse--The person to whom the participant is married. Spouse does not include a person separated from the participant under a decree of divorce, or annulment.

(38) [(36)] TexFlex--The flexible benefits plan adopted by the board of trustees.

(39) [(37)] Texas Employees Group Benefits Program--The employee insurance benefits program administered by the Employees Retirement System of Texas, pursuant to the Texas Insurance Code, Chapter 1551. The program consists of health, voluntary accidental death and dismemberment, optional term life, dependent term life, short and long term disability, and dental insurance coverages.

(40) [(38)] Third Party Administrator or TPA--The vendor, administrator or firm selected by the plan administrator to perform the day-to-day administrative responsibilities of the TexFlex program for participants of the Texas Employees Group Benefits Program who enroll in either the health care reimbursement plan, dependent care reimbursement plan or both.

### §85.3. *Eligibility and Participation.*

#### (a) Dependent care reimbursement plan.

(1) Eligibility. Any employee eligible to participate in the Texas Employees Group Benefits Program may elect to participate in the dependent care reimbursement account.

#### (2) Participation.

(A) An employee who is eligible under paragraph (1) of this subsection may elect to participate by completing and submitting an election form either in writing or electronically on, or within 30 days after, the date on which the employee begins active duty. An employee, upon executing an election form for participation, either in writing or electronically, shall be deemed to have consented to and be bound by all the terms, conditions, and limitations of the plan, any and all amendments hereto, any administrative rules adopted by the plan administrator, and any decision or determinations made by the plan administrator with respect to the participant's eligibility, obligations, rights and benefits available under the plan. An election made on the date on which the employee begins active duty becomes effective on that date. An election made after the date on which the employee begins active duty becomes effective on the first day of the month following the date on which the employee begins active duty.

(B) An employee who is otherwise eligible to participate in the Texas Employees Group Benefits Program but who declined participation in the dependent care reimbursement account prior to the beginning of a plan year, and who, after the beginning of a plan year, has a qualifying life event, as defined in §85.7(c) of this title (relating to Enrollment), may elect to participate in the dependent care reimbursement account as provided in §85.7(c).

(C) A qualifying life event as defined in §85.7(c) of this title (relating to Enrollment) will permit a change or revocation of participation during the plan year as provided in §85.7(c).

(D) An eligible employee shall have an opportunity to enroll or change benefit options during the annual enrollment period. The annual enrollment period shall be prior to the beginning of a new plan year. Elections and changes in elections made during the annual enrollment period become effective on the first day of the plan year.

(E) The plan administrator shall maintain and update the participant enrollment records. Any and all changes will be communicated to the TPA via weekly file transfer protocol (FTP), tapes or other selected media.

(3) Duration of participation.

(A) An employee's election to participate or to waive participation in the dependent care reimbursement plan shall be irrevocable for the plan year unless there is a qualifying life event as defined in §85.7(c) of this title (relating to Enrollment).

(B) An employee returning to active duty following termination of employment, or following a period of approved leave without pay, during the same plan year shall reinstate the election in effect on the employee's last previous active duty date. Reinstatement becomes effective on the date on which the employee resumes active duty, unless the employee requests a change in election as provided in §85.7(c) of this title (relating to Enrollment).

(b) Health care reimbursement plan.

(1) Eligibility.

(A) Any employee eligible to participate in the Texas Employees Group Benefits Program may elect to participate in a health care reimbursement account, except that an employee participating in a consumer directed health plan with a health savings account, as permitted under Subchapter J, Chapter 1551, Insurance Code, may only participate in the limited purpose health care reimbursement account described by §85.5(b)(3) of this title (relating to Benefits). Only participants in a consumer directed health plan are eligible to elect to participate in the limited purpose health care reimbursement account described by §85.5(b)(3).

(B) Prior to September 1, 2014, an employee whose employment has been terminated, voluntarily or involuntarily, and who had a health care reimbursement account at the time of termination, shall retain the health care reimbursement account for the applicable period of election. The terminated employee must pre-pay, on a monthly basis, the elected amount and any administrative fee for the plan year. Payments are due on the first day of each month and must be received no later than the 30th day of the month. Failure to pay will automatically cancel enrollment.

(C) On and after September 1, 2014, the employee's period of coverage ends on the date of termination of employment.

(2) Participation.

(A) An employee who is eligible under paragraph (1) of this subsection may elect to participate by completing and submitting an election form either in writing or electronically on, or within 30

days after, the date on which the employee begins active duty. An employee, upon executing an election form for participation, either in writing or electronically, shall be deemed to have consented to and be bound by all the terms, conditions, and limitations of the plan, any and all amendments hereto, any administrative rules adopted by the plan administrator, and any decision or determinations made by the plan administrator with respect to the participant's eligibility, obligations, rights and benefits available under the plan. An election made on the date on which the employee begins active duty becomes effective on that date. An election made after the date on which the employee begins active duty becomes effective on the first day of the month following the date on which the employee begins active duty.

(B) An employee who is eligible but who declined participation in the health care reimbursement account prior to the beginning of a plan year, and who, after the beginning of a plan year, has a qualifying life event, as defined in §85.7(c) of this title (relating to Enrollment), may elect to participate in a health care reimbursement account as provided in §85.7(c).

(C) A qualifying life event as defined in §85.7(c) of this title (relating to Enrollment) will permit the following changes in election during the plan year, as provided in §85.7(c):

(i) an increase in the election amount, if the increase is consistent with the qualifying life event; or

(ii) a decrease in the election or election amount, if the decrease is consistent with the qualifying life event.

(D) An eligible employee shall have an opportunity to enroll or to change benefit options during the annual enrollment period. The annual enrollment period shall be prior to the beginning of a new plan year. Elections and changes in elections made during the annual enrollment period become effective on the first day of the plan year.

(E) The plan administrator shall maintain and update the participant enrollment records. Any and all changes will be communicated to the TPA via weekly file transfer protocol (FTP), tapes or other selected media.

(F) If an eligible employee elects to enroll in a consumer directed health plan with a health savings account, any unspent flexible benefit plan dollars in the employee's health care reimbursement account at the end of the previous plan year shall automatically be transferred to and carryover into a limited purpose account as described by §85.5(b)(3) of this title, up to the maximum carryover permitted by the IRS. Such carryover shall comply with §85.7(g) of this title. Any flexible benefit plan dollars remaining that exceed the maximum carryover permitted by the IRS will be forfeited by the employee.

(3) Duration of participation.

(A) Except as otherwise provided in subparagraph (C)(ii) of paragraph (2), or subparagraph (D) of this paragraph, an employee's election to or not to participate in a health care reimbursement account shall be irrevocable for the plan year.

(B) An employee returning to active duty following termination of employment, or following a period of leave without pay, during the same plan year shall reinstate the election in effect on the employee's last previous active duty date. Reinstatement becomes effective on the date on which the employee resumes active duty, unless the employee requests a change in election as provided in §85.7(c) of this title (relating to Enrollment) or a different requirement is imposed by the Family and Medical Leave Act of 1993 (FMLA).

(C) For plan years beginning before September 1, 2014, an employee who is enrolled in a health care reimbursement account who terminates employment during the plan year must retain the health

care account for the remainder of the plan year and prepay premiums or make monthly premium payments due for the remainder of the plan year, as described in paragraph (1)(B) of this subsection.

(D) For plan years beginning on and after September 1, 2014, an employee who is enrolled in a health care reimbursement account who terminates employment during the plan year does not retain the health care account for the remainder of the plan year. The employee's period of coverage ends on the date of termination. An employee may only file a claim for reimbursement for expenses incurred before the date of termination.

(E) Notwithstanding any provision to the contrary in this Plan, if an employee goes on a qualifying unpaid leave under the Family Medical Leave Act (FMLA), to the extent required by the FMLA, the plan administrator will continue to maintain the employee's health care reimbursement account on the same terms and conditions as though he were still an active employee (i.e., the plan administrator or its designee will continue to provide benefits to the extent the employee opts to continue his coverage). If the employee opts to continue his coverage, the employee shall pay his or her contribution in the same manner as a participant on the non-FMLA leave, including payment with after-tax dollars while on leave. The employee may also be given the option to pre-fund all or a portion of the contribution for the expected duration of the leave on a pre-tax salary reduction basis out of his pre-leave compensation by making a special election to that effect prior to the date such compensation would normally be made available to him (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year).

#### §85.5. *Benefits.*

(a) Benefits available for selection by participants. A participant may elect, in accordance with the procedures set forth in this section, one or both of the following benefits, subject to all the requirements and conditions contained in these rules:

- (1) health care reimbursement plan;
- (2) dependent care reimbursement plan.

(b) Health care reimbursement plan.

(1) General purpose health care reimbursement account. Pursuant to the health care reimbursement plan, a participant may elect to receive reimbursements of certain health care expenses which are excludable from the participant's taxable income. The general purpose health care reimbursement account [plan] is intended to be qualified under the Code, §105, is an optional benefit under the flexible benefits plan, and constitutes a separate written employee benefit plan as contemplated by the Code, §105, and Treasury Regulation 1.105-11.

(2) Maximum benefit available. Subject to the limitations set forth in these rules, hereafter referred to as the plan, to avoid discrimination, the maximum amount of flexible benefit dollars that an employee may receive in any plan year for health care expenses under the health care reimbursement plan is the amount permitted under the Code, §105. Even if permitted under the Code, in no event shall the amount available exceed \$5,000 in a plan year. An employee may prepay the health care election amounts for the remainder of the plan year in anticipation of termination, retirement, or a period of leave without pay.

(3) Limited purpose health care reimbursement account. An employee who elects to participate in a consumer directed health plan with a health savings account as permitted by Subchapter J, Chapter 1551, Insurance Code, may elect to participate in a limited purpose health care reimbursement account. This limited purpose health care reimbursement account may only be used to reimburse eligible dental and vision care expenses incurred during the benefit plan year or per-

mitted carryover period. The limited purpose health care reimbursement account is intended to be qualified under the Code, §105, is an optional benefit under the flexible benefits plan, and constitutes a separate written employee benefit plan as contemplated by the Code, §105, and Treasury Regulation 1.105-11.

(c) Dependent care reimbursement plan.

(1) Pursuant to the dependent care reimbursement plan, a participant may elect to have payments made or receive reimbursement for dependent care expenses. The dependent care reimbursement plan is intended to be qualified under the Code, §129, is an optional benefit under the flexible benefits plan, and constitutes a separate written employee benefit plan as contemplated by the Code, §129.

(2) Maximum benefit available.

(A) Subject to any limitations imposed by these rules, hereafter referred to as the plan, to avoid discrimination, the maximum amount that an employee may receive in any plan year in the form of payment of or reimbursement for dependent care expenses under the dependent care reimbursement plan is the lesser of:

(i) the employee's earned income for the plan year (after all reductions in compensation including the reduction related to dependent care expenses);

(ii) the earned income of the employee's spouse for the plan year; or

(iii) the amount permitted under the Code, §129. Even if permitted under the Code, in no event shall the amount available exceed \$5,000 in a plan year.

(B) In the case of a participant's spouse who is a full-time student at an educational institution or who is physically or mentally incapable of caring for himself, such spouse shall be deemed to have earned income of not less than \$200 per month if the participant has one dependent and \$400 per month if the participant has two or more dependents in accordance with the Code, §21.

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 March 18, 2016.

TRD-201601288

Paula A. Jones

General Counsel and Chief Compliance Officer  
Employees Retirement System of Texas

Earliest possible date of adoption: May 1, 2016

For further information, please call: (877) 275-4377



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT**

#### **CHAPTER 221. PROFICIENCY CERTIFICATES** **37 TAC §221.25**

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §221.25, concerning Civil Process Proficiency. Subsection (a)(1) adds the requirement of full-time experience in a constable or sheriff's office and changes the re-

quirement from serving civil process to working with civil process. Subsection (d) reflects the effective date.

This amendment is necessary to include clerks in a constable or sheriff's office that work with civil process to enhance their proficiency and professionalism.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has also determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by providing the clerks in a constable and sheriff's office the opportunity to enhance their professionalism.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.402, Proficiency Certificates.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.25. *Civil Process Proficiency.*

(a) To qualify, an applicant for a civil process proficiency certificate must meet all proficiency requirements including:

(1) at least three years full-time experience in a constable or sheriff's office working with [serving] civil process;

(2) successful completion of 40 hours of civil process training, with at least 20 hours completed in the current training cycle; and

(3) pass the approved examination for civil process proficiency.

(b) A certificate will become invalid at the end of a training cycle unless the holder successfully completes a 20 hour course of training in civil process during the training cycle.

(c) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(d) The effective date of this section is September 1, 2016. ~~[January 17, 2013.]~~

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 March 16, 2016.  
TRD-201601257

Kim Vickers  
Executive Director  
Texas Commission on Law Enforcement  
Earliest possible date of adoption: May 1, 2016  
For further information, please call: (512) 936-7713



## CHAPTER 225. SPECIALIZED LICENSES

### 37 TAC §225.1

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §225.1, concerning Issuance of Jailer License through a Contract Jail Facility. Subsection (e) removes obsolete rule cross-referencing. Rule 217.11 was incorporated into rule 218.3. Subsection (f) reflects the effective date.

This amendment is necessary to reflect the correct rule cross-referencing.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has also determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by providing the public with the correct rule cross-referencing.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

No other code, article, or statute is affected by this proposal.

§225.1. *Issuance of Jailer License through a Contract Jail Facility.*

(a) The commission shall issue a jailer license to an individual appointed by a contract jail facility who meets all the minimum standards for jailer licensure, and submits both the current commission application and any required fees.

(b) A contract jail facility that appoints an individual who already holds a valid, active jailer license shall meet the appointment requirements of §217.7 of this title (relating to Reporting the Appointment and Termination of a Licensee), including submitting any required fee.

(c) A contract jail facility that appoints an individual with a 180-day break in service shall meet the appointment requirements of §217.7 of this title, including submitting any required fee.

(d) The commission shall issue a temporary jailer license to an individual appointed by a contract jail facility who meets all the minimum standards for licensure except for training and testing, and

submits both the current commission application and any required fees. A temporary jailer license expires 12 months from the appointment date.

(e) Individuals licensed as jailers appointed by a contract jail facility shall meet the continuing education requirements in Chapter 218 of this title. [~~§217.11 of this title (relating to Legislatively Required Continuing Education for Licensees).~~]

(f) The effective date of this section is September 1, 2016. [~~July 15, 2010.~~]

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 March 16, 2016.

TRD-201601259

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 936-7713



### 37 TAC §225.3

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §225.3, concerning Issuance of Peace Officer License through a Medical Corporation. Subsection (d) removes obsolete rule cross-referencing. Rule 217.11 was incorporated into rule 218.3. Subsection (e) reflects the effective date.

This amendment is necessary to reflect the correct rule cross-referencing.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has also determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by providing the public with the correct rule cross-referencing.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim

Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

No other code, article, or statute is affected by this proposal.

§225.3. *Issuance of Peace Officer License through a Medical Corporation.*

(a) The commission shall issue a peace officer license to an individual appointed by a medical corporation who meets all the minimum standards for peace officer licensure, and submits both the current commission application and any required fees.

(b) A medical corporation that appoints an individual who already holds a valid, active peace officer license shall meet the appointment requirements of §217.7 (relating to Reporting the Appointment and Termination of a Licensee), including submitting any required fee.

(c) A medical corporation that appoints an individual with a 180-day break in service shall meet the appointment requirements of §217.7 of this title, including submitting any required fee.

(d) Individuals licensed as peace officers appointed by a medical corporation shall meet the continuing education requirements in Chapter 218 of this title. [~~§217.11 of this title (relating to Legislatively Required Continuing Education for Licensees).~~]

(e) The effective date of this section is September 1, 2016. [~~July 15, 2010.~~]

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 March 16, 2016.

TRD-201601260

Kim Vickers

Executive Director

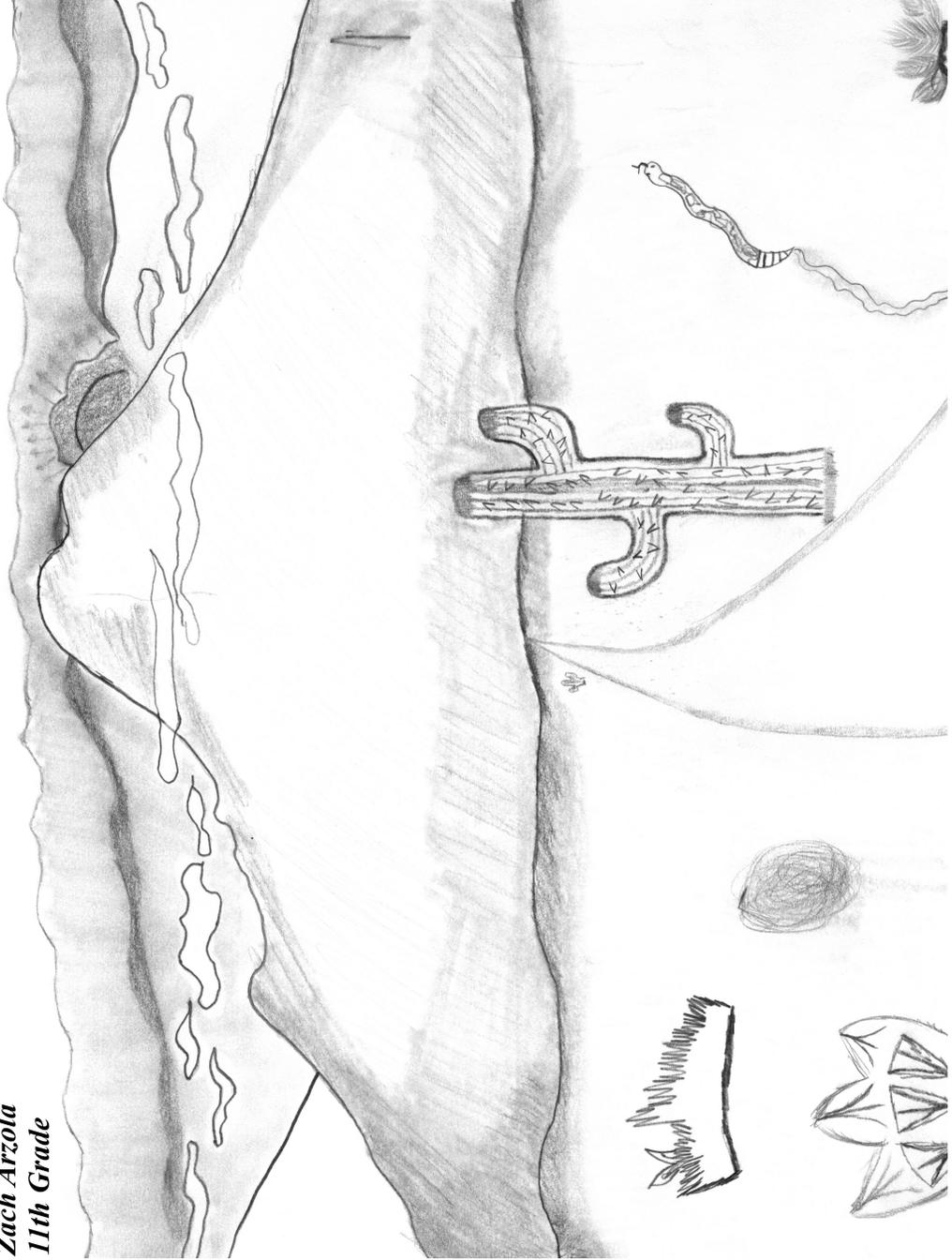
Texas Commission on Law Enforcement

Earliest possible date of adoption: May 1, 2016

For further information, please call: (512) 936-7713



Zach Arzola  
11th Grade



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 98. DENTAL SUPPORT ORGANIZATIONS

The Office of the Secretary of State (hereinafter referred to as "Office") adopts new rules under Chapter 98, concerning dental support organizations (DSOs). The Office adopts §98.5 without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9404). The Office adopts §§98.1, 98.2, 98.3 and 98.4 with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9404). The changes to proposed §§98.1, 98.2, 98.3 and 98.4 are adopted to address certain comments raised during the comment period, and are limited to clarification and procedural, non-substantive modifications. Sections 98.1 - 98.4 will be republished.

Section 98.1 is added to define relevant terms. Paragraph (1) defines the term "dental support agreement." Paragraph (2) defines the term "non-dentist owner." Paragraph (3) defines "Professional Entity."

Section 98.2 specifies the procedures for registering with the secretary of state as well as renewing a registration as a DSO.

Section 98.3 provides that a registration for a DSO is valid for one year and must be renewed annually. The section also provides clarification as to the time period in which DSOs must first register.

Section 98.4 sets forth the procedures and time periods to submit a certificate of correction.

Section 98.5 is added to set forth the required fees under Chapter 73 of the Business & Commerce Code. Subsection (a) sets forth the fee for registering or renewing the registration of a DSO. Subsection (b) sets forth the fee for filing a statement of correction.

Three comments were received regarding adoption of the new rules.

Steve Bresnan, on behalf of the Association of Dental Support Organizations, submitted the following comments. The Office's response to each comment is included with the description of each comment:

1. The first comment requests clarification regarding when DSOs are required to register. The comment suggests that DSOs in existence as of the effective date of the rules, with dental support agreements in existence as of the effective date of the rules, be required to register no later than 90 days

after the effective date of the rules. However, based on the language of SB 519, it is the position of this Office that the statute provides for the timing of all registrations. In order to clarify what is already provided in SB 519, §98.3(c) and (d) are added to provide specific language as to the timing of the initial registration for DSOs.

2. The second comment requests that the proposed rules be amended to include that registration is required where the agreements are between a professional entity owned by one or more dentists and services are provided to such a professional entity. After careful review, the Office finds that such a change to the rules would be unnecessary because the language of SB 519 specifies that a dental support organization is defined as "an entity that, under an agreement, provides two or more business support services to a dentist." The types of agreements contemplated by the statute, whether entered into with a professional entity or a dentist, still provide support services to a dentist. As a result, the Office understands that registration would be required whether or not the parties to an agreement include a professional entity. However, to assist with some clarification, the Office has added a definition to §98.1(3) to define professional entity, has clarified §98.2(b)(2) to refer to the support services being provided to the dentist under a dental support agreement, has modified the definition of a dental support agreement in §98.1(1) to refer to support services being provided to a dentist under an agreement, and has included the name of the professional entity through which dental services are provided, if any, to the registration requirements in §98.2(b)(2)(B).

3. The third comment requests changes to the language of the proposed rules, where they refer to "applicant" and "application [for registration]." Specifically, it generally requests that the Office replace words such as "applicant" and "application" with "registrant" and "registration", respectively, contending that the former language implies that the Office has regulatory authority not given to it by SB 519, and thus allegedly exceeds the authority of this Office. After careful review, the Office rejects the notion that the language implies regulatory authority the Office does not have because the Office retains the authority to reject registrations for various reasons when the registration does not facially comply with the statutory requirements (i.e., is missing information required by §73.004 of the Business and Commerce Code) or does not include the required fee, both of which the comment itself recognizes are within the Office's authority. However, the Office is not opposed to the language suggested in the third comment and therefore amends §§98.2, 98.3, and 98.4 to replace references to "applicant" and "application" (as well as "application for registration") with "registrant" and "registration" or "registration form", as requested.

4. The fourth comment requests an extension to the time period for submitting a statement of correction each quarter, to 45 days after the end of the calendar quarter during which a change in

the original registration occurs. The Office has amended §98.4 to include this 45-day time period.

5. The fifth comment requests an amendment to the proposed rules to remove the requirement that the registration include trade names. The fifth comment also contends that §98.2(b)(2)(B) is surplus language as the DSO registrant's name is already on the registration; however, the Office notes that §98.2(b)(2)(B) refers to information to be provided regarding the dentist, not the DSO, and, in any event, as amended, §98.2(b)(2)(B) now refers to the name of a professional entity through which a dentist provides services, in accordance with the Office's response to the second comment. The Office also amends §98.2 and §98.3 to remove references to trade names, and only refer to legal names, and has clarified that the DSO must include a legal name in any Statement of Correction in §98.4(b)(1).

6. The sixth comment addresses the registration form and did not request any changes to the proposed rules. The Office has not made any modifications to the proposed rules based on the sixth comment.

7. The seventh comment requests that the requirement regarding notarizations be removed and that a registration be signed by a person authorized to signed on behalf of the registrant and include in the form an attestation to that effect. The Office incorporates this change by removing the notarization requirement in §98.3 and §98.4.

Craig S. Armstrong, on behalf of the Texas Dental Association, sent in a comment in support of the proposed rules.

Jordan Dixon, clerk of the Senate Committee on Health and Human Services, submitted a question regarding whether the rules contained a clarification of the registration deadlines in SB 519; this has been addressed in the adopted rules in response to Mr. Bresnan's first comment as described above.

## SUBCHAPTER A. DEFINITIONS

### 1 TAC §98.1

#### STATUTORY AUTHORITY

The rule is adopted under the general rulemaking authority in §2001.004 of the Texas Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the new rule is adopted pursuant to the authority of the secretary of state to set a fee for filing under §73.004(b), Texas Business and Commerce Code.

No other code or statute (besides Chapter 73 of Texas Business & Commerce Code (referenced in the adopted and proposed rules)) is affected by the adoption.

#### §98.1. Definitions.

Words and terms defined in Chapter 73 of the Business & Commerce Code shall have the same meaning in this chapter. In addition the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Dental Support Agreement--The agreement under which a dental support organization provides two or more business support services to a dentist.

(2) Non-Dentist Owner--A person, including a corporation, association, limited partnership, limited liability company, limited liability partnership, sole proprietorship, or other legal entity,

who is not a licensed dentist but maintains 10% or more ownership in a dental support organization.

(3) Professional Entity--A professional corporation, professional limited liability company, professional association, general partnership that provides a professional service, or limited partnership that provides a professional service.

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

Filed with the Office of the Secretary of State on March 21, 2016.

TRD-201601337

Lindsey Wolf

General Counsel

Office of the Secretary of State

Effective date: April 10, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 463-5586



## SUBCHAPTER B. REGISTRATION AND RENEWAL OF DENTAL SUPPORT ORGANIZATIONS

### 1 TAC §98.2, §98.3

#### STATUTORY AUTHORITY

The rules are adopted under the general rulemaking authority in §2001.004 of the Texas Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the new rules are adopted pursuant to the authority of the secretary of state to set a fee for filing under §73.004(b), Texas Business and Commerce Code.

No other code or statute (besides Chapter 73 of Texas Business & Commerce Code (referenced in the adopted and proposed rules)) is affected by the adoption.

#### §98.2. *Registration and Renewal of Dental Support Organizations.*

(a) A complete initial registration or renewal is comprised of:

(1) A completed registration form (See Form 3801);

(2) Payment of the filing fee stated in §98.5 of this chapter (relating to Filing Fees); and

(3) A registrant contact sheet (See Form 3802).

(b) A registration or renewal must comply with the Business & Commerce Code, §73.004, and also provide:

(1) For the dental support organization:

(A) The legal name; and

(B) The business address and mailing address, if different.

(2) For each dentist who is being provided two or more business support services under a dental support agreement:

(A) The dentist's name and business address;

(B) If the dentist provides services through a professional entity, the legal name of the professional entity; and

(C) A disclosure of the business support services provided pursuant to any dental support agreement the dental support organization has.

(3) For each person who owns 10% or more of the dental support organization:

- (A) The name and address of the owner; and
- (B) Whether the owner is a dentist or non-dentist owner.

(c) Each registration shall be signed by a person authorized to act by or on behalf of the dental support organization.

*§98.3. Timing of Registration.*

(a) Registrations will expire annually on December 31 of each year. Renewals may be submitted from 90 days prior to expiration until January 31 of the year for which the next registration will be effective, by submitting a completed registration form and paying the filing fee, except as provided in subsection (b) of this section.

(b) In the event a dental support organization meets the requirements for registration under §73.004 of the Business & Commerce Code after January 31, the dental support organization must file an application for registration within 90 days after the date of execution of a dental support agreement.

(c) The initial registration for a dental support organization that has entered into a dental support agreement prior to February 1, 2016 must be filed not later than January 31, 2017.

(d) The initial registration for a dental support organization that first enters into a dental support agreement on or after February 1, 2016 must be filed not later than the 90th day after the date the agreement is executed.

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

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Lindsey Wolf  
General Counsel  
Office of the Secretary of State  
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Proposal publication date: December 25, 2015  
For further information, please call: (512) 463-5586



**SUBCHAPTER C. STATEMENT OF CORRECTION**

**1 TAC §98.4**

**STATUTORY AUTHORITY**

The rule is adopted under the general rulemaking authority in §2001.004 of the Texas Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the new rule is adopted pursuant to the authority of the secretary of state to set a fee for filing under §73.004(b), Texas Business and Commerce Code.

No other code or statute (besides Chapter 73 of Texas Business & Commerce Code (referenced in the adopted and proposed rules)) is affected by the adoption.

*§98.4. Corrections.*

(a) A dental support organization must submit a statement of correction if, during the quarter, any information provided in the registration changes.

(b) A statement of correction must include the following information:

- (1) The legal name of the dental support organization;
- (2) The date of the last filed registration;
- (3) Any identification number assigned by the secretary of state assigned to the dental support organization; and
- (4) A statement identifying the information that has changed.

(c) A dental support organization that is required to submit a statement of correction in accordance with subsection (a) shall do so according to the following schedule:

- (1) First quarter (January 1 - March 31) - Statement of correction due not later than the 45th day after March 31.
- (2) Second quarter (April 1 - June 30) - Statement of correction due not later than the 45th day after June 30.
- (3) Third quarter (July 1 - September 30) - Statement of correction due not later than the 45th day after September 30; and
- (4) Fourth quarter (October 1 - December 31) - Statement of correction due not later than the 45th day after December 31.

(d) Each statement of correction shall be signed by a person authorized to act by or on behalf of the dental support organization.

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

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**SUBCHAPTER D. FILING FEES**

**1 TAC §98.5**

**STATUTORY AUTHORITY**

The rule is adopted under the general rulemaking authority in §2001.004 of the Texas Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the new rule is adopted pursuant to the authority of the secretary of state to set a fee for filing under §73.004(b), Texas Business and Commerce Code.

No other code or statute (besides Chapter 73 of Texas Business & Commerce Code (referenced in the adopted and proposed rules)) is affected by the adoption.

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

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Lindsey Wolf

General Counsel

Office of the Secretary of State

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## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 120. LICENSED DYSLEXIA THERAPISTS AND LICENSED DYSLEXIA PRACTITIONERS

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC) Chapter 120, §§120.1, 120.10, 120.20, 120.21, 120.26, 120.65, 120.67 - 120.70, 120.90 and 120.95, regarding the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9413). These rules will not be republished.

The Commission adopts new rules at 16 TAC Chapter 120, §§120.22 - 120.25, 120.66 and 120.80 with changes to the proposed text as published in December 25, 2015, issue of the *Texas Register* (40 TexReg 9413). These rules will be republished.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Commission and the Texas Department of Licensing and Regulation (Department). The Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program is part of the phase 1 transfer.

The adopted new rules under 16 TAC Chapter 120 are necessary to implement S.B. 202 and to regulate the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program under the authority of the Commission and the Department. The rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate the program. These adopted new rules are separate from and are not to be confused with the DSHS rules located at 25 TAC Chapter 140, Subchapter K, regarding the Dyslexia Therapists and Dyslexia Practitioners program, which are still in effect.

Sections 120.1, 120.10, and 120.65 - 120.69 are adopted with an effective date of April 15, 2016, to enable the Department to form the Dyslexia Therapists and Practitioners Advisory Committee in advance of the date that the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program begins operation at the Department. The remaining rule sections

are adopted with an effective date of October 1, 2016. The Department will officially commence all regulatory functions for the Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners program on October 3, 2016.

The adopted new §120.1 provides the statutory authority to regulate licensed dyslexia therapists and practitioners.

The adopted new §120.10 creates the definitions to be used in this chapter.

The adopted new §120.20 establishes the application criteria.

The adopted new §120.21 establishes the licensing requirements for dyslexia therapists.

The adopted new §120.22 establishes the licensing requirements for dyslexia practitioners.

The adopted new §120.23 creates the examination guidelines.

The adopted new §120.24 sets the requirements for training programs.

The adopted new §120.25 creates the continuing education requirements for all licenses in this program.

The adopted new §120.26 sets the parameters for renewing a license.

The adopted new §120.65 establishes the authority and membership of the Dyslexia Therapists and Practitioners Advisory Committee.

The adopted new §120.66 creates the duties of the Dyslexia Therapists and Practitioners Advisory Committee.

The adopted new §120.67 sets the terms and vacancies process for the Dyslexia Therapists and Practitioners Advisory Committee.

The adopted new §120.68 provides for a presiding officer of the Dyslexia Therapists and Practitioners Advisory Committee.

The adopted new §120.69 sets the parameters and provides instruction for calling a meeting of the Dyslexia Therapists and Practitioners Advisory Committee.

The adopted new §120.70 creates the responsibilities for license holders.

The adopted new §120.80 establishes the fees related to the licensed dyslexia therapists and licensed dyslexia practitioners program.

The adopted new §120.90 creates professional standards that all licensees must adhere to. This section also establishes the basis on which disciplinary action may be taken.

The adopted new §120.95 provides information on how the public may reach the department to file a complaint against a license holder.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9413). The deadline for public comments was January 25, 2016. The Department held a public hearing on the proposed rules on January 12, 2016. The Department received written comments from four interested parties and three oral comments, including two from the Academic Language Therapy Association on the proposed rules during the 30-day public comment period.

Comment--Three commenters expressed general approval of the proposed rules, including specifically the provisions for on-line renewal and updating personal information, the requirement to conduct background checks on applicants, the requirement for the advisory committee meetings to be held in compliance with the Open Meetings Act, the focus in the rules on what is best for the public, the availability of the toll-free complaint line, the consideration of dyslexia treatment as a health profession, and not charging subscription or convenience fees.

*Department Response*--The Department acknowledges and appreciates the expressions of satisfaction with the proposed rules. No changes have been made to the rules in response to these comments.

Comment--Three commenters expressed concern about the meaning and implications of the phrase "...Academic Language Therapy Association or its equivalent, as approved by the department..." appearing in the rules in relation to certifications and to continuing education programs offered or approved by the Academic Language Therapy Association (ALTA). The commenters expressed concern about whether the future Dyslexia Therapists and Practitioners Advisory Committee members would play a role in the approvals, and how those members would be chosen to serve on the committee.

*Department Response*--The Texas Occupations Code, Chapter 403 does not require or authorize the Department to accept only ALTA certifications or programs or approvals of programs of continuing education. Therefore the Department has included this language to recognize that ALTA is currently approved but that other providers or a successor entity to ALTA could be approved in the future. The Dyslexia Therapists and Practitioners Advisory Committee members would be involved in the evaluation of other providers, but the power to approve them is reserved to the Department. The Department conducts the recruitment and examination of the credentials of potential committee members, and the presiding officer of the Commission appoints the members upon approval by the Commission. The member selection process is governed by Texas Occupations Code, Chapter 51 and 16 TAC Chapters 60 and 120 (these rules). The Department and Commission have considerable experience applying the requirements for evaluating and selecting qualified candidates for multiple advisory bodies. No change has been made to the rules in response to this comment.

Comment--Five commenters expressed concern that licensees who obtained therapist licensure without a master's degree in the past might now be required to obtain a master's degree in order to renew their licenses. One of the commenters requested that the rules include a provision stating that the master's degree requirement will not now be imposed on dyslexia therapists who are currently licensed.

*Department Response*--The Department will continue to renew licenses that were validly issued under the requirements applicable at the time of issuance as long as all current renewal requirements are satisfied, including completion of continuing education requirements and payment of fees. Requirements for renewal of the therapist license do not include the requirement to hold a master's degree. The Department will not impose at renewal, retroactively or otherwise, requirements for initial licensure that were not applicable at the time of issuance. However, all applicants for new or renewal licenses may be subject to new requirements that are imposed by law. Applicants who let their licenses lapse and who no longer qualify to late-renew the license

must meet the current requirements for licensure. No change has been made to the rules in response to these comments.

Comment--Three commenters suggested that the term "academic language teacher" should be removed from the rules because there is no longer such a credential.

*Department Response*--The Department agrees and has removed the term "academic language teacher" from the rule.

Comment--Two commenters pointed out that there are not two dyslexia licensing examinations available as indicated in §120.23 and §120.66.

*Department Response*--The Department agrees and has modified §120.23 and §120.66 to make the correction.

Comment--Three commenters expressed concern that §120.24 lists only one of the requirements specified in Texas Occupations Code §403.106(a), and are concerned that the requirements in the statute are still applicable.

*Department Response*--All requirements in Texas Occupations Code, Chapter 403 and in the adopted rules are applicable and enforceable. Most of the provisions in Chapter 403 are not repeated in the rules in the interest of clarity and brevity. The §403.106(a)(11) provision was included in the rule in order to update the referenced version of the cited publication only. A clarifying change was made to the rule in §120.24 to include the applicability of Texas Occupations Code §403.106.

Comment--One commenter questioned the ability of the Department and the advisory committee to determine whether a training program meets the requirements of Texas Occupations Code §403.106, as provided in proposed rule §120.24(b), due to the special expertise required to make such a determination.

*Department Response*--The requirement for the Department to consult with the advisory committee to determine whether a training program meets the requirements of §403.106 is located in §403.106(c). The repetition of this requirement in rule is not necessary therefore, the Department has removed it. It is within the Department's power to summon all necessary resources to make any such determination as needed.

The Department made changes to the proposed rules based on written comments and oral comments received during the public hearing held on January 12, 2016. At its meeting on March 9, 2016, the Commission adopted the proposed rules with the recommended changes and with separate effective dates. Sections 120.1, 120.10, and 120.65 - 120.69 are adopted with an effective date of April 15, 2016, and the remaining sections are adopted with an effective date of October 1, 2016.

#### **16 TAC §§120.1, 120.10, 120.65 - 120.69**

The new rules are adopted under Texas Occupations Code, Chapters 51 and 403, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 403. No other statutes, articles, or codes are affected by the adoption.

#### *§120.66. Duties.*

The committee shall advise the department regarding rules relating to the licensure and regulation of dyslexia therapists and dyslexia practitioners, including continuing education requirements and the approved examination for licensure.

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

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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



## 16 TAC §§120.20 - 120.26, 120.70, 120.80, 120.90, 120.95

The new rules are adopted under Texas Occupations Code, Chapters 51 and 403, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 403. No other statutes, articles, or codes are affected by the adoption.

### §120.22. *Dyslexia Practitioner Licensing Requirements.*

(a) A person who holds current certification as an academic language practitioner issued by the Academic Language Therapy Association or its equivalent, as approved by the department, may be licensed as a dyslexia practitioner if the person has earned a bachelor's degree from an accredited public or private institution of higher education.

(b) A person who qualifies for licensure under subsection (a), is not required to provide documentation to the department that the person meets the requirements of Occupations Code §403.104(a)(2) - (5), Eligibility for Licensed Dyslexia Practitioner License.

(c) A licensed dyslexia practitioner may practice only in an educational setting, including a school, learning center, or clinic.

### §120.23. *Examination.*

(a) The examination designated and approved by the department for licensure as a dyslexia therapist is the Alliance National Registration Examination, Therapist Level, administered by the Academic Language Therapy Association.

(b) The examination designated and approved by the department for licensure as a dyslexia practitioner is the Alliance National Registration Examination, Practitioner Level, administered by the Academic Language Therapy Association.

(c) The applicable licensure examination requirement is waived for a person who holds current certification as an academic language therapist or academic language practitioner issued by the Academic Language Therapy Association, or its equivalent, as approved by the department.

### §120.24. *Requirements for Training Programs.*

(a) For purposes of determining whether an applicant satisfies the training requirements for a license under the Act, a multisensory structured language education training program completed by the applicant must meet the requirements in Occupations Code, §403.106 and must have provided instruction based on the Texas Education Agency publication "The Dyslexia Handbook: Procedures Concerning

Dyslexia and Related Disorders" (2014) or a revised version of that publication approved by the department.

(b) Training programs accredited by the International Multisensory Structured Language Education Council (IMSLEC), meet the requirements of the Act.

### §120.25. *Continuing Education.*

(a) A license holder must complete 20 clock-hours of continuing education during each two-year licensure period.

(b) Continuing education credit taken by a license holder for renewal shall be acceptable if the experience falls in one or more of the following categories and meets the requirements of subsection (c):

(1) academic courses at a regionally accredited college or university;

(2) in-service educational programs, training programs, institutes, seminars, workshops and conferences;

(3) instructing or presenting education programs or activities at an academic course, in-service educational programs, training programs, institutes, seminars, workshops and conferences not to exceed five clock-hours each continuing education period;

(4) publishing a book or an article in a peer review journal not to exceed five clock-hours each continuing education period; or

(5) successful completion of a self-study program, not to exceed ten clock-hours each continuing education period.

(c) Continuing education credit taken by a license holder, shall be in one or more of the following content areas:

(1) basic language and/or learning disorders;

(2) applied multisensory practice and methodology;

(3) curricula in academic language therapy;

(4) related research in medicine, psychology, education, or linguistics; or

(5) professional practice, including relevant laws, rules, and ethics of practice.

(d) Continuing education experience shall be credited as follows:

(1) Completion of course work at or through an accredited college or university, shall be credited for each semester hour on the basis of ten clock-hours of credit for each semester hour successfully completed for credit or audit as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs that meet the criteria of subsection (c)(2) or (3), shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education experience.

(3) A clock-hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(4) Continuing education programs, as described in subsection (c)(2) and (3), must be offered or approved by the Academic Language Therapy Association or its equivalent, as approved by the department.

(5) Successful completion of continuing education experience, as described in subsection (c)(2) and (3), is evidenced by a certificate of completion or attendance issued by the approved sponsoring organization of the course.

(6) Successful completion of continuing education experience, as described in subsection (b)(4), is evidenced by submission of a copy of the publication.

(7) Successful completion of continuing education experience, described in subsection (b)(5), is evidenced by a certificate of completion presented by the sponsoring organization of the self-study program.

(e) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours, are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(f) The audit process shall be as follows.

(1) The department shall select for audit, a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) All license holders selected for audit shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the license holder's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A license holder who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until the required continuing education documents are received, accepted and approved by the department.

(g) Licenses will not be renewed until continuing education requirements have been met.

(h) A person who fails to complete continuing education requirements for renewal may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license.

(i) The department may not grant continuing education credit to any license holder for:

(1) education incidental to the regular professional activities of a license holder, such as learning occurring from experience or research;

(2) professional organization activity, such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (a); or

(4) performance of duties that are routine job duties or requirements.

#### *§120.80. Fees.*

(a) Unless otherwise specified, the fees established in this section must be paid to the department before a license will be issued or renewed.

(b) All fees paid to the department are nonrefundable.

(c) Licensing fees are as follows:

(1) application and initial license--\$150

(2) renewal--\$150

(d) Late renewal fees for licenses issued under this chapter are prescribed under §60.83 of this title (relating to Late Renewal Fees).

(e) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(f) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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

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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



## **TITLE 19. EDUCATION**

### **PART 2. TEXAS EDUCATION AGENCY**

#### **CHAPTER 74. CURRICULUM REQUIREMENTS**

##### **SUBCHAPTER A. REQUIRED CURRICULUM 19 TAC §74.6**

The State Board of Education (SBOE) adopts new §74.6, concerning required curriculum. The new section is adopted without changes to the proposed text as published in the December 25, 2015 issue of the *Texas Register* (40 TexReg 9419) and will not be republished. The rule action adopts charts indicating the alignment of the College and Career Readiness Standards (CCRS) and the Texas Essential Knowledge and Skills (TEKS), as required by House Bill (HB) 1613, 84th Texas Legislature, Regular Session, 2015.

**REASONED JUSTIFICATION.** In 2006, the 79th Texas Legislature required the Texas Education Agency (TEA) and the Texas Higher Education Coordination Board (THECB) to establish vertical teams composed of public school educators and faculty from institutions of higher education that would develop college- and career-ready standards in the areas of English/language arts, mathematics, science, and social studies. The work of the vertical teams was organized in three phases. The first phase entailed a series of team meetings to create the CCRS for the four subject areas. Phase two required the vertical teams to make recommendations regarding alignment of the TEKS with the CCRS. Phase three required the vertical teams to develop or establish instructional strategies, professional development materials, and online support materials for students who need additional assistance in preparing to successfully perform college-level work. Teams also engaged in a series of gap analyses to ensure alignment between the adopted TEKS and the CCRS.

The THECB adopted the CCRS in January 2008. The commissioner of education approved the CCRS, and the SBOE incorporated them into the TEKS as follows: English language arts and reading TEKS in 2008; mathematics and science TEKS in 2009; and social studies TEKS in 2010.

The 84th Texas Legislature, Regular Session, 2015, passed HB 1613, amending the Texas Education Code (TEC), §28.008, to require the SBOE to adopt a chart by rule that clearly indicates the alignment of the college readiness standards and expectations with the TEKS. New 19 TAC §74.6 adopts in rule charts demonstrating the alignment of the TEKS with the mathematics, science, social studies, and cross-disciplinary CCRS. The SBOE will adopt a chart demonstrating the alignment of the TEKS with the English/language arts CCRS following adoption of revisions to the English and Spanish language arts and reading TEKS.

New 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum, §74.6, College and Career Readiness and Texas Essential Knowledge and Skills Alignment, was approved by the SBOE for first reading and filing authorization at its November 20, 2015 meeting and for second reading and final adoption at its January 29, 2016 meeting.

In accordance with the TEC, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2016-2017 school year. The earlier effective date is necessary in order to meet the statutory requirement for the approval of the alignment.

**SUMMARY OF COMMENTS AND RESPONSES.** No public comments were received on the proposal.

**STATUTORY AUTHORITY.** The new section is adopted under the Texas Education Code, §28.008, as amended by HB 1613, 84th Texas Legislature, Regular Session, 2015, which requires the SBOE to adopt a chart by rule that clearly indicates the alignment of the college readiness standards and expectations with the TEKS.

**CROSS REFERENCE TO STATUTE.** The new section implements the Texas Education Code, §28.008, as amended by HB 1613, 84th Texas Legislature, Regular Session, 2015.

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

Filed with the Office of the Secretary of State on March 17, 2016.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 102. EDUCATIONAL PROGRAMS

### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

#### 19 TAC §102.1003

The Texas Education Agency (TEA) adopts new §102.1003, concerning the high-quality prekindergarten grant program. The new section is adopted with changes to the proposed text as published in the February 5, 2016 issue of the *Texas Register* (41 TexReg 903). The adopted new section outlines the requirements of a new grant program authorized by House Bill (HB) 4, 84th Texas Legislature, Regular Session, 2015.

**REASONED JUSTIFICATION.** Texas Education Code (TEC), §29.165, as added by HB 4, 84th Texas Legislature, 2015, requires the commissioner to by rule establish a grant funding program under which funds are awarded to school districts and open-enrollment charter schools to implement a high-quality prekindergarten grant program.

In accordance with the TEC, §29.165, adopted new 19 TAC §102.1003, High-Quality Prekindergarten Grant Program, outlines school district and charter school eligibility for grant funding and qualifications for students eligible to receive instruction under the grant program.

In accordance with TEC, §29.167, adopted new §102.1003(c) requires school districts and charter schools to implement a curriculum that addresses all of the Texas Prekindergarten Guidelines (updated 2015). Adopted new §102.1003(d) requires districts and charter schools to measure the progress of each student in meeting the recommended outcomes identified in the Texas Prekindergarten Guidelines (updated 2015) using a progress monitoring tool selected from the commissioner's list of approved prekindergarten instruments in order to be eligible to receive grant funding under this program. In response to public comment, a reference to the statutory requirement related to kindergarten readiness assessments was added at adoption (§102.1003(d)(2)).

Also in accordance with TEC, §29.167, the adopted new rule outlines the requirements teachers must meet in order to provide instruction in a high-quality prekindergarten program. In response to public comment, the following changes were also made at adoption.

Documented completion of the Texas School Ready Training Program (TSR Comprehensive) was added as an additional qualification (§102.1003(e)(5)).

Language was adjusted to clarify that professional development must be completed in the Texas Prekindergarten Guidelines in addition to other relevant topics related to high-quality prekindergarten and that not all professional development must be completed solely related to the Texas Prekindergarten Guidelines (§102.1003(e)(6)).

The requirement related to professional development completed prior to the 2016-2017 school year was amended to reference the Texas Prekindergarten Guidelines that were approved prior to 2015 (§102.1003(e)(6)).

The requirement that at least half of the professional development hours be completed in face-to-face training opportunities was removed and the reference to "master teachers" was replaced with "specialists in early childhood education" (§102.1003(e)(6)).

In accordance with TEC, §29.168, the adopted rule also identifies the family engagement components that districts and charter schools are required to address in a family engagement plan in order to be eligible to receive grant funding under this program. In response to public comment, a requirement that a district or

charter make the family engagement plan available on the district, charter, or campus website was added (§102.1003(f)).

In accordance with TEC, §29.169, the adopted new rule also identifies reporting requirements related to the grant program. In response to public comment, the requirement for districts and charters to report the results of the district's or charter school's kindergarten students on a kindergarten readiness instrument was adjusted from 100% to 95% (§102.1003(g)).

In response to public comment, the following statutory requirement was added to the rule as new §102.1003(i), "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

**SUMMARY OF COMMENTS AND AGENCY RESPONSES.** The public comment period on the proposal began February 5, 2016, and ended March 7, 2016. Following is a summary of the public comments received and corresponding agency responses regarding proposed new 19 TAC 102, Educational Programs, Subchapter AA, Commissioner's Rules Concerning Early Childhood Education Programs, §102.1003, High-Quality Prekindergarten Grant Program.

**Comment.** The Waterford Institute asked if the prekindergarten curriculum needs to be identified and written into the grant application.

**Agency Response.** This comment is outside the scope of the rulemaking process.

**Comment.** Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children asked for confirmation that a locally developed curriculum can satisfy the curriculum requirements outlined in proposed §102.1003(c) and be reported as the curriculum used under proposed §102.1003(g)(1).

**Agency Response.** The agency provides the following clarification. Districts may implement and report a locally developed curriculum that addresses all of the Texas Prekindergarten Guidelines to satisfy the curriculum requirements outlined in proposed §102.1003(c) and reporting requirements under proposed §102.1003(g)(1).

**Comment.** The superintendent of KIPP Houston Public Schools expressed hope that the agency would allow participating school districts and public charter schools the opportunity to vet and update the state's selected list of suggested literacy and mathematics curriculum.

**Agency Response.** The agency provides the following clarification. The state does not have a list of suggested literacy and mathematics curricula. Decisions regarding curriculum have been left to local discretion.

**Comment.** The Texas Association of School Administrators expressed support for the flexibility in proposed new §102.1003(c) that allows districts to make decisions locally about the schedule and delivery of instruction on the ten domains in the revised Texas Prekindergarten Guidelines.

**Agency Response.** The agency agrees and has maintained language as proposed.

**Comment.** The Waterford Institute asked whether an approved progress monitoring instrument must be used or if districts can

purchase a curriculum and progress monitoring instrument separately.

**Agency Response.** The agency provides the following clarification. Under TEC, §29.169(c), an assessment instrument administered to a prekindergarten program class must be selected from a list of appropriate prekindergarten assessment instruments identified by the commissioner.

**Comment.** Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended adding physical development to the list of required domains to be measured using a progress monitoring instrument under proposed §102.1003(d)(1).

**Agency Response.** The agency disagrees and has determined that in order to measure student progress toward kindergarten readiness the list of domains to be measured is appropriate as proposed.

**Comment.** Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended amending §102.1003(d)(2) to include a reference to TEC, §28.006(b), which outlines the requirements in state law related to kindergarten reading instruments.

**Agency Response.** The agency agrees and has amended TEC, §102.1003(d)(2), to read, "the preparation of each student for kindergarten using a kindergarten readiness instrument for reading as described in TEC, §28.006."

**Comment.** Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, Stand for Children, and an individual recommended aligning the target percentage of kindergarten students for whom kindergarten readiness instrument results are reported with the agency's accountability "safe guard" targets for participation on STAAR of 95%.

**Agency Response.** The agency agrees and has amended §102.1003(g)(3)(B) to read, "the results for at least 95% of the district's or charter school's kindergarten students on the kindergarten readiness instrument."

**Comment.** United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children expressed concern that if progress monitoring is tied to reported program evaluation, teachers might be incentivized to inflate the results and then prekindergarten will look strong but ineffective if the results do not show in kindergarten. The commenters asked if sampling would be permissible.

**Agency Response.** The agency provides the following clarification. The agency has determined that sampling would not be permissible. Under TEC, §29.1532, a district that administers an assessment instrument to students in prekindergarten classes must report to the agency a description and the results of each type of assessment instrument.

**Comment.** Lumin Education asked for clarification regarding whether a child with an individualized education program (IEP) would be exempt from the requirement that a district or charter report the results of a kindergarten readiness instrument for 100% of students.

Agency Response. The agency provides the following clarification. In response to other comments, the agency has amended §102.1003(g)(3)(B) to read "the results for at least 95% of the district's or charter school's kindergarten students on the kindergarten readiness instrument."

Comment. Lumin Education expressed full support for the choice of using a "progress monitoring tool" rather than an assessment or test. The commenter indicated that focusing on progress at this age is more valuable and informative than having a child take a test.

Agency Response. The agency agrees and has maintained language as proposed.

Comment. An individual asked if a district will have to complete the full Circle assessment, including measures on science, social studies, physical health development, etc., or if the district will only have to complete the components addressed in the new rule.

Agency Response. The agency provides the following clarification. A school district or charter school would be required to measure the progress of each student in social and emotional development, language and communication, emergent literacy reading, emergent literacy writing, and mathematics.

Comment. The superintendent of KIPP Houston Public Schools asked if I-Station will continue to be free for districts that participate in the new prekindergarten grant.

Agency Response. This comment is outside the scope of the rulemaking process.

Comment. The Association of Texas Professional Educators expressed the belief that granting school districts maximum flexibility in choosing how to measure state-determined student success metrics and avoiding the appearance of preferential treatment of one or a limited number of vendors are both highly advantageous goals and stated that the agency should allow grantees to choose vendor(s) either on or outside of the commissioner's list to monitor progress in the content areas listed in §102.1003(d)(1).

Agency Response. The agency provides the following clarification. Under TEC, §29.169(c), an assessment instrument administered to a prekindergarten program class must be selected from a list of appropriate prekindergarten assessment instruments identified by the commissioner.

Comment. The Waterford Institute asked if the family engagement plan must include home visits.

Agency Response. The agency provided the following clarification. Home visits are not specifically required in the rule. A school district has the authority to identify the specific strategies it will use to meet the required components of the family engagement plan.

Comment. Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended adding language to proposed §102.1003(f) that would require districts to publish the family engagement plan on the district or school website.

Agency Response. The agency agrees and has amended §102.1003(f) to read, "To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall develop, implement, and make available on

the district, charter, or campus website a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven."

Comment. The superintendent of KIPP Houston Public Schools commented that the proposed rule contains 40 requirements for a family engagement plan and suggested that this list should be scaled down significantly.

Agency Response. The agency provides the following clarification. The rule requires that a family engagement plan include six components. The strategies that follow the term "such as" for each of the six required components in the rule are examples and are not required to be included in the family engagement plan.

Comment. The Texas Association of School Administrators asked for confirmation that examples of family engagement strategies following the phrase "such as" are examples only and that a district's grant application will not be penalized if only a portion of the examples are included in its family engagement program.

Agency Response. The agency provides the following clarification. The strategies that follow the term "such as" for each of the six required components in the rule are examples only and are not required to be included in the family engagement plan.

Comment. Texans Care for Children recommended revising the proposed rule to address TEC, §29.167(d), which states that a school district must attempt to maintain an average ratio in any prekindergarten class of not less than one certified teacher or teacher's aide for every 11 students. The commenter also recommended clarifying in the proposed rule or through guidance provided to districts a process to demonstrate that a district either meets the ratio requirement or is making a reasonable attempt to do so. This commenter suggested that the process could include requiring each district to report the average teacher/aide-to-student ratio in each prekindergarten class and submit a written plan to the Texas Education Agency to remedy any classroom ratio over 11:1 over a three-year period.

Agency Response. The agency agrees with the addition of language that would require districts and charters to attempt to maintain an average teacher- or teacher aide-to-student ratio. In response to this and other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

The agency disagrees that a process should be included to require a district or charter to submit a written plan to remedy any classroom ratio over 11:1 over a three-year period because statute only requires that districts and charters attempt to meet the ratio.

The agency also provides the following clarification. Data will be collected to allow the agency to calculate the teacher- or teacher aide-to-student ratio in prekindergarten classrooms without requiring school districts and charters to specifically report the ratio.

Comment. Literacy Connexus commented that it endorsed the comments of Texans Care for Children regarding the need for a required student-to-teacher class ratio, optimally at the recommended 11:1 ratio.

Agency Response. The agency disagrees and has determined that statute only requires that districts and charters attempt to meet the student-to-teacher ratio. In response to other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. Two Montessori school principals expressed support of the rule as proposed. The commenters expressed agreement with the lack of specification around class size or student-to-teacher ratios.

Agency Response. The agency agrees and has determined that districts have the authority to identify class size and student-to-teacher ratios appropriate for their programs.

Comment. An individual expressed a desire to see student-to-teacher ratios addressed in the rule and suggested a cap of not more than 18:1.

Agency Response. The agency disagrees and has determined that statute only requires that districts and charters attempt to meet the student-to-teacher ratio. In response to other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. An individual recommended taking a step toward a student-to-teacher ratio of 11:1.

Agency Response. The agency agrees and has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. The Texas Center for Public Policy Priorities recommended including nationally recognized class-size limits and staff-child ratios in the criteria for a high-quality program.

Agency Response. The agency disagrees and has determined that statute only requires that districts and charters attempt to meet the student-to-teacher ratio. In response to other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. The chief of staff for Representative Mary Gonzalez asked why the teacher-to-student ratio/class size language included in House Bill 4 was excluded from the proposed rule and asked whether there must be a rule that references the language of the enabling statute if legislative language exists.

Agency Response. The agency provides the following clarification. Administrative rules do not need to repeat language

that already exists in statute. In response to other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. The Texas Classroom Teachers Association expressed the belief that the statutory requirement for school districts to attempt to maintain a 1:11 staff/student ratio must be included in the rule.

Agency Response. The agency agrees and has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. Raise Your Hand Texas commented that the proposed rule does not offer guidance or collect information regarding TEC, §29.167(d), which requires a district or charter school to attempt to maintain a prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students. The commenter stated that the commissioner should require districts to submit documentation describing their plans and procedures to maintain this ratio in an effort to align with bill language and promote transparency.

Agency Response. The agency disagrees with the comment that districts should be required to submit documentation describing plans and procedures to maintain the ratio. In response to other comments, the agency has added new §102.1003(i) to read, "A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students."

Comment. The superintendent of KIPP Houston Public Schools expressed agreement with the lack of prescribed student-to-teacher ratio.

Agency Response. The agency agrees and has determined that districts have the authority to identify class size and student-to-teacher ratios appropriate for their programs.

Comment. One teacher expressed concern regarding the grant program's certification requirements for prekindergarten teachers. The commenter recommended grandfathering the credentials of teachers who are already teaching prekindergarten for the grant program.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified. In response to other comments, the agency has made other modifications to the grant program's certification requirements for prekindergarten teachers in §102.1003(e).

Comment. One teacher expressed concern that teachers would be expected to pay for new certification and/or training requirements and that if teachers must complete training or coursework during the school day, the cost of employing substitute teachers would not be covered.

Agency Response. This comment is outside the scope of the rulemaking process.

Comment. One teacher expressed concern that the certification requirements for prekindergarten teachers under the grant pro-

gram would force teachers currently teaching prekindergarten out of the classroom.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified.

Comment. An early childhood program supervisor commented that the teacher qualifications seem to discount the value of an early childhood teacher certification from the State Board for Educator Certification (SBEC). She further commented that while a Child Development Associate (CDA) provides valuable preparation on early childhood development, it does not appear to prepare teachers for their role in preparing children to enter the K-12 world academically. The commenter also stated that the qualifications do not seem to respect the value of the university coursework of a new teacher.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified.

Comment. One administrator expressed concern that while the professional development requirements are welcomed, districts will need more time and support for implementation. The commenter stated that sorting through documentation to see which teachers need additional hours, coordinating a flexible professional development plan that includes all of the required components, and effectively executing the plan by the end of the 2016-2017 school year will be a challenge.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified, including allowing teachers multiple years to comply with the professional development option.

Comment. One administrator suggested that education service centers either offer face-to-face trainings that meet the requirements of the grant or assist districts in coordinating multi-district cooperatives for providing some of the training.

Agency Response. This comment is outside the scope of the rulemaking process.

Comment. One administrator suggested reducing the training requirements for the first year from 30 to 15 hours.

Agency Response. The agency disagrees and has determined that 30 hours is equivalent to one week of training and is appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's qualification requirements for prekindergarten teachers in §102.1003(e).

Comment. Collaborative for Children stated that the group felt that 12 college credit hours in early childhood education or early childhood development would be another helpful and important equivalent to a CDA credential to add to proposed new §102.1003(e). The commenter stated that the National Association for the Education of Young Children (NAEYC) has already defined this as an equivalent to a CDA.

Agency Response. The agency disagrees and has determined that the teacher qualification requirements identified for the grant program are appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's qualification requirements for prekindergarten teachers in §102.1003(e).

Comment. The Children's Learning Institute, Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas,

First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended the addition of the Texas School Ready Training Program (TSR Comprehensive) as an additional qualification under the teacher qualification requirements in proposed §102.1003(e).

Agency Response. The agency agrees and has added new §102.1003(e)(5) to read, "documented completion of the Texas School Ready Training Program (TSR Comprehensive)."

Comment. Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended amending proposed new §102.1003(e)(5)(B) to require teachers who have not completed the first 30 hours of required training for the grant programs to complete 10 hours within the first six weeks of the school year or, if hired after the school year starts, within six weeks after the hire date.

Agency Response. The agency disagrees and has determined that the teacher qualification requirements identified for the grant program allow for appropriate flexibility. In response to other comments, the agency has made other modifications to the grant program's certification requirements for prekindergarten teachers in §102.1003(e).

Comment. Early Matters (Dallas), Early Matters (Houston), United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended amending proposed new §102.1003(e)(5)(C) to read, "at least half of the hours required by subparagraph (A) or (B) of this paragraph are completed in face-to-face training opportunities (which may include the use of distance based technology) that include experiential learning, practical application, and direct interaction with specialists in early childhood education (including hours interacting with an instructional coach)."

Agency Response. The agency disagrees that the rule should state "face-to-face training opportunities (which may include the use of distance based technology)" because the statement appears to be contradictory and would likely create confusion. However, in response to this and other comments, the agency has amended proposed new §102.1003(e)(5)(C), adopted as §102.1003(e)(6)(C), to read, "at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches."

Comment. Early Matters (Houston) and an early childhood program supervisor commented that it would be helpful to clarify that a district's prekindergarten teacher training plan will allow districts to continue to provide professional development for prekindergarten teachers in topics other than the ten domains of the revised Texas Prekindergarten Guidelines because districts train teachers on a variety of necessary skills, such as classroom management. The commenter agreed that teachers need to have quality early childhood-specific training, but also indicated that participating school districts and charter schools should have the flexibility to ensure that prekindergarten teachers get all of the training they need to be effective teachers.

Agency Response. The agency agrees and has amended proposed new §102.1003(e)(5)(A) and (B), adopted as §102.1003(e)(6)(A) and (B), to state "...all ten domains in the

Texas Prekindergarten Guidelines...in addition to other relevant topics related to high-quality prekindergarten...."

Comment. Early Matters (Houston) commented that the requirement that half of a teacher's continuing professional education (CPE) hours be face-to-face will likely be problematic for some smaller and rural districts and that technological advancements have made remote instruction, including coaching to individual teachers, widely available and effective. The commenter requested that the agency consider amending the rule to allow for such remote and technological training.

Agency Response. The agency agrees and has amended proposed new §102.1003(e)(5)(C), adopted as §102.1003(e)(6)(C), to read, "at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches."

Comment. United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended adding neurological basis of learning, learning environment, academic and nonacademic learning through play, family engagement, and informal assessments to the topics that must be covered in the required training in proposed new §102.1003(e).

Agency Response. The agency disagrees with the recommendation to include a specific list of additional professional development topics because it could be overly limiting for districts and charters. However, in response to this and other comments, the agency has amended proposed §102.1003(e)(5)(A) and (B), adopted as §102.1003(e)(6)(A) and (B), to state "...all ten domains in the Texas Prekindergarten Guidelines...in addition to other relevant topics related to high-quality prekindergarten...."

Comment. United Way of Metropolitan Dallas, First 3 Years, the Dallas Early Education Alliance, the Budd Center, Momentous Institute, and Stand for Children recommended adding a requirement that not later than the 2017-2018 school year and forward, districts implement a prekindergarten instructional coach training program that should include individualized coaching linked to classroom observation and child progress monitoring results.

Agency Response. The agency disagrees and has determined that statutory authority does not exist to include such a requirement in the grant program.

Comment. The superintendent of Austin Independent School District commented that, as currently worded, no teacher could qualify under proposed §102.1003(e)(5)(A) because the prekindergarten guidelines were not updated until late 2015 and recommended that the language be amended to reference the Texas Prekindergarten Guidelines as they existed prior to the 2015 update.

Agency Response. The agency agrees and has amended proposed §102.1003(e)(5)(A), adopted as §102.1003(e)(6)(A), to read, "prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of documented professional development addressing all ten domains in the Texas Prekindergarten Guidelines that were approved prior to 2015 in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period."

Comment. The superintendent of Austin Independent School District commented that the term "master teachers" as referenced in proposed §102.1003(e)(5)(C) is not defined and would

be too limiting and suggested adding a definition and including "specialists in early childhood education."

Agency Response. The agency agrees and has amended proposed new §102.1003(e)(5)(C), adopted as §102.1003(e)(6)(C), to read "at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches."

Comment. The Texas Classroom Teachers Association expressed concern that the enabling statute provides that prekindergarten teachers in school districts are eligible if the district received approval from the commissioner for the district's prekindergarten-specific instructional training plan that the teacher uses in the teacher's prekindergarten classroom and the commenter does not believe that a reasonable interpretation of "district's prekindergarten-specific instructional training plan" is that a district must ensure that its prekindergarten teachers complete 150 hours of continuing professional education in prekindergarten. The commenter requested that the proposed rule language be stricken.

Agency Response. The agency disagrees and has determined that the teacher qualification requirements identified for the grant program are appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's certification requirements for prekindergarten teachers in §102.1003(e).

Comment. The Texas Classroom Teachers Association commented that teachers who are certified to teach prekindergarten have already demonstrated, by virtue of passing the relevant certification examination, that they have the knowledge and skills that the state has deemed necessary in order to be able to teach prekindergarten. The commenter added that to require them to complete additional training in order to be eligible to teach in the prekindergarten grant program requires more of them than their counterpart prekindergarten teachers who do not hold the appropriate certificate to teach prekindergarten and is unnecessary. The commenter requested that the proposed rule language be stricken.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified.

Comment. The Texas Classroom Teachers Association noted that although TEC, §29.167(c), provides that a school district may allow a teacher employed by the district to receive the training required to be awarded a CDA credential from a regional education service center, the proposed rule does not include this provision and requested that it be included.

Agency Response. The agency disagrees and has determined that it is not necessary to address the method by which a teacher meets one of the qualifications in the rule.

Comment. The Texas Association of School Administrators asked if the requirement in proposed new §102.1003(e)(5)(A) is above and beyond the 150 CPE hours a teacher needs to retain his or her teaching certificate as required by 19 TAC §232.13, or if it is intended to satisfy the certification requirement.

Agency Response. The agency provides the following clarification. The agency has removed the reference to CPE in proposed §102.1003(e)(5)(A), adopted as §102.1003(e)(6)(A), to increase flexibility in the professional development that may be used to meet the requirement.

Comment. The Texas Association of School Administrators asked how teachers will be expected to complete training if there are no approved providers on the TEA-approved provider list for CPE.

Agency Response. The agency provides the following clarification. The agency has removed the reference to CPE in proposed §102.1003(e)(5)(A), adopted as §102.1003(e)(6)(A), to increase flexibility in the professional development that may be used to meet the requirement.

Comment. The Texas Association of School Administrators expressed concern that the requirements in proposed new §102.1003(e)(5) are onerously weighted against public school teachers and discredits those with experience teaching in a public school prekindergarten classroom by not counting that experience as one of the additional qualifications.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified.

Comment. The Texas Association of School Administrators expressed the belief that the proposed rule exceeds the authority of TEC, §29.167(b)(2)(D), that dictates a district-specific training plan by mandating a one-size-fits-all state-level versus district-specific training.

Agency Response. The agency disagrees and provides the following clarification. The agency has removed the reference to CPE in proposed §102.1003(e)(5)(A), adopted as §102.1003(e)(6)(A), and has clarified that professional development must address the Texas Prekindergarten guidelines in addition to other relevant topics related to high-quality prekindergarten to increase flexibility in the professional development that may be used to meet the requirement.

Comment. The Texas Association of School Administrators expressed the belief that proposed new §102.1003(e)(5) does not allow a district with established high-quality prekindergarten programs to continue to provide its own quality professional development to the teachers participating in the grant program.

Agency Response. The agency disagrees. In response to other comments the agency has amended proposed §102.1003(e)(5)(A) and (B), adopted as §102.1003(e)(6)(A) and (B), to state "...all ten domains in the Texas Prekindergarten Guidelines...in addition to other relevant topics related to high-quality prekindergarten...."

Comment. The Texas Association of School Administrators expressed concern that the requirement in proposed new §102.1003(e)(5)(A) is not a feasible option because the updated guidelines were not available until February 2016.

Agency Response. The agency agrees and has amended proposed §102.1003(e)(5)(A), adopted as §102.1003(e)(6)(A), to read, "prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of documented professional development addressing all ten domains in the Texas Prekindergarten Guidelines that were approved prior to 2015 in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period."

Comment. The Texas Association of School Administrators recommended that the language in proposed new §102.1003(e)(5) be stricken.

Agency Response. The agency disagrees and has determined that the teacher qualification requirements identified for the grant program are appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's certification requirements for prekindergarten teachers in §102.1003(e).

Comment. The Texas Association of School Administrators recommended that the rule allow prekindergarten teachers who have the EC-4 or EC-6 certification and at least two years of experience in a public prekindergarten setting to satisfy the additional qualification needed for eligibility.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified and the teacher qualification requirements identified for the grant program are appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's requirements for prekindergarten teachers in §102.1003(e).

Comment. The Texas Association of School Administrators recommended that the rule allow those who obtained the prekindergarten endorsement when it was an option in SBEC rule to have satisfied the additional qualification requirement.

Agency Response. The agency disagrees and has determined that there are multiple avenues provided for school districts to identify teachers as qualified and the teacher credentials identified for the grant program are appropriate as proposed. In response to other comments, the agency has made other modifications to the grant program's requirements for prekindergarten teachers in §102.1003(e).

Comment. The Texas Association of School Administrators recommended that a rule be added that allows flexibility for a district to meet the needs of its young students when developing a district prekindergarten-specific instructional training plan and that aligns with TEC, §29.167(b)(D).

Agency Response. The agency agrees and has amended §102.1003(e)(5)(A) and (B), adopted as §102.1003(e)(6)(A) and (B), to state, "...all ten domains in the Texas Prekindergarten Guidelines...in addition to other relevant topics related to high-quality prekindergarten...."

Comment. An individual asked whether teachers will have to complete the 150 cumulative hours of professional development every five years or only for the first five years.

Agency Response. The agency provides the following clarification. A teacher would only need to complete the 150 cumulative hours once and not every five years.

Comment. Two individuals asked what is considered a master teacher.

Agency Response. The agency provides the following clarification. The agency has amended proposed new §102.1003(e)(5)(C), adopted as §102.1003(e)(6)(C), to read, "at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches."

Comment. Raise Your Hand Texas asked whether all 150 hours of professional development must be related to the prekindergarten guidelines.

Agency Response. The agency provides the following clarification. The agency has amended proposed new §102.1003(e)(5), adopted as §102.1003(e)(6), to clarify that the professional development must address all ten domains in the Texas Prekindergarten Guidelines (updated 2015) in addition to other relevant topics related to high-quality prekindergarten.

Comment. Raise Your Hand Texas asked whether teachers who have completed the 150 required hours with 30 hours in early childhood must continue to complete 30 hours of their next 150 hours in CPE related to the prekindergarten guidelines for as long as their district receives grant funding.

Agency Response. The agency provides the following clarification. In order to use the teacher qualifications in proposed new §102.1003(e)(5), adopted as §102.1003(e)(6), all 150 hours must be related to high-quality prekindergarten. A teacher would not be required to continue to complete hours of professional development beyond the 150-hour requirement for this purpose.

Comment. Raise Your Hand Texas commented that the requirements in proposed new §102.1003(e)(5) are unclear as to their application to charter schools and indicated an understanding that the provisions of TEC, Chapter 29, Subchapter E-1, apply to both school districts and charter schools that receive a grant.

Agency Response. The agency agrees that the provisions of the high-quality prekindergarten program grant apply to both school districts and charter schools and clarifies that the teacher qualifications in proposed new §102.1003(e) also apply to both school districts and charter schools.

Comment. The superintendent of KIPP Houston Public Schools asked for a definition of "master teacher."

Agency Response. The agency provides the following clarification. In response to this and other comments the agency has amended proposed new §102.1003(e)(5)(C), adopted as §102.1003(e)(6)(C), to read "at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches."

Comment. The Texas Association of School Administrators asked if documented completion of the Texas School Readiness Training Program would be added to the rule.

Agency Response. The agency provides the following clarification. In response to other comments the agency has added new §102.1003(e)(5) to read, "documented completion of the Texas School Ready Training Program (TSR Comprehensive)."

Comment. The Texas Charter Schools Association requested that the commissioner of education use his authority to allow for the greatest flexibility, while still ensuring quality, in the teacher requirements for open-enrollment charter schools. The commenter suggested that one method of granting such a request would be to provide for a waiver from the teacher certification requirement thus providing open-enrollment charter schools with the opportunity to access the grant funds.

Agency Response. The agency provides the following clarification. Under statute, TEC, §29.167(b)(1), each teacher for a prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B. The comment regarding the granting of a waiver is outside the scope of the rulemaking process.

Comment. A.W. Brown Fellowship-Leadership Academy and Tekoa Academy of Accelerated Studies STEM School recommended adding language to require a teacher at an open-enroll-

ment charter school to meet the requirements outlined in TEC, §12.129, rather than be certified under TEC, Chapter 21. The commenter stated that requiring prekindergarten charter school teachers to be state certified would place an undue burden on charter schools without an attendant benefit.

Agency Response. The agency provides the following clarification. Under statute, TEC, §29.167(b)(1), each teacher for a prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B.

Comment. Lumin Education strongly urged the agency to make the qualifications for prekindergarten teachers inclusive of and consistent with the qualifications allowed for charter school teachers and asked that the qualification be listed as certified or a qualification listed under the proposed §102.1003(e)(1)-(5).

Agency Response. The agency provides the following clarification. Under statute, TEC, §29.167(b)(1), each teacher for a prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B.

Comment. KIPP Houston Charter School urged the agency to consider creating flexibility for proven prekindergarten programs with regard to the requirement for a Chapter 21 certified teacher and to consider rewarding good performance with an ease in regulation.

Agency Response. The agency provides the following clarification. Under statute, TEC, §29.167(b)(1), each teacher for a prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B.

Comment. The superintendent of KIPP Houston Public Schools urged the agency to consider clarifying the commissioner's ability to waive the teacher certification requirement for proven public charter school prekindergarten programs.

Agency Response. The agency provides the following clarification. Under statute, TEC, §29.167(b)(1), each teacher for a prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B. The comment regarding the granting of a waiver is outside the scope of the rulemaking process.

Comment. The Texas Center for Public Policy Priorities requested that the agency clarify that grant awards will be based on actual children enrolled in prekindergarten and not based on average daily attendance counts.

Agency Response. The agency provides the following clarification. Grant awards will be based on the number of actual children enrolled.

Comment. The Texas Center for Public Policy Priorities requested that the agency set the grant amount at the maximum to better assist districts in implementing a high-quality program.

Agency Response. The agency disagrees and has maintained language as proposed. The amount of funding per qualifying student will be determined based on the total amount of appropriated funding, the number of eligible grant applicants, and the number of qualifying students served by each eligible grant applicant.

Comment. The superintendent of Austin Independent School District requested clarification on the ability of a school district to decline the grant if the cost to implement the statute and rule exceeds the grant funds awarded.

Agency Response. This comment is outside the scope of the rulemaking process.

Comment. The CEO of Community Family Centers asked if any provisions were considered for partnerships and/or contractual opportunities with nonprofits providing quality early childhood education.

Agency Response. The agency provides the following clarification. Under TEC, §29.171, a school district that participates in the grant program may enter into a contract with an eligible private provider to provide services or equipment for the program.

Comment. The Association of Texas Professional Educators recommended requiring school districts and charter schools to preregister their intent to apply for funding for an upcoming school year by a cutoff date and establishing a timeline by which the agency will inform preregistered potential applicants what the minimal award under the program would be. The commenter stated that allowing districts and charters to knowledgeably plan their resource allocation with a higher degree of information and certainty would promote better stewardship of limited education dollars.

Agency Response. This comment is outside the scope of the rulemaking process.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §29.1532, as amended by House Bill (HB) 4, 84th Texas Legislature, 2015, which adds a requirement that school districts that offer prekindergarten classes, including a high-quality prekindergarten program class, report a description and the results of each type of assessment instrument if the district elects to administer an assessment instrument to students enrolled in district and campus prekindergarten program classes and report curricula used in the district's prekindergarten program classes; TEC, §29.165, as added by HB 4, 84th Texas Legislature, 2015, which requires the commissioner to by rule establish a grant funding program under which funds are awarded to school districts and open-enrollment charter schools to implement a high-quality prekindergarten grant program; TEC, §29.166, as added by HB 4, 84th Texas Legislature, 2015, which addresses the student qualifications and general school district and charter eligibility for funding under this grant program; TEC, §29.167, as added by HB 4, 84th Texas Legislature, 2015, which requires school districts and charter schools to select and implement a curriculum for a high-quality prekindergarten grant program that includes the prekindergarten guidelines established by the TEA, measures the progress of students in meeting the recommended learning outcomes, and does not use national curriculum standards developed by the Common Core State Standards Initiative. This section also outlines requirements that each teacher of a prekindergarten program class must meet, including employment as a prekindergarten teacher in a school district that has received approval from the commissioner for the district's prekindergarten-specific instructional training plan that the teacher uses in the teacher's prekindergarten classroom, and allows for equivalent qualifications; TEC, §29.168, as added by HB 4, 84th Texas Legislature, 2015, which requires a school district or charter school to develop and implement a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. The local family engagement plan must be based on the family engagement strategies established by the TEA in collaboration with other state agencies; TEC, §29.169, as added by HB 4, 84th Texas Legislature, 2015, which requires a school district to select and implement appropriate methods for evaluating the district's program classes by measuring student progress and make data

from the results of program evaluations available to parents; and TEC, §29.172, as added by HB 4, 84th Texas Legislature, 2015, which permits the commissioner of education to adopt rules necessary to implement this grant program.

CROSS REFERENCE TO STATUTE. The new section implements the TEC, §§29.1532, 29.165-29.169, and 29.172, as amended and added by HB 4, 84th Texas Legislature, 2015.

§102.1003. *High-Quality Prekindergarten Grant Program.*

(a) From funds appropriated for this purpose, all eligible school districts and open-enrollment charter schools may receive grant funding for each qualifying student in average daily attendance in a high-quality prekindergarten program in the district or charter school.

(1) The amount of funding per qualifying student will be determined based on the total amount of appropriated funding, the number of eligible grant applicants, and the number of qualifying students served by each eligible grant applicant. Funding under this program for each qualifying student in attendance for the entire instructional period on a school day shall not exceed \$1,500.

(2) Each applicant seeking funding through the high-quality prekindergarten grant program authorized by the Texas Education Code (TEC), §29.165, must submit an application in a format prescribed by the Texas Education Agency (TEA) through a request for application (RFA).

(3) Each applicant must meet all the requirements established under the TEC, Chapter 29, Subchapter E-1.

(b) An eligible applicant receiving funds under this program must provide educational services to qualifying students. A student qualifies for additional funding under this grant program if the student is four years of age on September 1 of the year the student begins the program and:

(1) is unable to speak and comprehend the English language;

(2) is educationally disadvantaged;

(3) is a homeless child, as defined by 42 United States Code §11434a, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child;

(4) is the child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;

(5) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty; or

(6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by the Texas Family Code, §262.201.

(c) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall implement a curriculum for a high-quality prekindergarten grant program that addresses all of the Texas Prekindergarten Guidelines (updated 2015) in the following domains:

(1) social and emotional development;

(2) language and communication;

(3) emergent literacy reading;

- (4) emergent literacy writing;
- (5) mathematics;
- (6) science;
- (7) social studies;
- (8) fine arts;
- (9) physical development and health; and
- (10) technology.

(d) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall measure:

(1) the progress of each student in meeting the recommended end of prekindergarten year outcomes identified in the Texas Prekindergarten Guidelines (updated 2015) using a progress monitoring tool included on the commissioner's list of approved prekindergarten instruments that measures:

- (A) social and emotional development;
- (B) language and communication;
- (C) emergent literacy reading;
- (D) emergent literacy writing; and
- (E) mathematics; and

(2) the preparation of each student for kindergarten using a kindergarten readiness instrument for reading as described in TEC, §28.006.

(e) To be eligible to receive grant funding under this program, each teacher of a high-quality prekindergarten grant program must be certified under the TEC, Chapter 21, Subchapter B, and have one of the following additional qualifications:

- (1) a Child Development Associate (CDA) credential;
- (2) a certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;
- (3) at least eight years' experience of teaching in a nationally accredited child care program;
- (4) a graduate or undergraduate degree in early childhood education or early childhood special education;
- (5) documented completion of the Texas School Ready Training Program (TSR Comprehensive); or
- (6) be employed as a prekindergarten teacher in a school district that has ensured that:

(A) prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of documented professional development addressing all ten domains in the Texas Prekindergarten Guidelines that were approved prior to 2015 in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period;

(B) teachers who have not completed training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class complete:

(i) the first 30 hours of 150 cumulative hours of documented professional development addressing all ten domains in the Texas Prekindergarten Guidelines (updated 2015) in addition to other

relevant topics related to high-quality prekindergarten before the end of the 2016-2017 school year; and

(ii) complete the additional hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom; and

(C) at least half of the hours required by subparagraph (A) or (B) of this paragraph shall include experiential learning, practical application, and direct interaction with specialists in early childhood education or instructional coaches.

(f) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall develop, implement, and make available on the district, charter, or campus website a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven.

(1) The following terms, when used in this section, shall have the following meanings.

(A) Family--Adults responsible for the child's care and children in the child's life who support the early learning and development of the child.

(B) Family engagement--The mutual responsibility of families, schools, and communities to build relationships to support student learning and achievement and to support family well-being and the continuous learning and development of children, families, and educators. Family engagement is fully integrated in the child's educational experience and supports the whole child and is both culturally responsive and linguistically appropriate.

(2) The family engagement plan shall:

(A) facilitate family-to-family support using strategies such as:

(i) creating a safe and respectful environment where families can learn from each other as individuals and in groups;

(ii) inviting former program participants, including families and community volunteers, to share their education and career experiences with current families; and

(iii) ensuring opportunities for continuous participation in events designed for families by families such as training on family leadership;

(B) establish a network of community resources using strategies such as:

(i) building strategic partnerships;

(ii) leveraging community resources;

(iii) monitoring and evaluating policies and practices to stimulate innovation and create learning pathways;

(iv) establishing and maintaining partnerships with businesses, faith-based organizations, and community agencies;

(v) identifying support from various agencies, including mental and physical health providers;

(vi) partnering with local community-based organizations to create a family-friendly transition plan for students arriving from early childhood settings;

(vii) providing and facilitating referrals to family support or educational groups based on family interests and needs;

(viii) communicating short- and long-term program goals to all stakeholders; and

(ix) identifying partners to provide translators and culturally relevant resources reflective of home language;

(C) increase family participation in decision making using strategies such as:

(i) developing and supporting a family advisory council;

(ii) developing, adopting, and implementing identified goals within the annual campus/school improvement plan targeting family engagement;

(iii) developing and supporting leadership skills for family members and providing opportunities for families to advocate for their children/families;

(iv) collaborating with families to develop strategies to solve problems and serve as problem solvers;

(v) engaging families in shaping program activities and cultivating the expectation that information must flow in both directions to reflect two-way communication;

(vi) developing, in collaboration with families, clearly defined goals, outcomes, timelines, and strategies for assessing progress;

(vii) providing each family with an opportunity to review and provide input on program practices, policies, communications, and events in order to ensure the program is responsive to the needs of families; and

(viii) using appropriate tools such as surveys or focus groups to gather family feedback on the family engagement plan;

(D) equip families with tools to enhance and extend learning using strategies such as:

(i) designing or implementing existing home educational resources to support learning at home while strengthening the family/school partnership;

(ii) providing families with information and/or training on creating a home learning environment connected to formal learning opportunities;

(iii) equipping families with resources and skills to support their children through the transition to school and offering opportunities for families and children to visit the school in advance of the prekindergarten school year;

(iv) providing complementary home learning activities for families to engage in at home with children through information presented in newsletters, online technology, social media, parent/family-teacher conferences, or other school- or center-related events;

(v) providing families with information, best practices, and training related to age-appropriate developmental expectations;

(vi) emphasizing benefits of positive family practices such as attachment and nurturing that complement the stages of children's development;

(vii) collaborating with families to appropriately respond to children's behavior in a non-punitive, positive, and supportive way;

(viii) encouraging families to reflect on family experiences and practices in helping children; and

(ix) assisting families to implement best practices that will help achieve the goals and objectives identified to meet the needs of the child and family;

(E) develop staff skills in evidence-based practices that support families in meeting their children's learning benchmarks using strategies such as:

(i) providing essential professional development for educators in understanding communication and engagement with families, including training on communicating with families in crisis;

(ii) promoting and developing family engagement as a core strategy to improve teaching and learning among all educators and staff; and

(iii) developing staff skills to support and use culturally diverse, culturally relevant, and culturally responsive family engagement strategies; and

(F) evaluate family engagement efforts and use evaluations for continuous improvement using strategies such as:

(i) conducting goal-oriented home visits to identify strengths, interests, and needs;

(ii) developing data collection systems to monitor family engagement and focusing on engagement of families from specific populations to narrow the achievement gap;

(iii) using data to ensure alignment between family engagement activities and district/school teaching and learning goals and to promote continuous family engagement;

(iv) ensuring an evaluation plan is an initial component that guides action;

(v) using a cyclical process to ensure evaluation results are used for continuous improvement and adjustment; and

(vi) ensuring teachers play a role in the family engagement evaluation process.

(g) In a format prescribed by the TEA, a school district or an open-enrollment charter school that receives funding under this grant shall:

(1) report the curriculum used in the high-quality prekindergarten program classes as required by subsection (c) of this section;

(2) report a description and the results of each prekindergarten instrument used in the high-quality prekindergarten program classes as required by subsection (d) of this section; and

(3) report:

(A) a description of each kindergarten readiness instrument used in the district or charter school to measure the effectiveness of the district's or charter school's high-quality prekindergarten program classes as required by subsection (d) of this section; and

(B) the results for at least 95% of the district's or charter school's kindergarten students on the kindergarten readiness instrument.

(h) A school district or an open-enrollment charter school that receives funding under this grant shall:

(1) select and implement appropriate methods for evaluating the district's or charter school's high-quality prekindergarten program by measuring student progress; and

(2) make data from the results of program evaluations available to parents.

(i) A school district or an open-enrollment charter school that receives funding under this grant must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students.

(j) A school district or an open-enrollment charter school that receives funding under this grant may only use the funding to improve the quality of the district's or charter school's high-quality prekindergarten program. Program funds must be used in accordance with the requirements stated in the RFA.

(k) A school district or an open-enrollment charter school that receives funding under this grant shall maintain locally and provide at the TEA's request the necessary documentation to ensure fidelity of high-quality prekindergarten program implementation.

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

Filed with the Office of the Secretary of State on March 17, 2016.

TRD-201601272

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

### SUBCHAPTER C. HIGH SCHOOL

#### 19 TAC §113.49

The State Board of Education (SBOE) adopts new §113.49, concerning Texas essential knowledge and skills (TEKS) for social studies. The new section is adopted without changes to the proposed text as published in the December 25, 2015 issue of the *Texas Register* (40 TexReg 9435) and will not be republished. The adoption adds TEKS for a new personal financial literacy one-half credit elective course.

**REASONED JUSTIFICATION.** The 83rd Texas Legislature, Regular Session, 2013, passed House Bill (HB) 5, amending the Texas Education Code (TEC), §28.025, to change the high school graduation programs from the current minimum, recommended, and advanced high school programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students. The 83rd Texas Legislature also passed HB 2662, amending the TEC, §28.0021, to require school districts and open-enrollment charter schools offering a high school program to provide a one-half credit elective course in personal financial literacy. In August 2013, the SBOE held a work session to discuss changes to the graduation requirements in order to align with legislative requirements from

the 83rd Texas Legislature, Regular Session, 2013, including a discussion of the new courses required by HB 5 and HB 2662. At the January 2014 meeting, the SBOE approved the final adoption of new 19 TAC Chapter 74, Curriculum Requirements, Subchapter B, Graduation Requirements. At that time, the SBOE also discussed new course development priorities.

At the April 2014 meeting, the board prioritized the new courses to be developed and requested that Texas Education Agency (TEA) staff move forward with the development of TEKS for two new mathematics courses, the one-half credit elective course in personal financial literacy, a one-credit career and technical education personal financial literacy course approved to satisfy a mathematics credit, and a one-credit combined world geography/world history course. In April 2014, the board approved for second reading and final adoption proposed revisions to 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum, to align rules for the required secondary curriculum with requirements from the 83rd Texas Legislature, Regular Session, 2013.

A committee of secondary and postsecondary educators and business and industry representatives was convened in Austin in May 2015 for a face-to-face meeting to begin working on recommendations for the personal financial literacy elective course. The committee conducted three additional virtual meetings to finalize its first draft recommendations. The course development committee also made additional recommendations to its proposal in response to feedback from the Texas Council on Economic Education and the Texas Social Studies Supervisors Association. The recommendations of the course development committee were presented to the SBOE at its November 2015 and January 2016 meetings for consideration in accordance with statutory requirements that the SBOE adopt TEKS for a new personal financial literacy one-half credit elective course.

New 19 TAC Chapter 113, Texas Essential Knowledge and Skills for Social Studies, Subchapter C, High School, §113.49, Personal Financial Literacy, (One-Half Credit), Adopted 2016, was approved by the SBOE for first reading and filing authorization at its November 20, 2015 meeting and for second reading and final adoption at its January 29, 2016 meeting.

**SUMMARY OF COMMENTS AND RESPONSES.** Following is a summary of the public comments received and the corresponding responses regarding proposed new 19 TAC §113.49.

**Comment.** Two administrators asked if the requirement in 19 TAC §74.1(b) to offer a personal financial literacy course can be fulfilled by offering a career and technical education course that addresses personal financial literacy.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One administrator asked if the proposed new Personal Financial Literacy course would be offered as a one-half credit course.

**Response.** The SBOE provides the following clarification. The board took action to approve §113.49, Personal Financial Literacy, as a one-half credit course.

**Comment.** One parent asked if the proposed course is going to replace §118.4, Economics with Emphasis on the Free Enterprise System and Its Benefits.

**Response.** The SBOE provides the following clarification. Economics with Emphasis on the Free Enterprise System and Its

Benefits is a required course that satisfies the economics graduation requirement. The Personal Financial Literacy elective course will not replace Economics with Emphasis on the Free Enterprise System and Its Benefits, nor will it satisfy the economics graduation requirement.

Comment. One administrator stated that §118.4, Economics with Emphasis on the Free Enterprise System and Its Benefits, includes student expectations related to personal financial literacy but that trying to cover them and all the Economics student expectations is extremely difficult.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One parent inquired whether the proposed Personal Financial Literacy course is a new course or already in effect. The commenter stated that he is interested in the course for his children in the future.

Response. The SBOE provides the following clarification. The SBOE took action to approve §113.49, Personal Financial Literacy, for implementation beginning with the 2016-2017 school year.

Comment. One teacher suggested offering personal financial literacy courses in elementary and middle schools. The commenter added that the proposed course would require modifications to be taught at earlier grade levels, but stated that the topic is too important to be offered as an elective and only in high school.

Response. The SBOE disagrees and determined that personal financial literacy instruction is already appropriately addressed in the mathematics TEKS for Kindergarten-Grade 8.

Comment. One parent asked whether the proposed course is a high school course.

Response. The SBOE provides the following clarification. The SBOE took action to approve §113.49, Personal Financial Literacy, to provide a one-half credit high school elective course in personal financial literacy.

Comment. One community member expressed support for the proposed new Personal Financial Literacy TEKS. The commenter added that this course will help students learn how to be financially mature in our society and wished she had been given the opportunity to take the course in high school.

Response. The SBOE agrees and has determined that the course would benefit many students.

Comment. One administrator stated that a district in the commenter's service area is considering offering the proposed new course to eighth grade students.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator stated that the proposed course will be very beneficial to students and recommended it be a required course rather than an elective.

Response. The SBOE agrees that the course would benefit many students but determined that the course is appropriate as a high school elective as proposed.

Comment. One administrator stated that the proposed new Personal Financial Literacy course is a good course to offer as an elective.

Response. The SBOE agrees and has determined that the course is appropriate as a high school elective.

Comment. One administrator asked whether the proposed new Personal Financial Literacy course would satisfy a social studies or mathematics graduation requirement.

Response. The SBOE provides the following clarification. Under statute, TEC, §28.0021, the Texas Essential Knowledge and Skills must include instruction in personal financial literacy in one or more courses offered for high school graduation, including a course that meets the requirements for a one-half credit elective course. The SBOE took action to approve the course as a social studies elective course as proposed.

Comment. One administrator and one community member questioned the inclusion of §113.49(b) in the introduction of the concept of constitutional republics. The commenters stated that the content seems out of place in this particular course.

Response. The SBOE disagreed and has determined that the introduction for the course was appropriate as proposed.

Comment. Two administrators asked whether teachers of the proposed new course will be required to have a social studies composite, economics, or other specific social studies teaching certificate.

Response. This comment is outside the scope of the proposed rulemaking.

#### STATUTORY AUTHORITY.

The new section is adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the SBOE to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.0021, which requires each school district and each open-enrollment charter school that offers a high school program to provide an elective course in personal financial literacy that meets the requirements for a one-half elective credit, using materials approved by the SBOE; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.0021, and 28.025.

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

Filed with the Office of the Secretary of State on March 17, 2016.

TRD-201601273

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER A. GENERAL RULES

###### 34 TAC §3.9

The Comptroller of Public Accounts adopts amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1083). The amendment corrects grammar in subsection (b)(2)(A)(ii) - (viii) and (x) - (xii). The amendment will update the statute cite in subsection (e)(1)(A). Additionally, the amendment will correct grammar in the itemized list of taxes under subsection (e)(1)(A). The amendment inserts a new subparagraph (B) which requires franchise tax information reports to be filed electronically pursuant to SB 1364, 84th Legislature, 2015. Subsection (i)(2)(A)(i) is amended for readability. This amendment memorializes a policy change effective for reports due on or after September 1, 2015, and edits the section to improve readability.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, 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.

The amendments implement Tax Code, §111.0626 (Collection Procedures).

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

Filed with the Office of the Secretary of State on March 16, 2016.

TRD-201601255

Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

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Proposal publication date: February 12, 2016

For further information, please call: (512) 475-0387



##### SUBCHAPTER NN. FIREWORKS TAX

###### 34 TAC §3.1281

The Comptroller of Public Accounts adopts amendments to §3.1281, concerning fireworks tax, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1085). The amendments are adopted to implement the provisions of Senate Bill 761, 84th Legislature, 2015, which repealed the tax on fireworks effective September 1, 2015.

The section is amended by adding new subsection (a) indicating that the rule applies to periods prior to September 1, 2015. All subsequent subsections are relettered accordingly.

Relettered subsection (d) is amended to correct the title of §3.286 (Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

No comments were received regarding adoption of the amendment.

The amendments are adopted under Tax Code, §111.002, 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.

The amendments implement the repeal of Tax Code, Chapter 161 (Fireworks Tax).

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

Filed with the Office of the Secretary of State on March 17, 2016.

TRD-201601264

Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

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## CHAPTER 19. STATE ENERGY

### CONSERVATION OFFICE

#### SUBCHAPTER A. GENERAL PROVISIONS

###### 34 TAC §19.2

The Comptroller of Public Accounts adopts an amendment to §19.2, concerning state energy conservation office business location and mailing address, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6873). The amendment updates SECO's physical address.

One comment was received regarding this amendment. Doug Lewin with the South-central Partnership for Energy Efficiency as a Resource (SPEER) expresses support for the proposed amendment. No response to this comment is necessary.

The amendment is adopted under Government Code, §447.002(b), which authorizes SECO to "establish procedures and adopt rules relating to the development and implementation of energy and water conservation measures and programs applicable to state buildings and facilities."

The amendment implements Government Code, Chapter 447, regarding the State Energy Conservation Office.

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

Filed with the Office of the Secretary of State on March 18, 2016.

TRD-201601282



## SUBCHAPTER B. STATE FACILITY ENERGY AND WATER MANAGEMENT

### 34 TAC §§19.12 - 19.14, 19.16, 19.17

The Comptroller of Public Accounts adopts amendments to §19.12, concerning application, and §19.14, concerning energy and water management plan, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6873). The comptroller also adopts amendments to §19.13, concerning definitions; §19.16, concerning long range utility services plan; and §19.17, concerning utility consumption data reporting, with changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6873).

The amendment to §19.12 implements the requirements of Government Code, §447.009 regarding energy and water management planning and reporting by clarifying the responsibilities and reporting requirements for Providing Agencies and Tenant Agencies.

The amendment to §19.13 updates the definitions to reflect changes made in other sections of Chapter 19. The proposed amendment adds the definitions of "Energy and Water Management Plan," "Providing agency," "SECO," "Tenant agency," and "Utility consumption data," and removes definitions that are no longer used in this chapter.

The amendment to §19.14 implements the requirements of Government Code, §447.009 regarding energy and water management planning and reporting by renaming this section as "Energy and Water Management Plan," replacing the "Resource Efficiency Plan" with the "Energy and Water Management Plan," and outlining the submission and implementation requirements for the plan.

The amendment to §19.16 implements the requirements of Government Code, §447.009 regarding energy and water management planning and reporting by removing the requirement to submit the Long Range Utility Services Plan to the State Energy Conservation Office (SECO) and requiring SECO to post guidelines for the plan on its website. It also removes duplicative language by deleting the term "State Energy Conservation Office."

The amendment to §19.17 implements the requirements of Government Code, §447.009 regarding energy and water management planning and reporting by requiring agencies to report utility consumption data, and directing agencies and institutions to prepare and submit the data in accordance with the guidelines located on SECO's website by October 31 of each year. The amendment also removes the requirement that "each state agency or institution of higher education review and audit utility billings and contracts to detect billing errors" because this requirement is already stated in Government Code, §447.007(c). The amendment also renames the section "Utility Consumption Data Reporting." Due to the submission schedule of this rulemaking, the date for first submission of

utility consumption data described in §19.17(c) as "beginning October 31, 2015" has been deleted from the proposed text as unnecessary. Additionally, the word "report" has been changed to "submit" in §19.17(a) and the words "submission of" has been added between "for" and "utility" in §19.17(b) to make the language consistent with the language in other rules in this chapter.

Three comments were received regarding these amendments.

Cyrus Reed with the Lone Star Chapter of the Sierra Club requests the addition of the words "energy and water use" between "utility" and "reduction" in the definition of "Energy and Water Management Plan" in §19.13(1). The comptroller agrees with this comment and adopts the change.

Mr. Reed comments that §19.16 should clarify that a Long Range Utility Services Plan may include any self-generation storage or demand response efforts. In response to this comment, a definition of "Long Range Utility Services Plan" has been added as new §19.13(3), which clarifies that a Long Range Utility Services Plan may include any self-generation storage or demand response efforts.

Mr. Reed also suggests that the submission of a Long Range Utility Services Plan should be required under §19.16, not "upon request," and should be published on a publicly available website. The comptroller declines to adopt the change requiring submission to SECO because it is unnecessary, but accepts the change requiring publication on a publicly available website, which enhances access to these plans and promotes transparency.

Dawn Jones with the Texas Workforce Commission asks for clarification as to due dates for the Energy and Water Management Plan under §19.14(c) and Utility Data Consumption Reporting under §19.17(c). The comptroller responds that the due date for each document is October 31 of each year.

Doug Lewin with the South-central Partnership for Energy Efficiency as a Resource (SPEER) expresses support for the proposed amendments. No response to this comment is necessary.

The amendments are adopted under Government Code, §447.002(b), which authorizes SECO to "establish procedures and adopt rules relating to the development and implementation of energy and water conservation measures and programs applicable to state buildings and facilities."

The amendments implement Government Code, Chapter 447 (State Energy Conservation Office).

#### §19.13. Definitions.

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

(1) Energy and Water Management Plan--A comprehensive plan prepared by a state agency or institution of higher education that includes a progress report of utility energy and water use reduction measures, goals for reducing utility consumption, a strategy and implementation schedule, a description of methods of financing improvements, and an employee awareness plan.

(2) Institution of higher education--Has the meaning that is assigned by Education Code, §61.003.

(3) Long Range Utility Services Plan--A long range plan for the delivery of reliable, cost-effective utility services for a state agency or institution of higher education, including any on-site generation, energy storage or demand response.

(4) Providing agency--A state agency or institution of higher education that occupies or manages a state-owned building and is responsible for paying utility bills.

(5) SECO--The Comptroller of Public Accounts State Energy Conservation Office or legally designated successor.

(6) State agency--Any department, commission, board, office, or other agency in the executive, judicial, or legislative branch of state government that exists under the constitution or a statute of this state and that has authority that is not limited to a geographical portion of the state.

(7) Tenant agency--A state agency or institution of higher education that occupies a building managed by another party and is not responsible for building renovation projects. A tenant agency may or may not be responsible for directly paying utility bills.

(8) Utility--Electricity, gas, thermal, or other energy resource, water, and wastewater.

(9) Utility consumption data--The measured amount of the agency's or institution's water, electricity, gasoline, or natural gas usage.

*§19.16. Long Range Utility Services Plan.*

(a) Requirement. A state agency or institution of higher education that purchases utilities shall prepare a long range plan for the delivery of reliable, cost-effective utility services for the agency or institution.

(b) Guidelines. SECO shall post guidelines for the Long Range Utility Services Plan on its website.

(c) Frequency. The agency or institution shall update the Long Range Utility Services Plan at least every five years to support five-year construction and major renovation planning.

(d) Posting/Submission. The plan shall be:

- (1) posted on a publicly available website; and
- (2) submitted to SECO upon request.

*§19.17. Utility Consumption Data Reporting.*

(a) Requirement. Each state agency or institution of higher education shall submit utility consumption data to SECO.

(b) Guidelines. SECO shall post guidelines for the submission of utility consumption data on its website.

(c) Frequency. Utility consumption data shall be submitted no later than October 31 of each year.

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

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Don Neal

Chief Deputy General Counsel

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**34 TAC §§19.15, 19.18, 19.19**

The Comptroller of Public Accounts adopts the repeal of §19.15, concerning implementation of resource efficiency plan recommendations; §19.18, concerning semiannual reporting; and §19.19, concerning extension of time, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6876).

The repeal for §19.15 removes the requirements relating to the Resource Efficiency Plan, which is no longer required by Government Code, §447.009. Instead, the statute replaced the Resource Efficiency Plan with the Energy and Water Management Plan, which is addressed in the amendment to §19.14 of this chapter.

The repeal of §19.18 removes the requirements relating to semiannual reporting, which are no longer required by the State Energy Conservation Office (SECO).

The repeal of §19.19 removes the requirements relating to extension of time to submit any required plan or report, and clarifies that no extensions will be permitted since SECO has a limited amount of time after the deadline to submit this information to the legislature.

One comment was received regarding these repeals. Doug Lewin with the South-central Partnership for Energy Efficiency as a Resource (SPEER) expresses support for the proposed repeal of §19.15 and §19.19. No response to this comment is necessary.

The repeals are adopted under Government Code, §447.002(b), which authorizes SECO to "establish procedures and adopt rules relating to the development and implementation of energy and water conservation measures and programs applicable to state buildings and facilities."

The repeals implement Government Code, Chapter 447.009 (State Energy Conservation Office).

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## SUBCHAPTER C. ENERGY CONSERVATION DESIGN STANDARDS

### 34 TAC §§19.31 - 19.34

The Comptroller of Public Accounts adopts amendments to §19.31, concerning requirement to use design standards; §19.33, concerning major renovation projects; and §19.34, concerning submission of certification and compliance documentation, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6877). The comptroller also adopts an amendment to §19.32, concerning energy and water conservation design standards,

with changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6877).

The amendment to §19.31 removes duplicative language by deleting the term "State Energy Conservation Office."

The amendment to §19.32 updates the energy conservation design standards and water conservation design standards for new construction or major renovation of existing buildings in compliance with Government Code, §447.004, which requires the State Energy Conservation Office (SECO) to establish and publish mandatory energy and water conservation design standards for state buildings or major renovation projects and to review and update the standards biennially. The amendment also clarifies that the standards apply to state agencies and institutions of higher education, and removes duplicative language by deleting the term "State Energy Conservation Office." The effective dates in subsection (a)(1) and (2) have been changed from "January 1, 2016," to "June 1, 2016" due to the submission schedule of this rulemaking. Additionally, the date of the Water Conservation Design Standards has been changed from "April 2015" to "April 2016" in subsection (b) to correct a typographical error in the proposed text.

The amendment to §19.33 clarifies major renovation projects by specifying that the implementation costs are those associated with energy and water efficiency improvements, and that the cost estimate is the engineering cost estimate.

The amendment to §19.34 requires agencies and institutions to use the certification form located on SECO's website, and removes duplicative language by deleting the term "State Energy Conservation Office."

Three comments were received regarding these amendments.

Jonathan Kleinman with AIQUEOUS suggests the following changes to the Water Conservation Design Standards for State Buildings and Institutions of Higher Education Facilities under §19.32(b):

1. Add the following to the list of Standards' goals in the Overview section: "Highlight the auxiliary and embedded energy savings associated with implemented water conservation measures." The comptroller declines to adopt this change because the suggested addition is covered in existing Item 4.
2. Change "alternate water source" to "alternative onsite water" in the definition section to align it with the definitions in H.B. 1902, passed in the 2015 legislative session. The comptroller agrees with this comment and adopts this change. In addition, the definition of "graywater" has been changed to conform with the definition of that term in H.B. 1902.
3. Add "multi-stream rotational" to the list of water-conserving technology described in Item 3 of the Standards for Irrigation. The comptroller agrees with this comment and adopts this change.
4. Add "digitally-connected soil moisture sensors" to the list of weather-based irrigation controllers described in Item 6 of the Standards for Irrigation. In response to this comment, the comptroller adds "soil moisture sensors" to Item 7, instead of making this change in Item 6.
5. Add "for irrigation system operation" to the end of Item 13 of the Standards for Irrigation. The comptroller agrees with this comment and adopts this change.

6. Consider specifying a percentage of non-turf, non-planted permeable areas or stating that such areas need to be integrated into the overall landscape design, and maximized as consistent with the building programming needs in the Standards for Landscape Design. The comptroller declines to make this change because specifying a percentage will be too challenging for compliance purposes. The approach is to provide more vegetation instead of turf grass area, and planted area is typically surrounded by mulch.

7. For major renovation, recommend an economic feasibility study for converting landscaped areas to non-turf, non-planted permeable areas and retiring irrigation zones, as appropriate. The comptroller declines to adopt this change because this is a list of standards, not best practices.

8. Define "minimal irrigation" in Item 5 of the Standards for Landscape Design. In response to this comment, the comptroller deletes the words "minimal irrigation" from Item 5.

9. Consider adding a requirement for commissioning of water conservation measures in the Standards for Heating, Ventilation and Air Conditioning that is parallel with any requirements for commissioning of energy efficiency measures. The comptroller declines to adopt this change because a commissioning practice is a best practice, not a standard; however, this comment will be considered for any future list of best practices.

10. Consider specifying that "harvesting and delivery" in Item 3 of the Standards for Heating, Ventilation and Air Conditioning specifically refer to "condensate water." The comptroller agrees with this comment and adopts this change.

11. Consider using the term "alternative onsite water" in the Rainwater Harvesting, Reclaimed Water, Recycled Water, and Reuse section to align it with recent legislation. The comptroller agrees with this comment and adopts this change.

12. Consider a requirement for system commissioning in the Rainwater Harvesting, Reclaimed Water, Recycled Water, and Reuse section. The comptroller declines to make this change because a commissioning practice is a best practice, not a standard; however, this comment will be considered for any future list of best practices.

13. In the Plumbing Fixtures and Pumps section, require an economic feasibility study for waterless urinals and toilets, where building programming is consistent with such a design. The comptroller declines to adopt this change because the standards for plumbing fixtures and pumps were recommended by the Water Conservation Standards Working Group, based on their experience and practical constraints, and based on the water saving performance standards in 30 TAC §290.252.

14. Consider including a requirement in Item 2 of the Standards for Plumbing Fixtures that toilets meet a 0.8 gpf standard. The comptroller declines to adopt this change because these standards were recommended by the Water Conservation Standards Working Group, based on their experience and practical constraints.

15. Consider including a requirement in Item 5 of the Standards for Plumbing Fixtures that showerheads meet a 1.5 gpm standard, as well as manual shutoff valves for when occupants need to leave a shower for a period of time and wish to maintain hot water temperature. The comptroller declines to adopt this change because these standards were recommended by the Water Conservation Standards Working Group, based on their experience and practical constraints.

16. In Item 1 of the Standards for Garbage Disposal, require an economic feasibility study to assess composting as an alternative to food waste disposal. The comptroller declines to adopt this change because the Water Conservation Working Group agreed that composting may not be a suitable or reasonable approach for a commercial operation; particularly in consideration of sanitary health constraint aspects and maintenance of an installation.

17. Correct a typographical error in the title of the Pools, Spas, and Special Water Features section. The comptroller agrees with this comment and adopts this change.

18. Clarify what "where practical" means for requiring pool covers in Item 4 of the Standards for Pools and Spas. The comptroller declines to adopt this change because agencies determine the practicality of covering pools and spas based on shape, size, economic feasibility and other factors.

19. In Item 1 of the Standards for Special Water Features, consider establishing a limit to annual potable water consumption for a special water feature, rather than simply a capacity limit. The comptroller declines to adopt this change because these limits are dependent on a variety of external factors.

Cyrus Reed with the Lone Star Chapter of the Sierra Club suggests that SECO allow the 2015 International Energy Conservation Code (IECC) to be used as an alternate code to the proposed American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)/Illuminating Engineering Society of North America (IESNA), 90.1-2013 standards. The comptroller agrees with this comment and adopts this change in §19.32.

Mr. Reed also expresses concern with the current blanket exemption for historic buildings in §19.32. The comptroller declines to adopt this change because no changes to the historic building exemption are being proposed in this rulemaking.

Doug Lewin with the South-central Partnership for Energy as a Resource (SPEER) recommends that the historic buildings exemption be replaced in §19.32 with language from the 2015 International Energy Conservation Code relating to historic buildings. The comptroller declines to adopt this change because no changes to the historic building exemption are being proposed in this rulemaking.

Mr. Lewin with also recommends that §19.33 regarding Major Renovation Projects be deleted in its entirety. The comptroller declines to adopt this change because Government Code, §447.004(a) requires SECO to define "major renovation project."

The amendments are adopted under Government Code, §447.002(b), which authorizes SECO to "establish procedures and adopt rules relating to the development and implementation of energy and water conservation measures and programs applicable to state buildings and facilities."

The amendments implement Government Code, §447.004 regarding design standards.

*§19.32. Energy and Water Conservation Design Standards.*

(a) SECO adopts by reference the following minimum energy standards for state agencies and institutions of higher education:

(1) for any new construction or major renovation project, except low-rise residential buildings, with a design assignment made on or after June 1, 2016, the energy conservation design standard of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)/Illuminating Engineering Society of North America (IESNA), Energy Standard for Buildings, ASHRAE/IESNA Stan-

dard 90.1-2013, and any errata sheet for 90.1-2013 that is published by the ASHRAE Standards Committee or the 2015 International Conservation Code as published by the International Code Council, provided however the following buildings or structures are exempt from compliance with this section:

(A) a building or structure that is listed in the State or National Register of Historic Places;

(B) a building or structure that is designated as a historic property under local or state designation law or survey;

(C) a building or structure that is certified as a contributing resource with a National Register listed or locally designated historic district; or

(D) with an opinion or certification by the State Historic Preservation Officer or Keeper of the National Register of Historic Places, a building or structure that is eligible to be listed on the National or State Registers of Historic Places either individually or as a contributing building to a historic district;

(2) for any new construction or major renovation project of a low-rise residential building with a design assignment made on or after June 1, 2016, the residential chapter of the 2015 International Energy Conservation Code as published by the International Code Council.

(b) Effective June 1, 2016, SECO adopts by reference the "Water Conservation Design Standards for State Buildings and Institutions of Higher Education Facilities" prepared by SECO, dated April 2016, as the water conservation design standards for any new construction or major renovation project.

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

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## SUBCHAPTER D. LOAN PROGRAM FOR ENERGY RETROFITS

### 34 TAC §§19.41 - 19.45

The Comptroller of Public Accounts adopts amendments to §19.41, concerning description of program; §19.43, concerning eligibility; and §19.45, concerning project funding and repayment, without changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6878). The comptroller also adopts amendments to §19.42, concerning definitions, and §19.44, concerning fund availability, with changes to the proposed text as published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6878).

The amendment to §19.41 clarifies that water efficiency measures are eligible for LoanSTAR funding and removes duplicative language by deleting the term "State Energy Conservation Office."

The amendment to §19.42 expands the definition of "building" to include not only the structure, but also the associated site where energy or water consumption takes place; clarifies the definition of "Estimated simple payback period," while specifying that interest is included in the total estimated utility cost reduction measure costs; clarifies that water efficiency measures are eligible for LoanSTAR funding by adding the word "water," and by changing references from "energy" to "utility" and from "conservation" to "cost reduction"; removes "public junior colleges" from the definition of "public sector institution" because they are included within an "institution of higher education," which is currently part of the definition of "public sector institution"; clarifies that certain measures that do not save energy but can result in lower utility costs are eligible for LoanSTAR funding by changing "conservation" to "cost reduction"; adds the definitions of "Utility Assessment Report," "Utility Cost Reduction Measure" and "Utility Cost Reduction Project"; removes the definitions of terms that are no longer used in this subchapter; and removes duplicative language by deleting the term "State Energy Conservation Office." The word "and," between the comma and "engineering," has been deleted in the third sentence of paragraph (2), and the acronym "UCRM" has been changed to "UCRMs" in the second sentence of paragraph (10), to correct typographical errors in the proposed text.

The amendment to §19.43 clarifies that water efficiency measures are eligible for LoanSTAR funding by changing references from "energy" to "utility" and from "conservation" to "cost reduction"; clarifies loan eligibility requirements by providing that the loan candidates must own and occupy the buildings where the proposed projects will take place; clarifies the types and requirements of eligible Utility Cost Reduction Measures; and provides that a Utility Assessment Report must be prepared by a State of Texas licensed professional engineer in a format that follows the LoanSTAR Program guidelines located on the SECO website, unless SECO specifically waives this requirement.

The amendment to §19.44 simplifies the fund availability notification process. The title of the section is also changed to "Fund Availability" to more accurately reflect the amended content.

The amendment to §19.45 clarifies the term for repayment of a loan; that loan disbursement is on a reimbursement basis; that the borrower will receive a Loan Repayment Schedule upon completion and acceptance of a project by SECO; and that there is no penalty for the early repayment of a loan.

Two comments were received regarding these amendments.

Doug Lewin with the South-central Partnership for Energy Efficiency as a Resource (SPEER) expresses support for the proposed amendments. No response to this comment is necessary.

Cyrus Reed with the Lone Star Chapter of the Sierra Club suggests changing §19.43(2)(M) to read: "thermal or electric energy storage systems than help reduce or shift demand." The comptroller declines to adopt this change because the current text of §19.43(2)(M) is sufficiently broad to include these systems.

The amendments are adopted under Government Code, §2305.011(f), which authorizes the comptroller to "establish procedures and adopt rules as necessary to administer" the LoanSTAR program.

The amendments implement Government Code, §2305.032 regarding the LoanSTAR program.

§19.42. *Definitions.*

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

(1) Building--A structure and its associated site where energy or water consumption takes place.

(2) Estimated simple payback period--The estimated number of years necessary for the savings from the utility cost reduction measure (UCRM) improvements to equal the cost of installing the improvements. The formula used in this determination is the total estimated UCRM costs (including audit, metering, installation, equipment, and engineering design, but excluding interest) divided by the annual estimated utility cost savings. For Energy Savings Performance Contracts only, the formula used in this determination is the total estimated UCRM costs (including audit, metering, installation, equipment, engineering design, and interest) divided by the annual estimated utility cost savings.

(3) Facility--Any major energy or water using group of buildings in geographic proximity to each other or a major energy or water using system that one or more public sector institutions own and occupy.

(4) Interest rate--The percentage of the loan amount charged on an annual basis by SECO to a borrower for the use of the LoanSTAR program proceeds.

(5) Loan agreement--The written agreement between an applicant and SECO that details all terms and requirements under which the loan is issued, including the intended use of the loan proceeds.

(6) LoanSTAR Program--The state Revolving Loan Program that SECO administers and which funds Utility Cost Reduction Projects. The program is comprised of five elements: energy and water audits, energy and water efficiency retrofits or enhancements, a revolving loan financing mechanism, program monitoring, and evaluation.

(7) Project cost--All costs that SECO determines to be directly related to the identification, design, implementation, metering, and monitoring of UCRM.

(8) Public sector institution--Any state agency; community college; institution of higher education as defined in Education Code, §61.003; unit of local government including a county, city, town, or public hospital; a public school; or political subdivision of the state.

(9) Utility Assessment Report (UAR)--A technical report which identifies and documents energy, water, and other cost saving measures. This report must be submitted to SECO by potential LoanSTAR borrowers for financing approval. The UAR is prepared by a State of Texas licensed professional engineer.

(10) Utility Cost Reduction Measure (UCRM)--A commercially available energy efficient device, technique, or technology that is designed to reduce energy consumption, peak energy demand, water consumption or utility costs at an existing facility that a public sector institution owns and occupies, and that is permanently affixed to the building or is permanently installed on the site. Retrofit measures that result from renewable energy resources are eligible UCRMs.

(11) Utility Cost Reduction Project--The identification, design, installation, monitoring, and evaluation of one or more energy and water efficient measures that are designed to reduce energy consumption, peak energy demand, water consumption, or utility cost.

§19.44. *Fund Availability.*

Fund Availability. From time to time, SECO may publish a Notice of Loan Fund Availability (NOLFA) regarding the availability of

LoanSTAR loans under this subchapter. The notice shall be published in the *Texas Register* or the *Electronic Business Daily*, and on the SECO website.

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

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Don Neal

Chief Deputy General Counsel

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

#### CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

##### 37 TAC §219.25

The Texas Commission on Law Enforcement (Commission) adopts amended §219.25, concerning License Requirements for Persons with Military Special Forces Training, with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7593).

This amended rule updates the qualifications to take the state licensing examination. New licensing standards are added and service time restrictions are removed. A special forces training course is added and the amended rule eliminates the need for the individual to show proof of completion.

These amendments are necessary to streamline the licensing process for persons with military special forces training.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.315, License Requirements for Persons with Military Special Forces Training.

*§219.25. License Requirements for Persons with Military Special Forces Training.*

(a) In this section, "special forces" means a special forces component of the United States armed forces, including:

- (1) the United States Army Special Forces;
- (2) the United States Navy SEALs;
- (3) the United States Air Force Pararescue;
- (4) the United States Marine Corps Force Reconnaissance;

and

(5) any other component of the United States Special Operations Command approved by the commission.

(b) An applicant qualifies to take the basic licensing examination if the applicant:

- (1) meets minimum licensing standards;
- (2) has provided military service records documenting that the applicant has served in the special forces;
- (3) successfully completes a training course developed for special forces veterans; and
- (4) completes a supplemental peace officer training course.

(c) The effective date of this section is May 1, 2016.

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

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Kim Vickers

Executive Director

Texas Commission on Law Enforcement

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## PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

### CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER G. GENERAL PROVISIONS

The Texas Juvenile Justice Department (TJJD) adopts amendments to the following rules without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8735): §380.9931 (Student Trust Fund), §380.9951 (Training for Juvenile Correctional Officers), and §380.9955 (Staffing Requirements for Juvenile Correctional Officers).

TJJD also adopts amendments to the following rules with changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8735): §380.9909 (Access to Youth Information and Records) and §380.9933 (Spending Money for Released Youth).

TJJD also adopts the repeal of the following rules without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8735): §380.9901 (Confidentiality Regarding Youth Alcohol and Drug Abuse) and §380.9911 (Youth Masterfile Records).

The changes to the proposed text of §380.9909 consist of correcting minor grammatical errors.

The changes to the proposed text of §380.9933 consist of correcting a cross-reference to another TJJD rule.

#### JUSTIFICATION FOR CHANGES

The justification for these amended and repealed rules is the availability of rules that have been updated to conform to current law and to more accurately reflect TJJD's current organizational structure and practices. The rule changes will also promote more

effective supervision of youth by allowing for modified staffing patterns in high-restriction facilities.

Additional public benefits anticipated as a result of the rule changes are standardization of practices for forwarding youths' personal funds upon their departure from TJJD facilities and ensuring youth have enough spending money to purchase meals if traveling by public transportation to reach their homes or parole placements.

#### SUMMARY OF CHANGES

The repeal of §380.9901 allows for information from this rule to be consolidated into the amended §380.9909.

The amended §380.9909: 1) clarifies that this rule applies to all youth committed to TJJD; 2) removes a statement that indicated TJJD would not provide records in response to a request from a confined youth or his/her agent; 3) removes requirements concerning access to youth orders of adjudication and sealing of youth records as this information is addressed in state law; 4) adds circumstances under which TJJD may allow access to records that have been designated as restricted access, such as when the juvenile court gives permission to provide the records to a party in a civil suit when the person who is the subject of the records has put facts relating to the person's records at issue, or when the person who is the subject of the records is an applicant for enlistment in the military and gives permission to provide the records to military personnel; 5) clarifies that TJJD will allow access to records that have been designated as restricted access by the person who is the subject of the records *on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records*; and 6) removes the requirement for TJJD to reply that no record exists when TJJD receives a request for information about records that have been designated by court order as restricted access, as this is no longer required under Texas Family Code §58.207.

The amended §380.9909 also adds requirements previously found in §380.9911, such as provisions relating to custody, transportation, and storage of youth records and information.

Additionally, the amended §380.9909 adds requirements previously found in §380.9901, such as provisions relating to identifying the types of drug and alcohol information that are confidential and requirements for notifying youth of the confidential nature of this information.

The repeal of §380.9911 allows for certain information from this rule to be consolidated into the amended §380.9909.

The amended §380.9931: 1) clarifies that TJJD is not responsible for funds that are lost or stolen after being transferred to a youth's possession upon release or discharge; 2) clarifies that the 15-day hold TJJD places on money orders does not apply to U.S. Postal Service money orders; 3) clarifies that youth in high-restriction facilities are not permitted to handle withdrawn funds; 4) adds a requirement to notify the youth when TJJD must withdraw funds from a youth's account when TJJD is charged for a problem with a deposit, such as a charge for insufficient funds; 5) clarifies that TJJD will establish a savings account for a youth who has a balance of at least \$5,100 and the youth is expected to stay at the current facility for at least six months; 6) adds a requirement for youth who establish savings accounts to maintain at least \$100 in their student trust fund accounts; 7) clarifies that when a youth is moved to a contract residential facility that does not have a banking system, TJJD does not forward the student trust fund balance to the new facility. Instead, TJJD holds

the funds until the youth designates a third party to receive the funds or personally requests the funds once he/she is released from the facility; 8) clarifies that when a youth is paroled to a home location, the total amount of his/her trust fund is provided unless the youth has a balance over \$50, in which case the youth is provided up to \$50 in cash and a check for the remainder is mailed to the parole officer to be picked up by the youth at the first parole meeting; 9) adds requirements for forwarding the balance of a youth's student trust fund when a youth is discharged from TJJD and is sent to any type of residential placement, such as adult prison, an Immigration and Customs Enforcement detention facility, or a group home; and 10) adds a requirement for TJJD to hold the funds in a youth's student trust fund account until the account is cleared of any questions that prevented it from being closed upon the youth's departure from the facility.

The amended §380.9933 increases the amount provided to youth upon discharge or release from \$10 to \$15, which applies only when youth do not have at least \$15 in their student trust fund accounts. The amended rule also clarifies that youth who have at least \$15 available in their student trust fund accounts are provided an amount of cash upon release as specified in §380.9931.

The amended §380.9951 reduces the amount of training juvenile correctional officers (JCOs) must receive before assuming sole-supervision responsibility from 300 hours to 240 hours. The rule now requires at least 60 hours of additional training within the first year of employment. The amended rule also requires the training topics to include trauma-informed care and the signs and symptoms of human trafficking.

The amended §380.9955 generally requires JCOs to rotate assigned stations at least once every 12 months, rather than every six months. The amended rule also generally requires a JCO to serve at least 12 months in another station, rather than six months, before returning to a previously assigned station. Additionally, the amended rule clarifies that a JCO who does not meet the requirements for sole supervision may be included in the staff-to-youth ratio if the JCO has completed training in appropriate restraint techniques, first aid, and cardiopulmonary resuscitation.

#### SUMMARY OF PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed amendments or repeals.

#### RULE REVIEW

In the Proposed Rules section of the December 4, 2015, issue of the *Texas Register* (40 TexReg 8735), TJJD published a notice of intent to review §§380.9901, 380.9909, 380.9911, 380.9931, 380.9933, 380.9951, and 380.9955, as required by Texas Government Code §2001.039. TJJD did not receive any public comments regarding the rule review.

TJJD has determined that the reasons for adopting §380.9901 and §380.9911 no longer exist. Accordingly, these rules are repealed as previously described in this notice.

TJJD has determined that the reasons for adopting §§380.9931, 380.9951, and 380.9955 continue to exist. Accordingly, these rules are readopted without changes as previously described in this notice.

TJJD has also determined that the reasons for adopting §380.9909 and §380.9933 continue to exist. Accordingly, these

rules are readopted with changes as previously described in this notice.

## DIVISION 1. YOUTH RECORDS

### 37 TAC §380.9901, §380.9911

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

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Jill Mata

General Counsel

Texas Juvenile Justice Department

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### 37 TAC §380.9909

#### STATUTORY AUTHORITY

The amended section is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

§380.9909. *Access to Youth Information and Records.*

(a) Purpose. This rule establishes controls on access to Texas Juvenile Justice Department (TJJD) youth records and information in compliance with federal and state laws and regulations that limit access to youth records.

(b) Applicability. This rule applies to all youth committed to TJJD.

(c) General Provisions. Records and information concerning youth:

- (1) must be marked "confidential;"
- (2) must remain in the custody and control of authorized personnel at all times;
- (3) may not be disclosed except as allowed by law; and
- (4) must be stored and transported in a manner that ensures security and confidentiality.

(d) Access by a Youth or Parent.

(1) In the interest of protecting TJJD youth and the public, TJJD may disclose records and other information concerning a youth to the youth and the youth's parent or guardian only if the disclosure would not:

(A) materially harm the treatment and rehabilitation of the youth; or

(B) substantially decrease the likelihood of TJJD receiving information from the same or similar sources in the future.

(2) If TJJD decides it is appropriate to disclose information to the parent or guardian concerning a youth who is at least 18 years old, TJJD may do so only with the youth's written consent.

(e) Educational Information.

(1) Educational information is made available in accordance with Title 20 of the United States Code §1232g and Title 34 of the Code of Federal Regulations (CFR).

(2) A TJJD youth who is at least 18 years old may access his/her own educational information or grant consent to another individual to access his/her information. If the youth is under the age of 18, the parent or guardian has the right to access the youth's educational information or grant consent to another individual to access the youth's educational information.

(3) TJJD may disclose educational information of a youth who is at least 18 years old to a parent without the youth's consent if the parent is claiming the youth as a "dependent student" as defined in Section 152 of the Internal Revenue Code.

(4) No consent is necessary if TJJD is releasing educational information on a youth to school officials within TJJD or to the school district where the youth seeks to attend.

(f) Alcohol and Drug Treatment Records.

(1) Access to youth records that contain certain information identifying the youth as chemically dependent or as a substance abuser may be disclosed only as provided in 42 CFR Part 2. Confidentiality requirements for this type of information are more restrictive than requirements in other regulations.

(2) Drug and alcohol information that may not be released includes any information that:

(A) would identify a youth as an alcohol or drug abuser; or

(B) is obtained for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.

(3) At the time of admission, youth diagnosed as alcohol or drug abusers must:

(A) be informed that federal laws protect the confidentiality of their alcohol and drug abuse records; and

(B) be given a written copy of the summary of the federal law and regulations.

(4) If a document contains information regarding alcohol and drug abuse but it also contains other information that may appropriately be released, TJJD must redact the alcohol and drug abuse information unless appropriate release forms have been completed.

(g) Restricted Access to Youth Records. If records have been designated as restricted access by court order pursuant to Texas Family Code §58.201, et seq., TJJD must not permit access to these records except:

(1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Texas Government Code §411.082; or

(2) by the person who is the subject of the records, on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records; or

(3) by TJJD for research purposes; or

(4) with the permission of the juvenile court, by a party to a civil suit if the person who is the subject of the records has put facts relating to the person's records at issue in the suit; or

(5) with the written permission of the individual, by military personnel, including a recruiter, of this state or the United States if the individual is an applicant for enlistment in the armed forces.

(h) Release of Information upon Escape. TJJJ may disseminate the following information upon an escape of a youth:

(1) the youth's name, including other names by which the youth is known;

(2) the youth's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(3) a photograph of the youth; and

(4) if necessary to protect the welfare of the community, any other information that reveals dangerous tendencies of the youth or expedites the apprehension of the youth.

(i) Access under Federal Protection and Advocacy Systems. Pursuant to Title 42 of the United States Code §10805 and §15043, federal law provides for a federally funded system of mental health advocates and a federally funded system of advocates for the developmentally disabled and grants those advocates access to facilities and TJJJ records for the purpose of investigating abuse and neglect of the mentally ill or developmentally disabled.

(j) Health Insurance Portability and Accountability Act.

(1) TJJJ is not a covered entity under the Health Insurance Portability and Accountability Act (HIPAA) because it does not engage in covered transactions as defined by 45 CFR §160.103. Records created by an entity covered by HIPAA are subject to TJJJ's regular confidentiality rules and procedures.

(2) Protected health information generated by HIPAA-covered contract providers (University of Texas Medical Branch) to youth in high-restriction facilities and halfway house programs is the property of TJJJ. The status of the source of the information does not impose HIPAA restrictions on the use of that healthcare information.

(3) To the extent that any healthcare information obtained by TJJJ may be covered by HIPAA as it applies to youth at high-restriction facilities and halfway houses, that healthcare information is for the governmental uses and purposes enumerated in 45 CFR §164.512, including but not limited to:

(A) the provision of healthcare to that youth;

(B) the health and safety of that youth or other youths;

(C) the health and safety of the officers or employees of or others at a high-restriction facility or halfway house;

(D) the health and safety of such individuals and officers or other persons responsible for the transporting of youths or their transfer from one institution, facility, or setting to another;

(E) law enforcement on the premises of a high-restriction facility or halfway house; and

(F) the administration of the safety, security, and good order of a high-restriction facility or halfway house.

(4) A contract healthcare provider who is a HIPAA-covered entity and provides services to TJJJ youth other than those in high-restriction facilities or halfway houses is required as a condition of the contract to secure all necessary consents or authorizations to provide to or obtain from TJJJ protected health information.

(k) Release of Certain Information for a Legitimate Need. TJJJ may disclose information regarding a youth's location and committing court to a person having a legitimate need for the information (e.g., to provide a location for a bench warrant or service of process to be issued the youth).

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

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Jill Mata

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Texas Juvenile Justice Department

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## DIVISION 2. YOUTH FUNDS

### 37 TAC §380.9931, §380.9933

#### STATUTORY AUTHORITY

The amendment to §380.9331 is adopted under Texas Human Resources Code §242.063, which requires TJJJ to adopt rules governing the administration of the student trust fund.

The amendment to §380.9933 is adopted under Texas Human Resources Code §245.106, which requires TJJJ to adopt rules that establish an amount of money to be provided to each child released under supervision.

§380.9933. *Spending Money for Released Youth.*

(a) The Texas Juvenile Justice Department (TJJJ) provides \$15 in cash from TJJJ funds to each youth who:

(1) is released or discharged from a residential facility operated by TJJJ;

(2) will travel by public transportation to his/her home placement; and

(3) does not have at least \$15 available to withdraw from his/her student trust fund account.

(b) A youth who has at least \$15 available to withdraw from his/her student trust fund account is provided cash from his/her student trust fund account in accordance with §380.9931 of this title upon release or discharge.

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

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## DIVISION 3. JUVENILE CORRECTIONAL OFFICERS

### 37 TAC §380.9951, §380.9955

#### STATUTORY AUTHORITY

The amended rules are adopted under Texas Human Resources Code §242.009, which requires TJJD to adopt rules to administer the training and staffing requirements for juvenile correctional officers set forth in this section.

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

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

#### CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission (HHSC) on behalf of the Department of Assistive and Rehabilitative Services (DARS), adopts amendments to §109.105 in Subchapter A, General Rules; amendments to §§109.205, 109.217, 109.221, 109.223 and 109.231, in Subchapter B, Division 1, Board for Evaluation of Interpreters (BEI) Interpreter Certification; amendments to §109.315, in Division 2, BEI Court Interpreter Certification; and new §§109.451, 109.453, and 109.457 in new Division 4, BEI Medical Interpreter Certification.

The amendment to §109.217 is adopted with changes to the proposed text published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7973). The amendments to §§109.105, 109.205, 109.221, 109.223, 109.231, and 109.315; and new §§109.451, 109.453, and 109.457 are adopted without changes; therefore, the sections will not be republished.

#### BACKGROUND AND JUSTIFICATION

DARS has recently completed an agency initiative to develop a new medical interpreter performance test (called the BEI Medical Performance Test) for the BEI Interpreter Certification program. The test is designed for interpreters seeking medical certification. Interpreters certified as medical interpreters assist persons who are deaf or hard of hearing in communicating with medical professionals in settings such as hospitals or medical offices.

In partnership with the University of Arizona, DARS Office for Deaf and Hard of Hearing Services (DHHS) has also developed

the American Sign Language (ASL) Proficiency Test and Performance Test for persons who are deaf or hard of hearing and who are seeking interpreter certification. The ASL Proficiency Test and Performance Test will replace the current test for persons who are deaf or hard of hearing and who are seeking interpreter certification.

HHSC, on behalf of DARS, is adopting new rules for the Medical Performance Test and amending existing BEI rules to incorporate the new ASL Proficiency Test and Performance Test. Rules for the BEI Interpreter Certification program fee schedule will be amended to include new fees for these tests. Test fees help defray the costs of test development, administration, and rating.

Additionally, Senate Bill (S.B.) 1307, 84th Legislature, Regular Session, 2015, requires rule amendments that pertain to military personnel. Senate Bill 1307 addresses exceptions to the requirements for military personnel and spouses of military personnel, which are applicable to the BEI Interpreter Certification program. Rule amendments address fee waivers for military personnel applying for certification when the applicant otherwise meets all requirements, as required by S.B. 807, 84th Legislature, Regular Session, 2015.

#### SECTION-BY-SECTION SUMMARY

HHSC, on behalf of DARS, adopts amendments to §109.105, Definitions, to add a new definition for "certified medical interpreter."

HHSC, on behalf of DARS, adopts amendments to §109.205, Definitions, to add definitions of "active duty" and "armed forces of the United States" and to modify definitions for "military service member," "military spouse," and "military veteran" to align with S.B. 1307.

HHSC, on behalf of DARS, adopts amendments to §109.217, Qualifications and Requirements for a BEI Certificate, to establish the option to take an ASL proficiency test and a performance test for persons who are deaf or hard of hearing. This rule section establishes eligibility requirements and clarifies that applicants must pass the American Sign Language (ASL) Proficiency Test to take the Performance Test. In addition, this rule section eliminates the prerequisite and performance tests previously required of persons who are deaf or hard of hearing and who are seeking certification.

HHSC, on behalf of DARS, adopts amendments to §109.221, Validity of Certificates and Recertification, to extend the time by two years for a person who has served in the military to earn all continuing education units, in accordance with S.B. 1307.

HHSC, on behalf of DARS, adopts amendments to §109.223, Certificate Renewal, to allow a person who has served in the military and who has an expired court certificate to renew certification within two years, in accordance with S.B. 1307.

HHSC, on behalf of DARS, adopts amendments to §109.231, Schedule of Fees, to establish a fee for persons taking the Medical Performance Test and the ASL Proficiency Test and Performance Test for persons who are deaf or hard of hearing. It eliminates the prerequisite and performance tests previously required of persons who are deaf or hard of hearing and who are seeking certification. It establishes application fees for persons who have taken the BEI test in another state and want to become Texas certified as Basic, Advanced, or Master. In addition, this rule section is amended to address the waiver of fees for military personnel, in accordance with S.B. 807.

HHSC, on behalf of DARS, adopts amendments to §109.315, Qualifications and Requirements of Court Certificate, to allow military service members and military veterans to be issued an expedited BEI court interpreter certificate, in accordance with S.B. 1307.

HHSC, on behalf of DARS, adopts new §109.451, Purpose, to establish a new Division 4, BEI Medical Interpreter Certification.

HHSC, on behalf of DARS, adopts new §109.453, Legal Authority, to establish the legal authority for medical certification under the BEI program.

HHSC, on behalf of DARS, adopts new §109.457, Qualifications and Requirements for Medical Certificate, to establish the qualifications and requirements for a person applying for medical interpreter certification. This rule section is also being added to establish an annual renewal requirement and a five-year continuing education requirement.

#### COMMENTS

DARS received comments from twelve commenters during the 30-day comment period. A summary of the comments along with the agency's responses follow.

Comment: Three commenters supported the changes to the proposed rules. One commenter supported the requirements of the 20 clock hours for medical recertification and the prerequisite certification for taking the medical test as required by §109.457, relating to Qualifications and Requirements for Medical Certificate.

Response: DARS agrees with these comments.

Comment: One commenter, relating to §109.105, Definitions, inquired if a medical certificate should be added to the definition of "specialty certificate."

Response: Based on DARS's review of the comment and DARS' recommendation, this rule is being adopted without change. The term specialty certificate has been removed from §109.217, Qualifications and Requirements for a BEI Certificate, and is only referenced as a definition. At this time, medical certificate is not added to this definition.

Comment: One commenter, relating to §109.217, stated that the use of the American Sign Language (ASL) Proficiency Test may not be useful when many interpreters work in K-12 and other educational settings and not the public sector.

Response: The ASL Proficiency Test is for individuals who are deaf or hard of hearing. Interpreter candidates who are deaf or hard of hearing are required to pass the ASL Proficiency Test to be eligible for the performance test for persons who are deaf or hard of hearing. The ASL Proficiency Test is not geared for a particular setting.

Section 109.217 is being adopted with a change in order to correct an editorial error. Subsection (c)(2) should include an "and" instead of a period in order to include subsection (c)(3) as part of the requirement to take a BEI performance test.

Comment: Two commenters, relating to the new rules proposed for Division 4, BEI Medical Interpreter Certification, are concerned about the current shortage of interpreters and to impose a medical interpreter certification would add to the shortage. One commenter inquired when requirement of a medical certification would begin.

Response: Based on DARS's review of the comments and DARS' recommendation, these rules are being adopted without change, as medical certification is not required to interpret in medical settings. Establishing a voluntary certification would not impact the availability of qualified interpreters but rather enhance the field by providing an alternative means to qualify interpreters in medical settings. The new medical test is scheduled for release in the spring of 2016.

Comment: Four commenters requested that §109.457, Qualifications and Requirements for Medical Certificate, allow for grandfathering certified BEI Advanced and Master certificate holders who have many years of experience in medical interpreting.

Response: Based on DARS's review of the comments and DARS' recommendation, this rule is being adopted without change. Medical certification is optional for interested interpreters when working with hospitals and physicians and is not required to interpret in medical settings. This is the first time that DARS has used medical certification; therefore, there is no grandfathering for this certification.

Comment: One commenter, relating to §109.457, inquired if the medical certification was for both sign language and oral interpreters as there is a need for both modes of interpreting in a medical setting.

Response: Based on DARS's review of the comment and DARS' recommendation, this rule is being adopted without change. The Medical Performance Test is designed for sign language interpreters. DARS may develop a test for oral interpreters as funding becomes available.

Comment: One commenter, relating to §109.457, inquired if persons who are deaf could take the Medical Performance Test. One commenter asked if interpreters who are deaf could interpret in medical settings since they are not eligible to take the Medical Performance Test.

Response: Based on DARS's review of the comment and DARS' recommendation, this rule is being adopted without change. The medical test is designed to test the skills of interpreters who can hear at the conversational level. Medical certification is not required to interpret in medical settings and deaf interpreters could still interpret in a medical setting.

Comment: One commenter, relating to §109.457, requested that interpreters applying for certification be required to have a background check and take a Tuberculosis (TB) test. The commenter stated that one hospital and a school system required interpreters to have a TB test before interpreting at their facilities, which makes it a hardship on interpreter referral agencies to find interpreters willing to take the TB test. Since this is requested, it would be better to require a background check and TB test when the interpreter updates the certification.

Response: Based on DARS's review of the comment and DARS' recommendation, this rule is being adopted without change. The BEI program focuses on the skill sets needed to become certified rather than on employment requirements that individual employers may establish for interpreters.

Comment: Four commenters inquired about the training requirements to take the Medical Performance Test as required by §109.457. Comments included defining a credit hour, counting experience towards training, requiring types of medical training, considering mentoring for training, and receiving credit for past courses. The commenters also inquired if a study guide will be

provided and will recommendations from the HHSC Advisory Committee on Qualifications for Healthcare Translators be a guide to determine training types. One commenter stated that content knowledge of medical terms and procedures are essential.

Response: Based on DARS's review of the comments and DARS' recommendation, this rule is being adopted without change. Credit hours are used to mean clock hours and are consistent with language currently in rule. In addition, experience does not qualify towards training and DARS DHHS must approve training, including mentoring and workshops. Policy will be developed to provide additional guidance on training requirements. A study guide will be developed and published to the DARS website. No restrictions have been established by these proposed rules as to when courses may be taken.

## SUBCHAPTER A. GENERAL RULES

### 40 TAC §109.105

#### STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this adoption.

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

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Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



## SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS

### DIVISION 1. BEI INTERPRETER CERTIFICATION

#### 40 TAC §§109.205, 109.217, 109.221, 109.223, 109.231

#### STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this adoption.

#### §109.217. *Qualifications and Requirements for a BEI Certificate.*

(a) To apply for or to take any examination for a BEI Certificate, an applicant must:

- (1) be at least 18 years old;
- (2) have earned a high school diploma or its equivalent;

and

(3) not have a criminal conviction that could qualify as grounds for denial, probation, suspension, or revocation of a BEI certificate, or other disciplinary action against any holder of a BEI certificate.

(b) To take the written Test of English Proficiency or to take the American Sign Language Proficiency Test for persons who are deaf or hard of hearing, an applicant must have:

- (1) met all the criteria in subsection (a) of this section; and
- (2) earned at least 30 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher.

(c) To take a BEI performance test, an applicant must have:

- (1) met all the criteria in subsection (a) of this section;
- (2) earned an associate degree and/or a minimum of 60 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher, unless the applicant is applying for a court, medical, or trilingual certificate or except as provided in subsections (e) and (f) of this section; and

(3) earned a passing score on the Test of English Proficiency, unless the applicant is applying for a court, medical, or trilingual certificate; or

(4) earned a passing score on the American Sign Language Proficiency Test if the applicant is deaf or hard of hearing.

(d) To apply for and to be issued a BEI certificate, an applicant must have:

- (1) met all criteria in subsection (a) of this section; and
- (2) earned an associate degree and/or a minimum of 60 credit hours from an accredited college or university, with a cumulative GPA of 2.0 or higher, except as provided in subsections (e) and (f) of this section; and earned a passing score on the requisite examination for the certificate level sought.

(e) A BEI certificate holder who holds an active and valid BEI certificate awarded as a result of proceedings initiated before January 1, 2012, is exempt from the educational or degree requirements in subsections (b), (c), and (d) of this section, as long as the BEI certificate remains active and valid.

(f) A BEI certificate holder who holds an active and valid BEI certificate awarded as a result of proceedings initiated before January 1, 2012, and who applies for an additional BEI certificate level after January 1, 2012, may be exempt from the educational or degree requirements of subsections (b), (c), and (d) of this section, if, at the time the certificate holder applies for, takes, and passes any BEI examination for the additional certificate, the BEI certificate holder:

(1) has an active and valid BEI certificate that is fully compliant with BEI's annual certificate maintenance and five-year recertification rules and requirements;

(2) is not under any type of active or pending disciplinary action from BEI or DHHS; and

(3) satisfies all other rules and requirements applicable to the additional BEI certificate level sought.

(g) A certified interpreter wanting to take a higher level BEI performance test must have the following prerequisite certificate for the corresponding BEI performance test:

Figure: 40 TAC §109.217(g)

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

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Sylvia F. Hardman

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## DIVISION 2. BEI COURT INTERPRETER CERTIFICATION

### 40 TAC §109.315

#### STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this adoption.

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## DIVISION 4. BEI MEDICAL INTERPRETER CERTIFICATION

### 40 TAC §§109.451, 109.453, 109.457

#### STATUTORY AUTHORITY

The adopted new rules are authorized by the Texas Human Resources Code, Chapter 111, §111.051, Chapter 117, and Chapter 81. The new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this adoption.

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

Filed with the Office of the Secretary of State on March 17, 2016.

TRD-201601269

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: April 6, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 424-4050



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Medical Board

### Title 22, Part 9

The Texas Medical Board proposes to review Chapter 161, General Provisions, §§161.1 - 161.13, pursuant to the Texas Government Code, §2001.039.

Comments on the proposed review may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

TRD-201601331  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Filed: March 21, 2016



The Texas Medical Board proposes to review Chapter 164, Physician Advertising, §§164.1 - 164.6, pursuant to the Texas Government Code, §2001.039.

Comments on the proposed review may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

TRD-201601332  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Filed: March 21, 2016



The Texas Medical Board proposes to review Chapter 176, Health Care Liability Lawsuits and Settlements, §§176.1 - 176.9, pursuant to the Texas Government Code, §2001.039.

Comments on the proposed review may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

TRD-201601342

Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Filed: March 21, 2016



The Texas Medical Board proposes to review Chapter 181, Contact Lens Prescriptions, §§181.1 - 181.7, pursuant to the Texas Government Code, §2001.039.

Comments on the proposed review may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

TRD-201601333  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Filed: March 21, 2016



The Texas Medical Board proposes to review Chapter 191, District Review Committees, §§191.1 - 191.5, pursuant to the Texas Government Code, §2001.039.

Comments on the proposed review may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

TRD-201601334  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Filed: March 21, 2016



The Texas Medical Board proposes to review Chapter 196, Voluntary Relinquishment or Surrender of a Medical License, §§196.1, 196.2, 196.4 and 196.5, pursuant to the Texas Government Code, §2001.039.

Comments on the proposed review may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

TRD-201601335

Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Filed: March 21, 2016



State Securities Board

**Title 7, Part 7**

Chapter 115 - Securities Dealers and Agents

Chapter 116 - Investment Advisers and Investment Adviser Representatives

The State Securities Board (Agency), beginning March 2016, will review and consider for readoption, revision, or repeal Chapter 115, Securities Dealers and Agents and Chapter 116, Investment Advisers and Investment Adviser Representatives, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code.

The assessment made by the staff at this time indicates that the reasons for initially adopting the chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amend-

ments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to Marlene Sparkman, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167 or sent by facsimile to Ms. Sparkman at (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). Comments will be reviewed and discussed in a future Board meeting.

TRD-201601378  
John Morgan  
Securities Commissioner  
State Securities Board  
Filed: March 23, 2016



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 19 TAC §102.1307(d)

## Innovation District

Please submit, on district letterhead, a letter to the commissioner of education stating the date that the board of trustees adopted a resolution to develop a local innovation plan for the designation of the district as an Innovation District.

A local innovation plan must be developed for a school district before the district may be designated as an Innovation District. A local plan must provide for a comprehensive educational program for the district, which may include:

- 1) Innovative Curriculum
- 2) Instructional Methods
- 3) Community Participation
- 4) Governance of Campuses
- 5) Parental Involvement

A local innovation plan must identify requirements imposed by the Education Code that inhibit the goals of the plan from which the district should be exempted on adoption of the plan. The local innovation plan should specify the manner in which a particular statute inhibits one or more goals of the plan. Please use the form below to check the statutes specifically identified in your district's local innovation plan as inhibiting a goal of the plan. Checking a specific statute does not necessarily indicate eligibility for an exemption from all subsections of the statute. The local innovation plan controls with regard to the specific exemptions adopted by a district. The form below provides a reporting mechanism to fulfill the reporting requirements of the statute. Entire sections of code may not be eligible for exemption and each district should consult its legal counsel in developing its innovation plan.

Exemptions claimed for an Innovation District apply only to the specific provision of the Texas Education Code (TEC) cited, which may or may not be governed by a separate legal requirement. The exemption does not relieve the district of any requirement imposed by other state or federal law or a duty imposed under federal regulation, grant compliance, agency rule applicable to a charter school or a local legal requirement. Each district should consult its legal counsel to ensure adoption of necessary local policies to ensure compliance with all applicable legal requirements.

Please note that this is not an exhaustive list of exemptions.

## Chapter 11 – School Districts

### Subchapter D. Powers and Duties of Board of Trustees of Independent School Districts

- §11.1511 (b)(5), (14) Specific Powers and Duties of Board
- §11.162 School Uniforms

### Subchapter F. District-Level and Site Based Decision-Making

- §11.251 Planning and Decision-Making Process
- §11.252 District-Level Planning and Decision-Making
- §11.253 Campus Planning and Site-Based Decision-Making
- §11.255 Dropout Prevention Review

## Chapter 21 – Educators

### Subchapter A – General Provisions

- §21.002 Teacher Employment Contracts
- §21.003 Certification Required
- §21.0031 Failure to Obtain Certification; Contract Void

### Subchapter B – Certification of Educators

- §21.051 Rules Regarding Field-Based Experience and Options for Field Experience and Internships.
- §21.053 Presentation and Recording of Certificates
- §21.057 Parental Notification

- Subchapter C – Probationary Contracts**

- Subchapter D – Continuing Contracts**

- Subchapter E – Term Contracts**

### Subchapter H – Appraisals and Incentives

- §21.352 Local Role
- §21.353 Appraisal on Basis of Classroom Teaching Performance
- §21.354 Appraisal of Certain Administrators
- §21.3541 Appraisal and Professional Development System for Principals

### Subchapter I – Duties and Benefits

- §21.401 Minimum Service Required
- §21.402 Minimum Salary Schedule for Certain Professional Staff
  - §21.4021 Furloughs
  - §21.4022 Required Process for Development of Furlough Program or Other Salary Reduction Proposal
- §21.403 Placement on Minimum Salary Schedule
  - §21.4031 Professional Staff Service Records
  - §21.4032 Reductions in Salaries of Classroom Teachers and Administrators
- §21.404 Planning and Preparation Time
- §21.405 Duty-Free Lunch

- §21.406 Denial of Compensation Based On Absence for Religious Observance Prohibited
- §21.407 Requiring or Coercing Teachers to Join Groups, Clubs, Committees, or Organizations: Political Affairs
- §21.408 Right To Join or Not To Join Professional Association
- §21.409 Leave Of Absence for Temporary Disability
- §21.415 Employment Contracts
- Subchapter J – Staff Development**
- §21.451 Staff Development Requirements
- §21.452 Developmental Leaves of Absence
- §21.458 Mentors

## **Chapter 22 – School District Employees and Volunteers**

### **Subchapter A – Rights, Duties, and Benefits**

- §22.001 Salary Deductions for Professional Dues
- §22.002 Assignment, Transfer, or Pledge of Compensation
- §22.003 Minimum Personal Leave Program
- §22.006 Discrimination Based on Jury Service Prohibited
- §22.007 Incentives for Early Retirement
- §22.011 Requiring or Coercing Employees to Make Charitable Contributions

## **Chapter 25 – Admission, Transfer, and Attendance**

### **Subchapter C – Operation of Schools and School Attendance**

- §25.0811 First Day of Instruction
- §25.0812 Last Day of School
- §25.083 School Day Interruptions
- §25.092 Minimum Attendance for Class Credit or Final Grade

### **Subchapter D – Student/Teacher Ratios; Class Size**

- §25.111 Student/Teacher Ratios
- §25.112 Class Size
- §25.113 Notice of Class Size
- §25.114 Student/Teacher Ratios in Physical Education Classes; Class Size

## **Chapter 37 – Discipline; Law and Order**

### **Subchapter A – Alternative Setting for Behavior Management**

- §37.0012 Designation of Campus Behavior Coordinator
- §37.002 Removal by Teacher

**Chapter 44 –Fiscal Management**

**Subchapter B – Purchases; Contracts**

- §44.031 Purchasing Contracts
- §44.0331 Management Fees Under Certain Cooperative Purchasing Contracts
- §44.0352 Competitive Sealed Proposals
- §44.042 Preference to Texas and United States Products
- §44.043 Right To Work
- §44.047 Purchase or Lease of Automated External Defibrillator

**Subchapter Z – Miscellaneous Provisions**

- §44.901 Energy Savings Performance Contracts
- §44.902 Long-Range Energy Plan to Reduce Consumption of Electric Energy
- §44.903 Energy-Efficient Light Bulbs in Instructional Facilities
- §44.908 Expenditure of Local Funds

**Chapter 45 – School District Funds**

**Subchapter G – School District Depositories**

- §45.205 Term of Contract
- §45.206 Bid Or Request for Proposal Notices; Bid and Proposal Forms
- §45.207 Award of Contract
- §45.208 Depository Contract; Bond
- §45.209 Investment of District Funds

**Other**

Please list any additional exemption required for your Innovation District Plan:

Figure: 40 TAC §109.217(g)

<b>Prerequisite Certificate</b>	<b>BEI Performance Test</b>
BEI--Level I, Basic, Level II, Level III, Level IV, Level V RID--Comprehensive Skills Certificate (CSC), Certificate of Interpreting (CI), Certificate of Transliteration (CT), National Interpreter Certification (NIC), NIC Advanced, NIC Master	Advanced
BEI--Level III, Level IV, Level V, OC:C, or Advanced RID--CSC, CI/CT, NIC Advanced or NIC Master	Master
Level I Oral or OC:B	Oral Certificate: Comprehensive (OC:C)

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Comptroller of Public Accounts

Addition - Local Sales Tax Rate Changes Effective April 2016

### LOCAL SALES TAX RATE CHANGES EFFECTIVE April 1, 2016

Addition to the Local Sales Tax Rate Changes Effective April 1, 2016

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2015 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Helotes (Bexar Co)	2015227	.017500	.080000

TRD-201601377  
Don Neal  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Filed: March 23, 2016



### Concho Valley Workforce Development Board

Public Notice: Request for Proposal

Concho Valley Workforce Development Board (CVWDB) is seeking qualified parties to submit proposals for staffing and management of its workforce center (Workforce Solutions), incorporating at a minimum Childcare Services, Workforce Innovation and Opportunity Act (WIOA) programs, Choices/Temporary Assistance to Needy Families (TANF), and Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T). Interested parties may obtain a copy of the RFP by visiting the website at <http://www.cvworkforce.org/Bids.aspx?CatID=17> on or after March 22, 2016.

Proposals will be accepted until 5:00 p.m. CDST, May 12, 2016, at the office of CVWDB, 36 E. Twohig Ave., Suite 805, San Angelo, Texas 76903. A conference will be held on April 7, 2016, at 9:30 a.m. CDST at the Cactus Hotel, 36 E. Twohig Ave., Green Room on 2nd floor, San Angelo, Texas 76903, to answer questions for any party interested in submitting a Proposal. Attendees must provide verbal commitment to Proposers' Conference by 5:00 p.m. CDST, April 1, 2016, at (325) 655-2005 Ext. 300. CVWDB reserves the right to accept or reject any or all proposals.

TRD-201601302  
Mike Buck  
Executive Director  
Concho Valley Workforce Development Board  
Filed: March 21, 2016



### Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/28/16 - 04/03/16 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/28/16 - 04/03/16 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/16 - 04/30/16 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/16 - 04/30/16 is 5.00% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201601361  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: March 22, 2016



### Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the pub-

lic an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is May 2, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on May 2, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Austin Equipment Company, LC; DOCKET NUMBER: 2015-1438-AIR-E; IDENTIFIER: RN104085717; LOCATION: Jarrell, Williamson County; TYPE OF FACILITY: limestone quarry; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to submit a permit renewal application for a rock crusher at least six months prior to the expiration of the permit; and 30 TAC §101.5 and THSC, §382.085(b), by failing to prevent excessive fugitive emissions from causing a traffic hazard; PENALTY: \$10,500; ENFORCEMENT COORDINATOR: Kingsley Coppinger, (512) 239-6581; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: City of Mansfield; DOCKET NUMBER: 2016-0070-WQ-E; IDENTIFIER: RN103098638; LOCATION: Mansfield, Tarrant County; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of untreated wastewater into or adjacent to any water in the state; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Skellytown; DOCKET NUMBER: 2015-1769-PWS-E; IDENTIFIER: RN102675006; LOCATION: Skellytown, Carson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(C) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper samples; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information

in the CCR is correct and consistent with the compliance monitoring data; 30 TAC §290.117(c)(2)(B) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the ED; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the ED each quarter by the tenth day of the month following the end of each quarter, and by failing to provide public notification regarding the failure to submit a DLQOR to ED and submit a copy of the public notice to the ED; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR; PENALTY: \$907; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2015-1793-AIR-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2292, Special Terms and Conditions Number 25, and New Source Review Permit Numbers 83702, PSDTX843, PSDTX860, and PAL15, Special Conditions Numbers 1 and 22, by failing to limit operating hours to 672 hours per rolling 12-month period and to comply with the annual allowable emissions rates per rolling 12-month period for the Paraxylene Flare, Emissions Point Number 11FLR-9601; PENALTY: \$14,063; Supplemental Environmental Project offset amount of \$5,625; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: IESI TX Landfill LP; DOCKET NUMBER: 2015-1686-MSW-E; IDENTIFIER: RN100825462; LOCATION: Alvarado, Johnson County; TYPE OF FACILITY: Type I municipal solid waste (MSW) landfill; RULES VIOLATED: 30 TAC §330.121(a) and §330.133(b) and MSW Permit Number 1417B, Site Operating Plan Sections 4.2.2 and 4.2.3, Appendix C, Section 3.3(e), Appendix E, Sections 3.3 and 8.2.1, by failing to prevent the unloading of waste in unauthorized areas at the facility; PENALTY: \$7,875; Supplemental Environmental Project offset amount of \$3,150; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Jackson County; DOCKET NUMBER: 2015-1511-MSW-E; IDENTIFIER: RN102081551; LOCATION: Edna, Jackson County; TYPE OF FACILITY: Type V municipal solid waste (MSW) processing facility; RULES VIOLATED: 30 TAC §30.213(a) and §305.125(1) and MSW Permit Number 2181, Site Operating Plan (SOP) Part IV, Training Requirements, by failing to employ at least one licensed individual who supervises or manages the operation of a MSW facility; 30 TAC §305.125(1) and MSW Permit Number 2181, SOP Part IV, Facility Inspections and Maintenance Table 3, by failing to comply with all permit conditions relating to facility inspections and maintenance; 30 TAC §§305.125(1), 330.221(c) and 330.247, and MSW Permit Number 2181, SOP Part IV, Training Requirements and Fire Protection, by failing to ensure that all personnel are properly trained and are operating the facility as required by the permit; and 30 TAC §305.125(1) and §330.231 and MSW Permit Number 2181, SOP Part IV, Facility Sign, by failing to ensure that the facility sign contained all the required information; PENALTY: \$19,563; Supplemental Environmental Project offset amount of \$15,651; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892;

REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2016-0183-PWS-E; IDENTIFIER: RN101380889; LOCATION: Mabank, Henderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$351; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Orange County Water Control and Improvement District Number 2; DOCKET NUMBER: 2015-1801-MWD-E; IDENTIFIER: RN101614030; LOCATION: Orange, Orange County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010240001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; PENALTY: \$11,775; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: SHUJAT HOLDING COMPANY dba Freeway Express; DOCKET NUMBER: 2015-1629-PST-E; IDENTIFIER: RN102036704; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(C), by failing to renew the underground storage tank (UST) delivery certificate and notify the agency of any change or additional information regarding the UST system within 30 days after change in ownership of the Station; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; 30 TAC §334.6(a)(2) and (b)(1)(C), by failing to submit a construction notification form before returning the UST system to service or altering vapor and product piping; 30 TAC §115.241(b)(4) and Texas Health and Safety Code, §382.085(b), by failing to submit the Stage II decommissioning checklist and submittal form with applicable results to the TCEQ no later than ten calendar days after the decommissioning activity at the Station; and 30 TAC §334.46(i)(2)(B)(iii), by failing to maintain records of any site features or UST system components which have been added, revised, changed, modified, or removed subsequent to the preparation of the original drawings or plans; PENALTY: \$10,690; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: SILVERLAKE CHURCH; DOCKET NUMBER: 2015-1698-PWS-E; IDENTIFIER: RN101244986; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to timely issue public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to collect routine coliform, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report

(DLQOR) to the ED; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a DLQOR to the ED each quarter by the tenth day of the month following the end of each quarter and failing to timely issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution total coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample; and 30 TAC §290.122(b)(2)(B) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to comply with the maximum contaminant level for total coliform; PENALTY: \$1,415; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2015-1677-AIR-E; IDENTIFIER: RN100222900; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas liquids processor plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit (NSR) Number 5452, Special Conditions (SC) Number 1, NSR Permit Number 56431, SC Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$25,000; Supplemental Environmental Project offset amount of \$12,500; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: United Copper Industries, Incorporated; DOCKET NUMBER: 2015-1757-AIR-E; IDENTIFIER: RN100683531; LOCATION: Denton, Denton County; TYPE OF FACILITY: copper wire manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2828, General Terms and Conditions, by failing to submit a permit compliance certification within 30 days after the end of the certification period; PENALTY: \$3,413; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: WATER NECESSITIES, INCORPORATED; DOCKET NUMBER: 2015-1772-PWS-E; IDENTIFIER: RN101229847; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §§290.272, 290.273, and 290.274(a) and (c), by failing to meet the adequacy, availability, and/or content requirements for the Consumer Confidence Report (CCR); 30 TAC §290.110(e)(4)(A) and (f)(2) and (3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the ED each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from each active source within 24 hours of notification of a distribution total coliform-positive result on a routine sample; 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect lead and copper samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the ED; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit DLQORs; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the CCR to each bill paying customer and failed to submit a copy of the CCR to the ED; PENALTY: \$1,089; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201601358



## Enforcement Orders

An agreed order was adopted regarding City of Deport, Docket No. 2015-1674-PWS-E on March 22, 2016 assessing \$235 in administrative penalties with \$47 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SUBA BUSINESS LLC dba Speedo Gas Food Store, Docket No. 2015-1669-PST-E on March 22, 2016 assessing \$4,125 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Grutsch, Enforcement Coordinator at (512) 239-2607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GoPetro Transport LLC, Docket No. 2015-1704-PST-E on March 22, 2016 assessing \$3,100 in administrative penalties with \$620 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Grutsch, Enforcement Coordinator at (512) 239-2607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding COASTAL TRANSPORT CO., INC., Docket No. 2015-1717-PST-E on March 22, 2016 assessing \$1,350 in administrative penalties with \$270 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding J&T Legend Homes Abilene, LLC, Docket No. 2016-0054-WQ-E on March 22, 2016 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Dumas, Docket No. 2015-0115-MWD-E on March 22, 2016 assessing \$3,562 in administrative penalties with \$712 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Pearsall, Docket No. 2015-0130-MWD-E on March 22, 2016 assessing \$2,863 in administrative penalties with \$572 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nerro Supply, LLC, Docket No. 2015-0286-IWD-E on March 22, 2016 assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HEART O' TEXAS COUNCIL OF THE BOY SCOUTS OF AMERICA, Docket No. 2015-0825-PWS-E on March 22, 2016 assessing \$2,230 in administrative penalties with \$446 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding VADHWANI ENTERPRISES INC., Docket No. 2015-0950-PWS-E on March 22, 2016 assessing \$2,016 in administrative penalties with \$403 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sterling Shipyard, LP, Docket No. 2015-1246-AIR-E on March 22, 2016 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Stazz Fortune Inc dba 24 Seven 14, Docket No. 2015-1272-PST-E on March 22, 2016 assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2015-1353-AIR-E on March 22, 2016 assessing \$6,450 in administrative penalties with \$1,290 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enbridge Pipelines (Texas Gathering) L.P., Docket No. 2015-1376-AIR-E on March 22, 2016 assessing \$2,888 in administrative penalties with \$577 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Willis, Docket No. 2015-1421-MWD-E on March 22, 2016 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2527, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SPADE WATER SUPPLY CORPORATION, Docket No. 2015-1442-PWS-E on March 22, 2016 assessing \$565 in administrative penalties with \$113 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Baytex USA Development, LLC, Docket No. 2015-1458-AIR-E on March 22, 2016 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TPC Group LLC, Docket No. 2015-1465-AIR-E on March 22, 2016 assessing \$3,563 in administrative penalties with \$712 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Austin White Lime Company, Docket No. 2015-1486-AIR-E on March 22, 2016 assessing \$5,401 in administrative penalties with \$1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CAPE CARANCAHUA WATER SUPPLY CORPORATION, Docket No. 2015-1509-PWS-E on March 22, 2016 assessing \$50 in administrative penalties with \$10 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ravenna-Nunnelee Water Supply Corporation, Docket No. 2015-1537-PWS-E on March 22, 2016 assessing \$210 in administrative penalties with \$42 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201601373

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 23, 2016



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 138938

APPLICATION. Frank Bartel Transportation, Inc., P.O. Box 827, Aubrey, Texas 76227-0827 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number

138938 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 8901 Stewart Road, Aubrey, Denton County, Texas 76227. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.26578&lng=-96.97445&zoom=13&type=r>. This application was submitted to the TCEQ on February 18, 2016. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on March 9, 2016.

**PUBLIC COMMENT/PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html). If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. Written comments about this application may also be submitted at any time during the hearing. The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. The public hearing is not an evidentiary proceeding.

The Public Hearing is to be held:

Monday, April 25, 2016, at 6:00 p.m.

Green Valley School Historical Society

6900 Farm-to-Market Road 2153

Aubrey, Texas 76226

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Frank Bartel Transportation, Inc., P.O. Box 827, Aubrey, Texas 76227-0827, or by calling Mr. Jim Sayles, Consultant, Logos Environmental at (512) 964-6685.

Notice Issuance Date: March 18, 2016

TRD-201601362

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 22, 2016



### Notice of Deletion of the Woodward Industries, Inc. Proposed State Superfund Site from Its Proposed-for-Listing Status on the State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ) is issuing this notice of deletion of the Woodward Industries, Inc. proposed state Superfund site (the site) from its proposed-for-listing status on the state Superfund registry (registry). The registry is the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The site is being deleted from the registry because the ED has determined that due to the removal actions performed by the TCEQ, the site no longer presents such an endangerment. Therefore, the site is eligible for deletion from the state registry of Superfund sites as provided by 30 Texas Administrative Code (TAC) §335.344(c). Notice of this deletion will be filed in the real property records in Nacogdoches County.

The site was originally proposed for listing on the state Superfund registry in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1139). The site, including all land, structures, appurtenances, and other improvements, is located at 403 County Road 816, Nacogdoches, Nacogdoches County, Texas. The site also included any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

In accordance with 30 TAC §335.344(b), the TCEQ held a public meeting to receive comment on this proposed deletion from the registry on December 15, 2015, at the Nacogdoches County Exposition and Civic Center, 3805 NW Stallings Drive, Nacogdoches, Texas. The TCEQ's notice regarding this public meeting and background information for the site was published in the November 6, 2015, issue of the *Texas Register* (40 TexReg 7914). The notice was also published in the Nacogdoches *Daily Sentinel* newspaper on November 6, 2015.

The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the TCEQ's Central File Room Customer Service Center, Mail Code 213, Building E, Room 103, First Floor, 12100 Park 35 Circle, Austin, Texas 78753. Phone: (800) 633-9363 or (512) 239-2900. Fees are charged for photocopying information.

TRD-201601359

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 22, 2016



### Notice of Water Quality Application

The following notice was issued on March 16, 2016.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

### INFORMATION SECTION

Petra Nova CCS I LLC which proposes to operate the Petra Nova Carbon Capture Plant, to capture carbon dioxide from coal combustion flue gas and compress it for use in enhanced oil recovery and carbon sequestration, has applied to the Texas Commission on Environmental Quality for a minor amendment without renewal to Texas Pollutant Discharge Elimination System Permit No. WQ0005142000 to postpone initial sampling, analysis, and submittal as required in Other Requirement No. 5; to clarify that testing required in Other Requirement No. 5 is to occur 60 days after initial discharge that is representative of regular operations; to postpone monitoring and reporting requirements and submittal of monthly discharge monitoring reports for Outfalls 001, 101, 201, and 301 during the startup (re-commercial operation) phase until the discharge is representative of regular operations; and to add a new Other Requirement to supersede and replace No. 1 Self-Reporting, Paragraph 1 of Monitoring and Reporting Requirements. The draft permit authorizes the discharge of previously monitored effluent (treated process wastewater, cooling tower blowdown, and plant drain wastewater and stormwater) at a daily average flow not to exceed 1,317,000 gallons per day via Outfall 001. The facility is located at 2500 Y. U. Jones Road, Thompsons, Fort Bend County, Texas 77481.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

TRD-201601371

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 23, 2016



### Revised Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40287

Application. The Gainsborough Corporation, 5207 Kiam Street, Houston, Texas 77007, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40287, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Gainsborough Waste (GW) Transfer Station will be located at 950 McCarty Street, approximately 2,600 feet south of Interstate Highway 10, 77029, in Harris County. The Applicant is requesting authorization to transfer, process, and recycle non-putrescible municipal solid waste which includes construction and demolition debris and rubbish from municipal and commercial activities, which will be processed for recyclable materials. The registration application is available for viewing and copying at the Pleasantville Library, 1520 Gellhorn Drive, Houston, Texas 77029, and may be viewed online at [www.earthcon.com/statepermits.html](http://www.earthcon.com/statepermits.html). The following web page which provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/in>

dex.html?lat=29.769965&lng=-95.28893&zoom=12&type=r. For exact location, refer to application.

**Public Comment/Public Meeting.** Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

**Executive Director Action.** The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

**Information.** Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to <http://www14.tceq.texas.gov/epic/eComment/>. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Further information may also be obtained from Gainsborough Corporation at the address stated above or by calling Mr. W. Noble Carl, III, President, The Gainsborough Corporation, at (713) 785-8051.

TRD-201601372

Bridget C. Bohac  
Chief Clerk

Texas Commission on Environmental Quality  
Filed: March 23, 2016

## Department of Family and Protective Services

### Correction of Error

The Department of Family and Protective Services proposed new 40 TAC §702.511, concerning Advisory Committees on Promoting Adoption of Minority Children, in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2153). The following error appeared in the rule text of §702.511(e)(1)(B)(ii) and should be corrected as follows.

On page 2153, §702.511(e)(1)(B)(ii), the sentence "At least six members must be ordained members of the clergy" should be "Membership may include ordained members of the clergy."

TRD-201601293

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Filed: March 18, 2016

## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 25, 2016, through March 21, 2016. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, March 25, 2016. The public comment period for this project will close at 5:00 p.m. on Monday, April 25, 2016.

#### FEDERAL AGENCY ACTIONS:

**Applicant:** Total Petrochemicals & Refining USA, Inc.

**Location:** The project site is located in emergent and scrub shrub wetlands adjacent to the Right Prong of Molasses Bayou, near the Port Arthur Hurricane Levee and the applicant's facility, located at 7600 32nd Street, in Port Arthur, Jefferson County, Texas. The project can be located on the U.S. Geological Survey (U.S.G.S.) quadrangle map entitled: Port Arthur North, Texas.

#### LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.959820 ° North; Longitude: 93.879755 ° West

**Project Description:** The applicant proposes to discharge fill material into 8.3 acres of emergent and scrub shrub wetlands during the construction of a ground flare, an access road, and one truss tower supporting a 459-foot-long pipe rack. The pipe rack is supported by four truss towers, each consisting of a series of nine driven concrete piles with a concrete cap. Only one truss tower is constructed in wetlands, resulting in a discharge of fill material. The access road and pipe rack will connect the proposed ground flare to a constructed ethane steam cracker unit within the applicant's existing facility. The proposed ground flare, impacting 7.3 acres of wetlands, will be 453-foot by 478-foot in area at the base with a 1:1 slope to the flare deck which will be elevated to approximately 17 feet mean sea level (msl). A total of 4,300 columns/piles will be installed in the ground to support the flare. Approximately 126,500 cubic yards of sandy/clay material will be used for the flare base and an additional 15,900 cubic yards of grout will be used for the columns/piles. The access road, impacting 1.0 acres of wetlands, will be 30-foot-wide by 840-foot-long, and will connect the existing haul road to the proposed ground flare. An additional 50 feet on each side of the road will be temporarily required for construction. The access road will be graded to elevate from 9 feet msl to the 17

feet msl elevation of the flare deck. Approximately 420 columns/piles will be installed to support the earthen embankment of the road. Approximately 16,800 cubic yards of sandy/clay material will be used for the embankment and an additional 1,030 cubic yards of grout will be used for the columns/piles.

**CMP Project No:** 16-1238-F1

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2007-00083. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

**Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).**

**Applicant:** Enterprise Products Operating LLC

**Location:** The project site is located in wetlands adjacent to the Houston Ship Channel (Buffalo Bayou), approximately 0.8-mile east of Sam Houston Parkway and immediately south of and adjacent to Jacintoport Boulevard, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Pasadena and Jacinto City, Texas.

**LATITUDE & LONGITUDE (NAD 83):**

Latitude: 29.747844° North; Longitude: 95.132055° West

**Project Description:** The applicant proposes to place fill material into 1.43 acres of wetlands for the construction of eight 217-foot diameter above-ground tanks on a 38.6-acre tract immediately adjacent to their existing facility. Construction of the project will consist of clearing vegetation, excavating, filling and grading the topography as necessary to provide suitable foundation for the facility construction. The project would impact 0.457 acre of scrub/shrub wetlands and 0.978 acre of forested wetlands for a total proposed impact of 1.43 acres. The wetland fill would allow expansion of the applicant's existing oil tank farm for the purpose of increasing the storage capacity. The applicant's plans are enclosed in four sheets.

**CMP Project No:** 16-1024-F1

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2015-00106. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Mr. Newby at the above address or by email.

TRD-201601376

Anne L. Idsal

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: March 23, 2016

**Texas Health and Human Services Commission**

Notice of Public Hearing on Proposed Payment Rates for the Comprehensive Rehabilitation Services Program

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Tuesday, April 12, 2016, at 9:00 a.m. to receive public comment on proposed new payment rates for the Comprehensive Rehabilitation Services (CRS) program operated by the Department of Assistive and Rehabilitative Services.

The hearing will be held in compliance with 1 Texas Administrative Code (TAC) §355.105(g)(1), which requires public notice and hearings on proposed reimbursement rates before HHSC approves the proposed rates. The public hearing will be held in the Public Hearing Room of the Winters Building, located at 701 West 51st St., Austin, Texas. Entry is through Security at the north entrance to the building. Persons requiring Americans with Disabilities Act accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes new payment rates for the CRS program. The proposed rates will be effective September 1, 2016, and were determined in accordance with the rate-setting methodologies listed below under "Methodology and Justification."

**Methodology and Justification.** The proposed rates were determined in accordance with the rate-setting methodologies that will be codified at 1 TAC Chapter 355, Subchapter M, §355.9040, Reimbursement Methodology for the Comprehensive Rehabilitation Services Program. The proposed new rule will be published in the April 29th edition of the *Texas Register* and is scheduled to be adopted effective September 1, 2016.

**Briefing Package.** A briefing package describing the proposed rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on April 1, 2016. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Attention: Rate Analysis, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

TRD-201601374

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: March 23, 2016

**Department of State Health Services**

Amendment to the Texas Controlled Substances Schedule

This amendment to the Texas Schedules of Controlled Substances was signed by the Commissioner of the Department of State Health Services, and it will take effect 21 days following publication of this notice in the *Texas Register*.

The Administrator of the Drug Enforcement Administration (DEA) issued a final order placing N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (com-

mon names: MAB-CHMINACA and ABD-CHMINACA) and its optical, positional, and geometric isomers, salts and salts of isomers into Schedule I pursuant to the temporary scheduling provisions of the United States Controlled Substances Act (CSA) effective February 5, 2016. This final order was published in the Federal Register, Volume 81, Number 24, pages 6171 - 6175. The Administrator has taken action based on the following.

1. MAB-CHMINACA has a high potential for abuse;
2. MAB-CHMINACA has no currently accepted medical use in treatment in the United States; and,
3. There is a lack of accepted safety for use under medical supervision.

Pursuant to §481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the Federal Register; and, in the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that the substance N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names: MAB-CHMINACA and ABD-CHMINACA) be placed temporarily into Schedule I.

#### SCHEDULE I

Schedule I consists of:

-Schedule I opiates

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-Schedule I opium derivatives

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-Schedule I hallucinogenic substances

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-Schedule I stimulants

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-Schedule I depressants

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-Schedule I Cannabimimetic agents

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-Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.

\*Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation.

1. (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144 and 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole);
2. [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144 and 5-F-UR-144 and XLR11 and 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole);
3. N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (Other names: APINACA, AKB48);

4. 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5);

5. 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);

6. 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);

7. Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);

8. Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);

9. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other name: AB-FUBINACA);

10. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: ADB-PINACA);

11. 4-methyl-N-ethylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one);

12. 4-methyl-alpha-pyrrolidinopropiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MePPP; MePPP; 4-methyl-[alpha]-pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)propan-1-one);

13. alpha-pyrrolidinopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-PVP; [alpha]-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one);

14. Butylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one);

15. Pentadrone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one);

16. Pentylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one);

17. 4-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one);

18. 3-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan-1-one);

19. Naphyrone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one);

20. alpha-pyrrolidinobutiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one);

21. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (Other name: "AB-CHMINACA");

22. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (Other names: "AB-PINACA");

23. [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (Other name: "THJ-2201");

24. N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (Other name: acetyl fentanyl); and

\*25. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names: MAB-CHMINACA and ABD-CHMINACA).

Changes to the schedules are designated by an asterisk (\*).

TRD-201601369

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: March 22, 2016



### Amendment to the Texas Controlled Substances Schedule

This amendment to the Texas Schedules of Controlled Substances was signed by the Commissioner of the Department of State Health Services, and it will take effect 21 days following publication of this notice in the *Texas Register*.

The Administrator of the Drug Enforcement Administration (DEA) issued a final rule placing 5-[[[(2S-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl)](1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid (eluxadoline), including its salts, isomers, and salts of isomers into Schedule IV of the United States Controlled Substances Act (CSA) effective December 17, 2015. This final order was published in the Federal Register, Volume 80, Number 218, pages 69861 - 69864. The Administrator has taken action based on the following.

1. Eluxadoline has a low potential for abuse relative to the drugs or other substances in schedule III.
2. Eluxadoline has a currently accepted medical use in treatment in the United States.
3. Abuse of eluxadoline may lead to limited psychological dependence similar to that of schedule IV drugs, but less than that of schedule III drugs.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the Federal Register; and, in the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that the substance 5-[[[(2S-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl)](1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid (eluxadoline), including its salts, isomers, and salts of isomers be placed into Schedule IV.

### SCHEDULE IV

Schedule IV consists of:

-Schedule IV depressants

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-Schedule IV stimulants

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-Schedule IV narcotics

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-Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

(1) Butorphanol, including its optical isomers;

(2) Carisoprodol;

\*(3) Eluxadoline (other name: 5-[[[(2S-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl)](1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) including its salts, isomers, and salts of isomers;

(4) Lorcarserin including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible; and

(5) Pentazocine, its salts, derivatives, compounds, or mixtures.

Changes to the schedules are designated by an asterisk (\*).

TRD-201601370

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: March 22, 2016



## Texas Department of Housing and Community Affairs

### 2016 Competitive Housing Tax Credit Application Public Hearing Schedule

Announcement of the Public Hearing Schedule for Comment on the 2016 Competitive Housing Tax Credit Applications

The mission of the Texas Department of Housing and Community Affairs ("the Department") is to administer its assigned programs efficiently, transparently, and lawfully and to invest its resources strategically and develop high quality affordable housing which allows Texas communities to thrive. Through our rental housing programs, the Department encourages the new construction or rehabilitation of high-quality affordable multifamily housing, primarily through private developers. These developments benefit Texans by providing qualified households with safe, affordable, quality housing.

The following seven public hearings are provided to gather public comment on the 2016 Competitive Housing Tax Credit Applications. The schedule of these meetings is provided below:

#### Lubbock

Wednesday, April 6 at 6:00 p.m.

Groves Library Community Room

5520 19th Street

Lubbock, TX 79407

<http://library.ci.lubbock.tx.us/>

#### Dallas

Wednesday, April 13 at 6:00 p.m.

J. Erik Johnson Central Library Auditorium

1515 Young Street

Dallas, TX 75201

<http://dallaslibrary.org/>

**Houston**

Thursday, April 7 at 6:00 p.m.

City Hall Annex Chamber, Public Level, 900 Bagby

Houston, TX 77002

[www.houstontx.gov](http://www.houstontx.gov)

**Austin**

Tuesday, April 12 at 6:00 p.m.

William B. Travis Building 1-104

1701 N. Congress

Austin, TX 78701

<http://www.tcfp.texas.gov/maps/>

**Harlingen**

Monday, April 11 at 6:00 p.m.

Harlingen Cultural Art Center

576 76 Drive (behind the public library)

Harlingen, TX 78550

<http://www.myharlingen.us/>

**El Paso**

Monday, April 4 at 4:30-6:30

Main Library

Maud Sullivan Gallery Room

501 N. Oregon St.

El Paso, TX 79901

<http://home.elpasotexas.gov/>

**Tyler**

Tuesday, April 5 at 6:00 p.m.

Tyler Rose Garden Center

420 Rose Park Drive

Tyler, Texas 75702

<http://www.tylertexasonline.com/tyler-texas-rose-garden.htm>

The application logs for all 2016 Competitive Housing Tax Credit Applications are published on the Department's website at the following link: <http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm>.

Written comments are encouraged. All public comment must be received by the Department by June 12, 2016, for the Competitive Housing Tax Credit Program. Such comments should be addressed to:

Texas Department of Housing and Community Affairs

Multifamily Finance Division

P.O. Box 13941

Austin, TX 78711-3941

Facsimile: (512) 475-0764 Email: [htc.public-comment@tdhca.state.tx.us](mailto:htc.public-comment@tdhca.state.tx.us)

For additional information you may contact the Multifamily Division at (512) 936-7834 or visit the program's web site at <http://www.tdhca.state.tx.us/multifamily/announcements.htm>. Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made. Individuals who require a language interpreter for the hearing should contact Gina Esteves at (512) 475-3943 at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Gina Esteves al siguiente número (512) 475-3943 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201601368

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 22, 2016



**Texas Department of Insurance**

**Company Licensing**

Application for admission to the State of Texas by CAPACITY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Sunrise, Florida.

Application for AMERICAN MILLENNIUM INSURANCE COMPANY to change its name to CITADEL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Bridgewater, New Jersey.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201601349

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: March 21, 2016



**Company Licensing**

Application for PROMINENCE HEALTHFIRST OF TEXAS, INC., a domestic Health Maintenance Organization, to change its name to PROMINENCE HEALTH PLAN. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201601375

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: March 23, 2016



**Texas Department of Insurance, Division of Workers' Compensation**

**Correction of Error**

**Notice of Correction - Chapter 134, Benefits--Guidelines for Medical Charges, Services and Payments**

In the March 18, 2016, issue of the *Texas Register* (41 TexReg 2117), the Texas Department of Insurance, Division of Workers' Compensation (division) proposed amendments to 28 TAC §134.204 and new §§134.209, 134.210, 134.215, 134.220, 134.225, 134.230, 134.235, 134.239, 134.240, and 134.250 under Chapter 134, Benefits--Guidelines for Medical Charges, Services and Payments. The publication contains the following errors which were submitted by the division.

On page 2121, first column, after the fourth paragraph, there should be a new paragraph which reads:

"New 28 TAC §134.240(2) does not include the word "subsection" and instead includes the word "section" because new 28 TAC §134.240 is an independent section."

On page 2121, first column, after the thirteenth paragraph, there should be a new paragraph which reads:

"New 28 TAC §134.250(2)(A) - (C) and (3)(B)(i) - (B)(ii) does not include the word "subsection" and instead includes the word "section" because new 28 TAC §134.250 is an independent section."

On page 2121, second column, after the third full paragraph, there should be a new paragraph which reads:

"New 28 TAC §134.250(5) does not include the word "subsection" and instead includes the word "section" because new 28 TAC §134.250 is an independent section."

TRD-201601380



**Texas Lottery Commission**

**Scratch Ticket Game Number 1725 "Jungle Gold"**

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1725 is "JUNGLE GOLD". The play style is "row".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1725 shall be \$3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1725.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1725 - 1.2D

PLAY SYMBOL	CAPTION
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E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$8.00, \$10.00, \$13.00, \$15.00, \$18.00, \$20.00 or \$23.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$75.00, \$80.00, \$100 or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1725), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1725-0000001-001.

K. Pack - A Pack of the "JUNGLE GOLD" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "JUNGLE GOLD" Scratch Ticket Game No. 1725.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "JUNGLE GOLD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 82 (eighty-two) Play Symbols. The player scratches the TREASURE NUMBERS Play Symbols to reveal 27 numbers. The player scratches ONLY the numbers in the PYRAMID that exactly match the TREASURE NUMBERS Play Symbols. If the player matches all the numbers in the same ROW, the player wins the prize for that ROW. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 82 (eighty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo styles games do not typically have Play Symbol captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 82 (eighty-two) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 82 (eighty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 82 (eighty-two) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas

Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. A Ticket can win up to four (4) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol patterns. Two (2) Tickets have matching Play Symbol patterns if they have the same Play Symbols in the same spots.

C. The "TREASURE NUMBERS" Play Symbols will all be different.

D. No matching Play Symbols within a ROW.

E. No more than two (2) matching Play Symbols in the "PYRAMID" play spots.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "JUNGLE GOLD" Scratch Ticket Game prize of \$3.00, \$5.00, \$8.00, \$10.00, \$13.00, \$15.00, \$18.00, \$20.00, \$23.00, \$30.00, \$50.00, \$75.00, \$80.00, \$100 or \$300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$75.00, \$80.00, \$100 or \$300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JUNGLE GOLD" Scratch Ticket Game prize of \$3,000 or \$50,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JUNGLE GOLD" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "JUNGLE GOLD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "JUNGLE GOLD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

## 3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

The approximate number and value of prizes in the game are as follows:

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 1725.

Figure 2: GAME NO. 1725 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$3	624,000	9.62
\$5	384,000	15.63
\$8	204,000	29.41
\$10	48,000	125.00
\$13	96,000	62.50
\$15	48,000	125.00
\$18	48,000	125.00
\$20	48,000	125.00
\$23	15,000	400.00
\$30	18,600	322.58
\$50	7,500	800.00
\$75	2,000	3,000.00
\$80	2,000	3,000.00
\$100	1,500	4,000.00
\$300	500	12,000.00
\$3,000	20	300,000.00
\$50,000	5	1,200,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.88. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1725 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

TRD-201601364  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: March 22, 2016



6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1725, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the

Scratch Ticket Game Number 1750 "Texas Wild 7's"

1.0 Name and Style of Game.

A. The name of Scratch Ticket Game No. 1750 is "TEXAS WILD 7'S". The play style is "slots".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1750 shall be \$5.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1750.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink, in red ink and in

blue ink in positive except for dual-image games. The following Play Symbols printed separately in black, red and blue are: CHERRY SYMBOL, DIAMOND SYMBOL, CHIP SYMBOL, SPADE SYMBOL, HEART SYMBOL, GOLD BAR SYMBOL, ORANGE SYMBOL, MOON SYMBOL, CLOVER SYMBOL, HORSESHOE SYMBOL, BELL SYMBOL, STAR SYMBOL and 7 SYMBOL. The following possible Prize Symbols are printed in black ink only: \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$300, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1750 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
CHERRY SYMBOL (BLACK)	CHERRY
DIAMOND SYMBOL (BLACK)	DIAMND
CHIP SYMBOL (BLACK)	CHIP
SPADE SYMBOL (BLACK)	SPADE
HEART SYMBOL (BLACK)	HEART
GOLD BAR SYMBOL (BLACK)	BAR
ORANGE SYMBOL (BLACK)	ORANGE
MOON SYMBOL (BLACK)	MOON
CLOVER SYMBOL (BLACK)	CLOVER
HORSESHOE SYMBOL (BLACK)	SHOE
BELL SYMBOL (BLACK)	BELL
STAR SYMBOL (BLACK)	STAR
7 SYMBOL (BLACK)	SVN
CHERRY SYMBOL (RED)	CHERRY
DIAMOND SYMBOL (RED)	DIAMND
CHIP SYMBOL (RED)	CHIP
SPADE SYMBOL (RED)	SPADE
HEART SYMBOL (RED)	HEART
GOLD BAR SYMBOL (RED)	BAR
ORANGE SYMBOL (RED)	ORANGE
MOON SYMBOL (RED)	MOON
CLOVER SYMBOL (RED)	CLOVER
HORSESHOE SYMBOL (RED)	SHOE
BELL SYMBOL (RED)	BELL
STAR SYMBOL (RED)	STAR
7 SYMBOL (RED)	RSVN
CHERRY SYMBOL (BLUE)	CHERRY
DIAMOND SYMBOL (BLUE)	DIAMND
CHIP SYMBOL (BLUE)	CHIP
SPADE SYMBOL (BLUE)	SPADE
HEART SYMBOL (BLUE)	HEART
GOLD BAR SYMBOL (BLUE)	BAR
ORANGE SYMBOL (BLUE)	ORANGE
MOON SYMBOL (BLUE)	MOON
CLOVER SYMBOL (BLUE)	CLOVER
HORSESHOE SYMBOL (BLUE)	SHOE
BELL SYMBOL (BLUE)	BELL

<b>STAR SYMBOL (BLUE)</b>	<b>STAR</b>
<b>7 SYMBOL (BLUE)</b>	<b>BSVN</b>
<b>\$5.00 (BLACK)</b>	<b>FIVE\$</b>
<b>\$10.00 (BLACK)</b>	<b>TEN\$</b>
<b>\$20.00 (BLACK)</b>	<b>TWENTY</b>
<b>\$30.00 (BLACK)</b>	<b>THIRTY</b>
<b>\$50.00 (BLACK)</b>	<b>FIFTY</b>
<b>\$100 (BLACK)</b>	<b>ONE HUN</b>
<b>\$300 (BLACK)</b>	<b>THR HUN</b>
<b>\$500 (BLACK)</b>	<b>FIV HUN</b>
<b>\$1,000 (BLACK)</b>	<b>ONE THOU</b>
<b>\$100,000 (BLACK)</b>	<b>100 THOU</b>

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$100, \$300 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1750), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1750-0000001-001.

K. Pack - A Pack of "TEXAS WILD 7'S" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front 075.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game or Scratch Ticket, or Ticket - A Texas Lottery "TEXAS WILD 7'S" Scratch Ticket Game No. 1750 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TEXAS WILD 7'S" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 48 (forty-eight) Play Symbols. If a player reveals 3 matching

Play Symbols in the same PULL, the player wins the PRIZE for that PULL. If a player reveals 3 "7" Play Symbols in the same PULL, the player multiplies the total winnings as shown in the legend. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 48 (forty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 48 (forty-eight) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 48 (forty-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Game Ticket (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. A Ticket can win up to twelve (12) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. There will be no matching non-winning PULLS on a Ticket. PULLS are considered matching if they have the same Play Symbols in the same spots regardless of color.

E. Regardless of color, no three (3) or more matching non-winning Play Symbols will appear in adjacent spots diagonally or in a column.

F. The red "7" (RSVN) Play Symbol, white "7" (SVN) Play Symbol and blue "7" (BSVN) Play Symbol will only appear together on winning PULLS as dictated by the prize structure, and will win five (5) times (5X) the prize.

G. Three (3) red "7" (RSVN) Play Symbols will only appear on winning PULLS as dictated by the prize structure and will win four (4) times (4X) the prize.

H. Three (3) white "7" (SVN) Play Symbols will only appear on winning PULLS as dictated by the prize structure and will win three (3) times (3X) the prize.

I. Three (3) blue "7" (BSVN) Play Symbols will only appear on winning PULLS as dictated by the prize structure and will win two (2) times (2X) the prize.

J. No PULL will contain matching Play Symbols of different colors unless restricted by other parameters, play action or prize structure.

K. Regardless of color, non-winning Play Symbols (except the "7" Play Symbols) will never appear more than five (5) times on a Ticket.

L. No more than two (2) matching non-winning Play Symbols will appear in one (1) PULL.

M. Non-winning Prize Symbols will never appear more than two (2) times.

N. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS WILD 7'S" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$30.00, \$100, \$300 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$100, \$300 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS WILD 7'S" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS WILD 7'S" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "TEXAS WILD 7'S" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "TEXAS WILD 7'S" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank

account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,200,000 Scratch Tickets in the Scratch Ticket Game No. 1750. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1750 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	768,000	9.38
\$10	1,008,000	7.14
\$20	144,000	50.00
\$30	96,000	75.00
\$100	24,000	300.00
\$300	5,160	1,395.35
\$500	300	24,000.00
\$1,000	202	35,643.56
\$100,000	5	1,440,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.52. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1750 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1750, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201601366  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: March 22, 2016



Scratch Ticket Game Number 1759 "\$200 Million Payout"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1759 is "\$200 MILLION PAYOUT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1759 shall be \$10.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1759.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, MONEY BAG SYMBOL, \$100 BURST SYMBOL, STAR SYMBOL, 10X SYMBOL, \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$50.00, \$75.00, \$100, \$200, \$1,000, \$10,000, \$100,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1759 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET

39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
<b>MONEY BAG SYMBOL</b>	<b>DBL</b>
<b>\$100 BURST SYMBOL</b>	<b>WIN\$100</b>
<b>STAR SYMBOL</b>	<b>WINX5</b>
<b>10X SYMBOL</b>	<b>WINX10</b>
<b>\$10.00</b>	<b>TEN\$</b>
<b>\$15.00</b>	<b>FIFTN</b>
<b>\$20.00</b>	<b>TWENTY</b>
<b>\$25.00</b>	<b>TWY FIV</b>
<b>\$30.00</b>	<b>THIRTY</b>
<b>\$50.00</b>	<b>FIFTY</b>
<b>\$75.00</b>	<b>SEVENTY FIV</b>
<b>\$100</b>	<b>ONE HUN</b>
<b>\$200</b>	<b>TWO HUN</b>
<b>\$1,000</b>	<b>ONE THOU</b>
<b>\$10,000</b>	<b>TEN THOU</b>
<b>\$100,000</b>	<b>100THOU</b>
<b>\$1,000,000</b>	<b>1 MILLION</b>

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$75.00, \$100 or \$200.

H. High-Tier Prize - A prize of \$1,000, \$10,000, \$100,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1759), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1759-0000001-001.

K. Pack - A Pack of the "\$200 MILLION PAYOUT" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$200 MILLION PAYOUT" Scratch Ticket Game No. 1759.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$200 MILLION PAYOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 65 (sixty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "MONEY BAG" Play Symbol, the player wins DOUBLE the prize for that symbol. If a player reveals a "\$100 BURST" Play Symbol, the player wins \$100 instantly. If a player reveals a "STAR" Play Symbol, the player WINS 5 TIMES the prize for that symbol. If a player reveals a "10X" Play Symbol, the player WINS 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 65 (sixty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut and have exactly 65 (sixty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch

Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 65 (sixty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 65 (sixty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

### 2.2 Programmed Game Parameters.

A. A Ticket can win up to thirty (30) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbols and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have five (5) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than four (4) times.

G. The "MONEY BAG" (DBL), "\$100 BURST" (WIN\$100), "STAR" (WINX5) and "10X" (WINX10) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "MONEY BAG" (DBL) Play Symbol will appear as dictated by the prize structure.

I. The "\$100 BURST" (WIN\$100) Play Symbol will appear as dictated by the prize structure.

J. The "STAR" (WINX5) Play Symbol will appear as dictated by the prize structure.

K. The "10X" (WINX10) Play Symbol will appear as dictated by the prize structure.

L. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

M. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 20 and \$20).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$200 MILLION PAYOUT" Scratch Ticket Game prize of \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$75.00, \$100 or \$200, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$30.00, \$75.00, \$100 or \$200 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$200 MILLION PAYOUT" Scratch Ticket Game prize of \$1,000, \$10,000, \$100,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$200 MILLION PAYOUT" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$200 MILLION PAYOUT" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$200 MILLION PAYOUT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

### 3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 28,080,000 Scratch Tickets in Scratch Ticket Game No. 1759. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1759 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	3,369,600	8.33
\$15	561,600	50.00
\$20	2,808,000	10.00
\$25	561,600	50.00
\$30	561,600	50.00
\$75	561,600	50.00
\$100	112,320	250.00
\$200	26,442	1,061.95
\$1,000	2,340	12,000.00
\$10,000	102	275,294.12
\$100,000	10	2,808,000.00
\$1,000,000	10	2,808,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.28. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1759 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1759, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201601365  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: March 22, 2016

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**Panhandle Regional Planning Commission**  
 Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking proposals for a provider of an online comprehensive career/college preparation program that can lead to either an accredited high school diploma or GED for the workforce development program customers administered in the Panhandle Workforce Development Area (PWDA).

Interested proposers may obtain a copy of the solicitation packet by contacting Leslie Hardin, at (806) 372-3381/(800) 477-4562 or [lhardin@theprpc.org](mailto:lhardin@theprpc.org). The proposals must be submitted to PRPC no later than April 15, 2016.

TRD-201601275  
 Leslie Hardin  
 WFD Contracts Coordinator  
 Panhandle Regional Planning Commission  
 Filed: March 17, 2016

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**Public Utility Commission of Texas**

**Announcement of Application for Adjustment of Rates**

The Public Utility Commission of Texas received an application from a Class C utility on March 16, 2016, for a price index adjustment of rates pursuant to Texas Water Code §13.1872 (TWC).

Docket Style and Number: Application of Chuck Bell dba Chuck Bell Water Systems, LLC for Class C Water or Sewer Utility Price Index Rate Adjustment, Docket Number 45733.

The Application: Chuck Bell dba Chuck Bell Water Systems, LLC (Chuck Bell) requested an adjustment to its water base rate and monthly gallonage rate based on the Commission's current price index, effective May 1, 2016. Chuck Bell meets the definition of a Class C utility because it provides retail water or sewer utility service through fewer than 500 taps or connections. As a Class C utility Chuck Bell is allowed to receive, without a hearing, an annual rate adjustment based on changes in the "price index." The Commission established a price index difference of 1.57% for calendar year 2016 to be used in rate adjustment applications filed under TWC §13.1872.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45733.

TRD-201601291  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 18, 2016



#### Announcement of Application for Adjustment of Rates

The Public Utility Commission of Texas received an application from a Class C utility on March 16, 2016, for adjustment of rates pursuant to Texas Water Code §13.1872.

Docket Style and Number: Application of QV Utility for a Price Index Rate Adjustment, Docket Number 45732.

The Application: QV Utility (QV) requested an adjustment to its water base rate and the monthly gallonage rate based on the commission's current price index, effective April 1, 2016. QV meets the definition of a Class C utility because it provides retail water or sewer utility service through fewer than 500 taps or connections. As a Class C utility QV is allowed to receive, without a hearing, an annual rate adjustment based on changes in the "price index." The Commission established a price index difference of 1.57% for calendar year 2016 to be used in rate adjustment applications filed under Texas Water Code §13.1872.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45732.

TRD-201601346  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 21, 2016



#### Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 14, 2016, for a service provider certificate of operating authority (SPCOA), pursuant to the Public Utility Regulatory Act (PURA). Applicant intends to provide facilities-based, data and resale telecommunications services throughout the State of Texas.

Docket Title and Number: Application of CBTR Services, LLC dba Digital Passage for a Service Provider Certificate of Operating Authority, Docket Number 45723.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than April 8, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45723.

TRD-201601278  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 17, 2016



#### Notice of Application for Approval of Special Amortization and Revised Depreciation Rate

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 17, 2016, for approval of a special amortization and new depreciation rate pursuant to §52.252 and §53.056 of the Public Utility Regulatory Act, Texas Utility Code Annotated §§11.001 - 66.016 (West 2007 & Supp. 2015).

Docket Title and Number: Application of Ganado Telephone Company, Inc. for Approval of Special Amortization and a New Depreciation Rate, Docket Number 45740.

The Application: Ganado Telephone Company, Inc. filed an application for approval (1) of a special amortization to retire early Account 2421.0 - Aerial Cable; (2) to establish a new depreciation rate for Account 2411.0 - Towers; and (3) to amortize Account 2411.00 - Poles over a two-year period in order to retire poles early. Ganado proposed an effective date of January 1, 2016.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45740.

TRD-201601290  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 18, 2016



#### Notice of Application for Purchase of Voting Stock

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 18, 2016.

Docket Style and Number: Application of Undine Texas, LLC for Approval to Purchase the Voting Stock in EMCAD Water and Wastewater, LLC, Docket Number 45745.

The Application: Undine Texas, Inc. (Undine Texas) filed an application for approval of the purchase of voting stock in EMCAD Water and Wastewater, LLC (EMCAD) pursuant to Texas Water Code §13.302 and 16 Texas Administrative Code §24.111. EMCAD provides waste-

water service to customers in Johnson and Tarrant counties through three wastewater systems under Certificate of Convenience and Necessity Nos. 21019, 20816 and 20832. Undine Texas is purchasing all issued and outstanding membership interest in EMCAD. Undine Texas will operate and maintain the systems with experienced contract licensed operators familiar with the systems and located in close proximity to the service areas.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45745.

TRD-201601379  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 23, 2016



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 11, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Ponderosa & Western Village Water Supply Corporation and El Paso Water Utilities Public Service Board For Sale, Transfer, or Merger of Facilities and Certificate Rights in El Paso County, Docket Number 45719.

The Application: El Paso Water Utilities Public Service Board (EPWU) filed an application for approval of a sale, transfer or merger in which EPWU will acquire all of Ponderosa & Western Village Water Supply Corporation's (Ponderosa) customers, facilities and certificate rights in El Paso County. EPWU's water certificate of convenience and necessity (CCN) No. 10211 will be amended. Ponderosa will be dissolved and its CCN No. 11017 will be cancelled. Rates will not change for affected customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45719.

TRD-201601274  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 17, 2016



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 11, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Villas of Willowbrook Homeowners Association, Inc. and Monarch Utilities, I, L.P. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County, Docket Number 45715.

The Application: Villas of Willowbrook Homeowners Association, Inc. (Willowbrook) and Monarch Utilities, I, L.P. (Monarch) filed an application for sale, transfer, or merger of facilities and certificate rights in Harris County. Willowbrook and Monarch seek approval for Monarch to acquire all of the water system assets and sewer system assets of Willowbrook and to amend Monarch's water Certificate of Convenience and Necessity Number 12983 and sewer CCN Number 20899.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45715.

TRD-201601289  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 18, 2016



#### Notice of Application to Amend a Service Provider Certificate of Operating Authority

On March 14, 2016, Intrado Communications Inc. filed an application with the Public Utility Commission of Texas (commission) to amend service provider certificate of operating authority (SPCOA) Number 60317. Applicant requests approval of a name change.

Docket Style and Number: Application of Intrado Communications Inc. to Amend its Service Provider Certificate of Operating Authority, Docket Number 45721.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than April 8, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45721.

TRD-201601279  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 17, 2016



#### Notice of Application to Amend a Service Provider Certificate of Operating Authority

On March 17, 2016, DSCI, LLC and U.S. TelePacific Corp. filed an application with the Public Utility Commission of Texas (commission) to amend service provider certificate of operating authority number 60943. Applicant requests approval of a change in ownership/control.

Docket Style and Number: Application of DSCI, LLC and U.S. TelePacific Corp. to Amend a Service Provider Certificate of Operating Authority, Docket Number 45741.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than April 8, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45741.

TRD-201601343  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 21, 2016



#### Notice of Application to Amend a Service Provider Certificate of Operating Authority

On March 14, 2016, Goff Network Technologies-Texas, Inc. d/b/a USA FIBER filed an application with the Public Utility Commission of Texas (commission) to amend service provider certificate of operating authority number 60956. Applicant requests approval of a name change.

Docket Style and Number: Application of Goff Network Technologies-Texas, Inc. d/b/a USA FIBER to Amend a Service Provider Certificate of Operating Authority, Docket Number 45728.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than April 8, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45728.

TRD-201601344  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 21, 2016



#### Notice of Application to Amend a Service Provider Certificate of Operating Authority

On March 18, 2016, Verizon Communications Inc. and XO Communications Services, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend service provider certificate of operating authority Number 60173. Applicants request approval of a change in ownership/control.

Docket Style and Number: Application of Verizon Communications Inc. and XO Communications, Inc. to Amend a Service Provider Certificate of Operating Authority, Docket Number 45744.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than April 8, 2016. Hearing and speech-impaired individuals with text

telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45744.

TRD-201601363  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 22, 2016



#### Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application to amend water certificate of convenience and necessity (CCN) in Chambers County, Texas.

Docket Style and Number: Application of Gulf Coast Waste Disposal Authority to amend Certificate of Convenience and Necessity in Chambers County, Docket Number 45718.

The Application: Gulf Coast Waste Disposal Authority (GCA) filed an application to amend its water certificate of convenience (CCN) Number 20465 in Chambers County. Gulf Coast seeks to decertify a portion of the CCN to accommodate the provision of wastewater services to an area within the GCA jurisdictional boundaries that GCA has agreed and consented for Aqua Texas, Inc. to serve. Approximately 2,809 acres and 0 customers are proposed for decertification.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45718.

TRD-201601263  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 16, 2016



#### Notice of Application to Relinquish Wireless Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on March 17, 2016, to relinquish wireless designation as an eligible telecommunications carrier.

Docket Title and Number: Application of Nexus Communications, Inc. to Relinquish Designation as an Eligible Telecommunications Carrier for Wireless Service, Docket Number 45739.

The Application: Nexus Communications, Inc. d/b/a ReachOut Wireless (Nexus) notified the Public Utility Commission of Texas that the company plans to discontinue wireless service in Texas on May 22, 2016 and seeks to relinquish its wireless eligible telecommunications carrier (ETC) designation effective June 14, 2016. Nexus stated that the company is not the sole ETC in the service area for which it received wireless ETC designation

Persons who wish to intervene in the proceeding or comment upon the action sought should notify the Public Utility Commission of Texas as a deadline to intervene will be established. Requests for further information should be mailed to the Public Utility Commission of Texas,

P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45739.

TRD-201601345  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 21, 2016



#### Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas on March 15, 2016, of a petition to amend a certificate of convenience and necessity by expedited release in Chambers County.

Docket Style and Number: Petition of National Property Holdings, LP to Amend Gulf Coast Waste Disposal Authority's Certificate of Convenience and Necessity by Expedited Release in Chambers County, Docket No. 45724.

The Application: National Property Holdings, LP filed with the Public Utility Commission of Texas an application for expedited release of 60.5865 acres from Gulf Coast Waste Disposal Authority's sewer certificate of convenience and necessity No. 20465 in Chambers County pursuant to Texas Water Code §13.254(a-5) and 16 Texas Administrative Code §24.113(r).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than April 15, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45724.

TRD-201601276  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 17, 2016



#### Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas on March 15, 2016, of a petition to amend a certificate of convenience and necessity by expedited release in Chambers County.

Docket Style and Number: Petition of Ameriport, LLC to Amend Gulf Coast Waste Disposal Authority's Certificate of Convenience and Necessity by Expedited Release in Chambers County, Docket No. 45725.

The Application: Ameriport, LLC filed with the Public Utility Commission of Texas an application for expedited release of 105.0859 acres from Gulf Coast Waste Disposal Authority's sewer certificate of convenience and necessity No. 20465 in Chambers County pursuant to Texas Water Code §13.254(a-5) and 16 Texas Administrative Code §24.113(r).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than April 15, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45725.

TRD-201601277  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 17, 2016



#### Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas on March 16, 2016, of a petition to amend a certificate of convenience and necessity by expedited release in Hunt County.

Docket Style and Number: Petition of 4252, LLC to Amend the City of Royse City's Certificate of Convenience and Necessity in Hunt County by Expedited Release, Docket No. 45735.

The Application: 4252, LLC filed with the Public Utility Commission of Texas an application for expedited release of approximately 212 acres from the City of Royse City's water certificate of convenience and necessity No. 12827 in Hunt County pursuant to Texas Water Code §13.254(a-5) and 16 Texas Administrative Code §24.113(r).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than April 15, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45735.

TRD-201601292  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 18, 2016



#### Public Notice of Workshop

The Staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding the Chapter 24 non-rate related water/sewer rules on Tuesday, April 26, 2016, at 1:00 p.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 45111, *Project to Amend Chapter 24 for Non-Rate Related Water/Sewer Rules* has been established for this proceeding. This project will amend the non-ratemaking portions of Chapter 24, including rules regarding Certificates of Convenience and Necessity related matters, and will implement Section 7 of Senate Bill 1148 of the 84th Legislature.

The commission will issue a strawman proposal by Wednesday, April 6, 2016, which will be available in Central Records, and on the commission's website, under Project No. 45111. Responses to the strawman proposal may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by April 20, 2016.

All responses should reference Project Number 45111. The commission requests comments be limited to 20 pages.

This notice is not a formal notice of proposed rulemaking; however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking. There will be a sign-in sheet available at the workshop, and parties will be called on for comments in the order in which they signed in.

Questions concerning the workshop or this notice should be referred to Erika Garcia, Attorney, Legal Division, (512) 936-7290. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201601306  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 21, 2016

## Texas Department of Transportation

### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

[www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html](http://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html).

Or visit [www.txdot.gov](http://www.txdot.gov), How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or (800) 68-PI-LOT.

TRD-201601367  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: March 22, 2016

## Texas Water Development Board

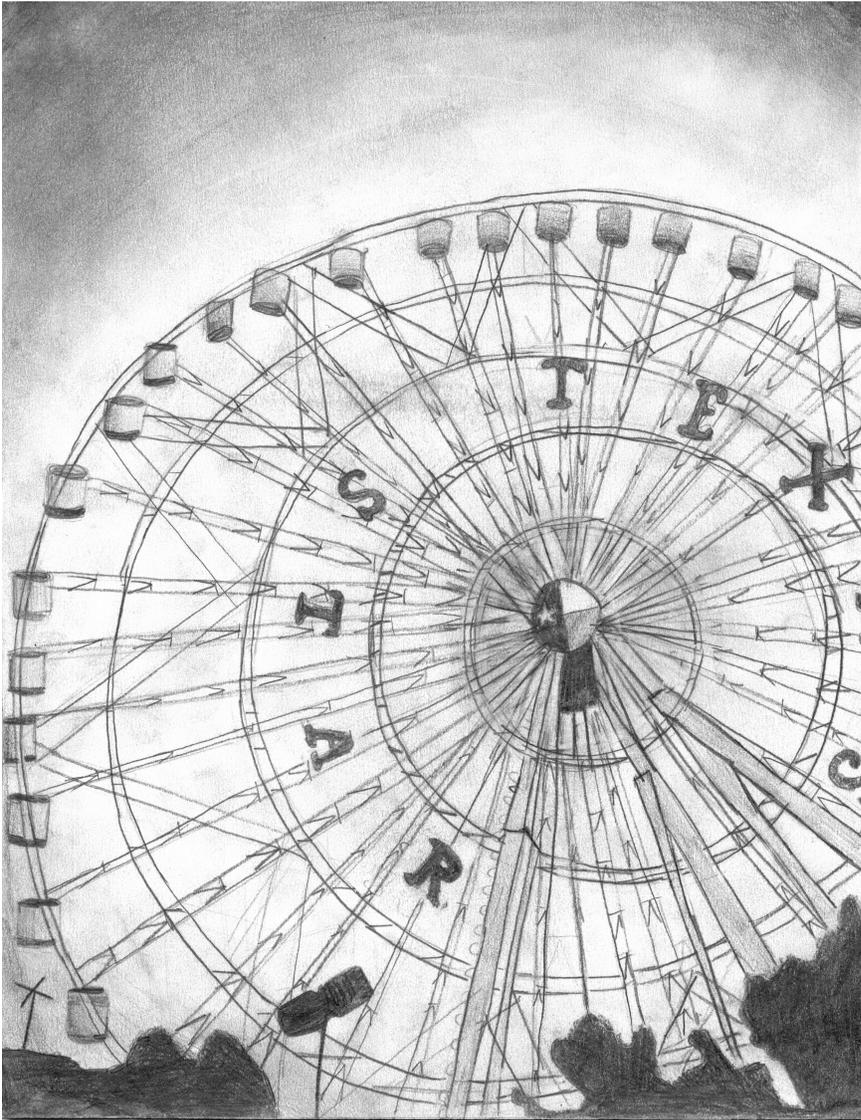
### Notice of Public Hearing

The Texas Water Development Board (TWDB) will conduct a public hearing in accordance with Texas Water Code §16.053(r) and 31 Texas Administrative Code §357.51(g), and §358.4(a) on May 2, 2016 to receive public comment on a proposed amendment to the 2012 State Water Plan, Water for Texas 2012. The hearing will begin at 9:30 a.m. in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

The Board seeks to receive public comment related to the Region M Major amendment adding a recommended water management strategy (WMS) for Hidalgo County Drainage District No. 1's Delta Watershed Project. The Delta Watershed Project WMS will develop two off-channel reservoirs to provide a total of 6,017 acre-feet per year for municipal and agricultural water users at a capital cost of \$53,788,355. These materials were reviewed by Board staff and the amendment to the regional water plan was approved by the Board on March 21, 2016.

Interested persons are encouraged to attend the hearing to present comments concerning the proposed amendment. Those who cannot attend the hearing may provide written comments on or before May 2, 2016 to Mr. Les Trobman, General Counsel, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711 or by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov). The TWDB will receive public comment on the proposed amendment until close of business at 5:00 p.m. on May 2, 2016. Copies of the proposed amendment are available for inspection during regular business hours at the Stephen F. Austin Building from the Water Use, Projections, and Planning Division, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78701. If you want to review these documents, please call (512) 475-2057 for arrangements to view them. A copy of the proposed amendment will also be available on the Board's web site at <http://www.twdb.texas.gov/waterplanning/swp/2012/index.asp>.

TRD-201601329  
Les Trobman  
General Counsel  
Texas Water Development Board  
Filed: March 21, 2016



## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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