

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 358. MEDICAID ELIGIBILITY FOR THE ELDERLY AND PEOPLE WITH DISABILITIES

SUBCHAPTER C. FINANCIAL REQUIREMENTS

The Texas Health and Human Services Commission (HHSC) proposes new §358.357, concerning Achieving a Better Life Experience Program; §358.358, concerning School-Based Savings Program; §358.389, concerning Achieving a Better Life Experience Program; and §358.390, concerning School-Based Savings Program. The new rules exclude Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as income and resources when determining eligibility for Medicaid Eligibility for Elderly and People with Disabilities (MEPD) programs.

BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for MEPD programs: Senate Bill (SB) 1664 and House Bill (HB) 3987. These proposed rules implement the statutory changes adopted by those bills.

MEPD is available to eligible individuals who need continuous, long-term services and supports. Services can be provided either through community programs while an individual is living at home or in a place of care, such as a nursing facility or a facility for individuals with intellectual disabilities. Some individuals do not need long-term services and supports but are eligible for Medicaid benefits to cover acute care needs.

In determining eligibility for MEPD, HHSC currently considers as countable income and resources funds used to establish savings accounts, funds held in savings accounts, interest earned on savings accounts, and payments made for expenses of an individual.

Proposed new §358.357 and §358.389 implement provisions of SB 1664. SB 1664 amended Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Education Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow the creation of tax-exempt, state-based private savings accounts for individuals with disabilities to fund disability-related

expenses, called ABLE accounts. Under §529A of the Internal Revenue Code, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including MEPD. Texas Education Code §54.9065, adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including MEPD.

The proposed new sections align policy for MEPD eligibility determinations with federal and state law. Under the proposed rules, HHSC will exclude from countable income and resources funds used to establish an ABLE account, funds held in an ABLE account, interest earned on an ABLE account, and payments for disability expenses for the designated beneficiary.

Proposed new §358.358 and §358.390 implement provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for MEPD. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The proposed new sections align policy for MEPD eligibility determinations with HB 3987. Under the proposed rules, HHSC will exclude from countable income and resources school-based savings accounts and interest earned on the accounts. HB 3987 rule changes are contingent on federal approval from the Centers for Medicare and Medicaid Services (CMS) of a Medicaid State Plan Amendment. HHSC is developing a Medicaid State Plan Amendment reflecting the proposed policy changes for the school-based savings accounts.

Related proposals for rules governing the Medicare Savings Program, Medicaid Buy-In Program, and Medicaid Buy-In for Children Program also appear elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Subchapter C (relating to Financial Requirements)

New §358.357 defines the terms "Achieving a Better Life Experience (ABLE) program," "ABLE account," and "designated ben-

eficiary." The section also excludes funds used to establish an ABLE account and funds held in an ABLE account from countable resources for purposes of an eligibility determination for MEPD programs. This is consistent with Texas Education Code §54.9065.

New §358.358 excludes funds held in a school-based savings account from countable resources for purposes of an eligibility determination for MEPD programs. This is consistent with Texas Education Code §28.0024 and Texas Human Resources Code §32.02611.

New §358.389 defines the terms "Achieving a Better Life Experience (ABLE) program," "ABLE account," and "designated beneficiary." The section also excludes interest earned on an ABLE account and payments made from an ABLE account that are used for the expenses of the designated beneficiary from countable income for purposes of an eligibility determination for MEPD programs. This is consistent with Texas Education Code §54.9065.

New §358.390 excludes funds held in a school-based savings account from countable income for purposes of an eligibility determination for MEPD programs. This is consistent with Texas Education Code §28.0024 and Texas Human Resources Code §32.02611.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be a fiscal impact to state government. While implementation of this bill is anticipated to result in additional costs to state government, a specific estimate cannot be provided at this time. HHSC lacks the information necessary to make appropriate assumptions to determine the anticipated additional costs. Costs and revenues of local governments will not be affected.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rules, as they will not be required to alter their business practices as a result of the proposed rules.

PUBLIC BENEFIT AND COST

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the rules as proposed.

HHSC has determined that the amended rules will not affect a local economy. 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 within 30 days after publication of this proposal in the *Texas Register* to Dee Church, Health and Human Services Commission, Office of Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751, or by email to OSS_PSAD@hhsc.state.tx.us.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

DIVISION 2. RESOURCES

1 TAC §358.357, §358.358

STATUTORY AUTHORITY (MEDICAID)

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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.

The proposed new rules implement Texas Human Resources Code §32.02611, Texas Education Code §54.9065, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§358.357. Achieving a Better Life Experience Program.

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

(1) Achieving a Better Life Experience (ABLE) program--

(A) the ABLE program authorized under Chapter 54, Subchapter J, of the Texas Education Code; or

(B) an ABLE program of any state that meets the requirements of §529A of the Internal Revenue Code of 1986.

(2) ABLE account--an account established under an ABLE program.

(3) Designated beneficiary--an individual who is named as the beneficiary of an ABLE account established under an ABLE program.

(b) The Texas Health and Human Services Commission excludes from the calculation of countable resources funds used to establish an ABLE account and funds held in an ABLE account.

§358.358. School-Based Savings Program.

The Texas Health and Human Services Commission excludes from the calculation of countable resources funds held in a school-based account

or bond as described by Texas Education Code §28.0024 and authorized by Texas Human Resources Code §32.02611.

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603603

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 4, 2016

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



DIVISION 3. INCOME

1 TAC §358.389, §358.390

STATUTORY AUTHORITY (MEDICAID)

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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.

The proposed new rules implement Texas Human Resources Code §32.02611, Texas Education Code §54.9065, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§358.389. Achieving a Better Life Experience Program.

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

(1) Achieving a Better Life Experience (ABLE) program--

(A) the ABLE Program authorized under Chapter 54, Subchapter J, of the Texas Education Code; or

(B) a qualified ABLE program of any state that meets the requirements of §529A of the Internal Revenue Code of 1986.

(2) ABLE account--an account established under an ABLE program.

(3) Designated beneficiary--an individual who is named as the beneficiary of an ABLE account established under an ABLE program.

(b) The Texas Health and Human Services Commission excludes from the calculation of countable income interest earned on an ABLE account and payments made from an ABLE account that are used for the designated beneficiary's expenses.

§358.390. School-Based Savings Program.

The Texas Health and Human Services Commission excludes from the calculation of countable income interest earned on funds held in a school-based account or bond as described by Texas Education Code §28.0024 and authorized by Texas Human Resources Code §32.02611.

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603604

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 4, 2016

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



DIVISION 6. BUDGETING FOR ELIGIBILITY AND CO-PAYMENT

1 TAC §358.431

The Texas Health and Human Services Commission (HHSC) proposes amendments to §358.431, concerning Definitions.

BACKGROUND AND JUSTIFICATION

HHSC proposes the amendments to align the terminology and requirements of Medicaid eligibility for the elderly and people with disabilities (MEPD) with federal laws and current HHSC policy and processes.

The amendments implement the legal recognition of same sex marriage consistent with the United States Supreme Court decision (*Obergefell v. Hodges*, 576 U.S. 135 (2015)). The decision in this case, issued on June 26, 2015, requires states to recognize a marriage between two people of the same sex to the same extent it would recognize a marriage between two people of opposite sex. Furthermore, states must also recognize a marriage between two people of the same sex when the marriage was lawfully performed in another state to the same extent the state would recognize the marriage between two people of opposite sex.

SECTION-BY-SECTION SUMMARY

Section 358.431 defines key terms for the subchapter. The proposed amendments align definitions with federal laws and current HHSC policy and processes regarding marriages recognized under federal law.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no fiscal impact to state governments. Costs and revenues of state and local governments will not be affected.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the proposed rule, as there is no requirement to alter current business practices as a result of the proposed rule.

PUBLIC BENEFIT AND COST

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because agency rules will correctly reflect agency compliance with federal law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. 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 Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Sara McGhee, Policy Analyst, 909 West 45th Street, Austin, Texas 78751; by fax to (512) 206-5141; or by e-mail to OSS_PSAD@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Healty Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

STATUTORY AUTHORITY (MEDICAID)

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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.

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

§358.431. Definitions.

In this division, the following words and terms have the following meanings, unless the context clearly indicates otherwise.

(1) Child--Has the meaning given in 20 CFR §416.1856.

(2) Couple--Two persons who live together and:

(A) present themselves to the community as married [~~husband and wife~~], intend to be married, and are considered to be married [~~under state law~~];

(B) are determined to be married [~~husband and wife~~] for purposes of receiving Social Security benefits; or

(C) are recognized as married [~~husband and wife under state law~~].

(3) Dependent relative--A relative who was living in the home of an applicant or recipient before the applicant's or recipient's

absence and who is unable to support himself or herself outside of the person's home due to medical, social, or other reasons.

(4) Married--Joined in a legal union between two people. A same-sex marriage that occurred before June 26, 2015, is considered valid effective June 26, 2015, and a same-sex marriage that occurred on or after June 26, 2015, is considered valid on the date it occurred.

(5) [(4)] Parent--Has the meaning given in 20 CFR §416.1881.

(6) Spouse--A person who is married.

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

Filed with the Office of the Secretary of State on July 20, 2016.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 4, 2016

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



CHAPTER 359. MEDICARE SAVINGS PROGRAM

1 TAC §359.103, §359.109

The Texas Health and Human Services Commission (HHSC) proposes to amend §359.103, concerning the Qualified Medicare Beneficiary Program and §359.109, concerning the Qualified Disabled and Working Individual Program. The rules as amended exclude Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as income and resources when determining eligibility for Medicare Savings Programs.

BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for Medicare Savings Programs: Senate Bill (SB) 1664 and House Bill (HB) 3987. These proposed rules implement the statutory changes adopted by those bills.

Medicare Savings Programs are for individuals who receive Medicare and need help paying for premiums, co-insurance, and deductibles. If an individual meets the income and resource requirements of a Medicare Savings Program, Medicaid will help pay for some Medicare costs. HHSC administers four Medicare Savings Programs: the Qualified Medicare Beneficiary (QMB) program, the Specified Low-Income Medicare Beneficiary (SLMB) program, the Qualifying Individual (QI) program, and the Qualified Disabled and Working Individual (QDWI) program.

In determining eligibility for the Medicare Savings Programs, HHSC currently considers as countable income and resources funds used to establish savings accounts, funds held in savings accounts, interest earned on savings accounts, and payments for expenses of an individual.

Proposed amendments to §359.103 and §359.109 implement provisions of SB 1664. SB 1664 amended Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Ed-

ucation Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow the creation of tax-exempt, state-based private savings accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under §529A of the Internal Revenue Code, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including Medicare Savings Programs. Texas Education Code §54.9065, as adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including Medicare Savings Programs.

The proposed rules align policy for Medicare Savings Program eligibility determinations with federal and state law. Under the proposed rules, HHSC will exclude from countable income and resources funds used to establish an ABLE account, funds held in an ABLE account, interest earned on an ABLE account, and payments for disability expenses for the designated beneficiary.

Proposed rules §359.103 and §359.109 implement provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, School-Based Savings Program, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resource Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for Medicare Savings Programs. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The proposed rules align policy for eligibility determinations for Medicare Savings Programs with state law. Under the proposed rules, HHSC will exclude from countable income and resources school-based savings accounts and interest earned on the accounts. HB 3987 rule changes are contingent on federal approval from the Centers for Medicare and Medicaid Services (CMS) of a Medicaid State Plan Amendment. HHSC is developing a Medicaid State Plan Amendment reflecting the proposed policy changes for the school-based savings accounts.

Related proposals for rules governing Medicaid Eligibility for the Elderly and People with Disabilities, Medicaid Buy-In Program, and Medicaid Buy-In for Children Program appear elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Section 359.103 excludes from countable resources and income for purposes of an eligibility determination for Qualified Medicare Beneficiary Programs payments from an ABLE account, interest earned on an ABLE account, funds used to establish an ABLE account, and funds held in an ABLE account. The section also excludes from countable resources and income for purposes of an eligibility determination for Qualified Medicare Beneficiary Programs interest earned on a school-based savings account and funds held in a school-based savings account.

Section 359.109 excludes from countable resources and income for purposes of an eligibility determination for Qualified Disabled and Working Individual Programs payments from an ABLE account, interest earned on an ABLE account, funds used to establish an ABLE account, and funds held in an ABLE account. The section also excludes from countable resources and income for purposes of an eligibility determination for Qualified Disabled and Working Individual Programs interest earned on a school-based savings account and funds held in a school-based savings account.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no impact to costs and revenues of state and local governments

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rules, as they will not be required to alter their business practices as a result of the proposed rules.

PUBLIC BENEFIT AND COSTS

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. 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 within 30 days after publication of this proposal in the *Texas Register* to Dee Church, Health and Human Services Commission, Office of Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751, or by email to OSS_PSAD@hhsc.state.tx.us.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Healy Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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.

The proposed amendments implement Texas Human Resources Code §32.02611, Texas Education Code §54.9065, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§359.103. *Qualified Medicare Beneficiary Program.*

(a) Authorized under 42 U.S.C. §1396a(a)(10)(E)(i), the Qualified Medicare Beneficiary (QMB) Program pays Medicare premiums, deductibles, and coinsurance for a person who meets the requirements of this section. A person receiving Medicaid may also receive QMB benefits if the person meets the requirements of this section.

(b) To be eligible for QMB coverage, a person must:

- (1) be entitled to benefits under Medicare Part A;
- (2) meet income requirements in 42 U.S.C. §1396d(p), except for:

(A) payments made from or interest earned on a tuition savings program under §358.388 of this title (relating to Tuition Savings Programs); ~~and~~

(B) payments made from or interest earned on an Achieving a Better Life Experience (ABLE) account under §358.389 of this title (relating to Achieving a Better Life Experience Program); and

(C) income earned on a school-based savings program under §358.390 of this title (relating to School-Based Savings Program).

(3) meet resource requirements in 42 U.S.C. §1396d(p), except for:

(A) funds used to establish a tuition savings program under §358.356 of this title (relating to Tuition Savings Programs);~~[-]~~

(B) funds used to establish an ABLE account and funds held in an ABLE account under §358.357 of this title (relating to Achieving a Better Life Experience Program); and

(C) funds held in a school-based savings program under §358.358 of this title (relating to School-Based Savings Program).

(c) A person is not eligible for QMB coverage if the person:

- (1) is in the custody of penal authorities as defined in 42 C.F.R. §411.4(b); or
- (2) is over 20 years of age and under 65 years of age and resides in an institution for mental diseases.

(d) A person's QMB eligibility begins on the first day of the month after the month the person is certified for QMB benefits.

(e) A person with QMB coverage is not eligible for three months prior medical coverage.

§359.109. *Qualified Disabled and Working Individual Program.*

(a) Authorized under 42 U.S.C. §1396a(a)(10)(E)(ii), the Qualified Disabled and Working Individual (QDWI) Program pays only Medicare Part A premiums for a person who meets the requirements of this section. A person cannot be eligible for regular Medicaid and QDWI coverage at the same time.

(b) To be eligible for QDWI coverage, a person must:

- (1) be under 65 years of age;
- (2) be entitled to benefits under Medicare Part A;
- (3) not otherwise be eligible for Medicaid;

(4) have a monthly income equal to or less than 200% of the federal poverty level, except for the following exclusions:

(A) payments made from or interest earned on a tuition savings program under §358.388 of this title (relating to Tuition Savings Programs); ~~and~~

(B) payments made from or interest earned on an Achieving a Better Life Experience (ABLE) account under §358.389 of this title (relating to Achieving a Better Life Experience Program); and

(C) income earned on a school-based savings program under §358.390 of this title (relating to School-Based Savings Program).

(5) have no more than twice the countable resources allowed under the Supplemental Security Income (SSI) program, as described in §1611 of the Social Security Act (42 U.S.C. §1382), except for:

(A) funds used to establish a tuition savings program under §358.356 of this title (relating to Tuition Savings Programs);~~[-]~~

(B) funds used to establish an ABLE account and funds held in an ABLE account under §358.357 of this title (relating to Achieving a Better Life Experience Program); and

(C) funds held in a school-based savings program under §358.358 of this title (relating to School-Based Savings Program).

(c) A person's QDWI eligibility begins in accordance with the coverage period described in §1818A of the Social Security Act (42 U.S.C. §1395i-2a(c)).

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603605

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 4, 2016

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



CHAPTER 360. MEDICAID BUY-IN PROGRAM

1 TAC §360.113

The Texas Health and Human Services Commission (HHSC) proposes amendments to §360.113, concerning Resources.

The rule as amended excludes Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as resources when determining eligibility for the Medicaid Buy-In (MBI) program.

BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for the MBI program: Senate Bill (SB) 1664 and House Bill (HB) 3987. The proposed amendments implement the statutory changes adopted by those bills.

The MBI program provides Medicaid benefits to eligible individuals with disabilities who work, regardless of their age. Some individuals "buy-in" to the program by paying a monthly premium.

In determining eligibility for the MBI program, HHSC currently considers funds used to establish savings accounts and funds held in savings accounts as resources. Unearned income is not counted in the eligibility determination for MBI. Therefore, the proposed rules do not exempt interest earned on an ABLE or school-based account and payments for qualified disability expenses for the designated beneficiary.

Proposed amendments to §360.113 implement provisions of SB 1664. SB 1664 amended Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Education Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow the creation of tax-exempt, state-based private savings accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under Internal Revenue Code §529A, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including MBI. Texas Education Code §54.9065, as adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including MBI.

The proposed amendments align policy for MBI eligibility determinations with federal and state law. Under the proposed rules, HHSC will exclude from countable resources funds used to establish an ABLE account and funds held in an ABLE account.

Proposed rule §360.113 implements provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts when determining eligibility for MBI. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The proposed rules align policy for MBI eligibility determinations with HB 3987. Under the proposed amendments, HHSC would exclude from countable resources school-based savings accounts. HHSC is developing a Medicaid State Plan Amendment

reflecting the proposed policy changes for the school-based savings accounts.

Related proposals for rules governing Medicaid for the Elderly and People with Disabilities (MEPD), Medicare Savings Program, and Medicaid Buy-In for Children Program also appear elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Section §360.113 excludes from countable resources for purposes of an eligibility determination for the Medicaid Buy-In Program funds used to establish an ABLE account and funds held in an ABLE. The section also excludes from countable resources for purposes of an eligibility determination for the Medicaid Buy-In Program funds held in a school-based savings account.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no impact to costs and revenues of state and local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rules, as they will not be required to alter their business practices as a result of the proposed rules.

PUBLIC BENEFIT AND COST

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. 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 AND 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 Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted within 30 days after publication of this proposal in the *Texas Register* to Dee Church, Health and Human Services Commission, Office of

Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751 or by email to OSS_PSAD@hhsc.state.tx.us.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

STATUTORY AUTHORITY (MEDICAID)

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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.

The proposed amendment implements Texas Human Resources Code §32.02611, Texas Education Code §54.0965, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§360.113. Resources.

(a) To establish and maintain eligibility for MBI, a person's countable resources must be equal to or less than \$3,000 plus the amount of the Supplemental Security Income (SSI) resource limit for an individual that is explained in 20 CFR §416.1205. Countable resources means resources for SSI purposes as defined in 20 CFR §416.1205, minus all applicable exemptions and exclusions explained in 20 CFR §§416.1207 - 416.1239.

(b) In addition to the exemptions and exclusions explained in subsection (a) of this section, the following are not countable resources under this section:

(1) Independence accounts.

(A) An independence account (IA) is a segregated account in a financial institution, the purpose of which is to save for future health care and work-related expenses to increase an individual's independence and employment potential.

(B) Only a person's own earned income may be deposited into an IA, and amounts deposited cannot exceed 50% of the person's gross earnings. If for any SSA Qualifying Quarter a person deposits more than 50% of the person's gross earnings into an account that is designated as an IA, the account loses its IA designation and the funds in the account become a countable resource for the 12-month period beginning with the first month after the SSA Qualifying Quarter. An SSA Qualifying Quarter is a three-month period that ends on March 31, June 30, September 30, and December 31 of each calendar year and during which a person's reported earnings and FICA contributions are enough for SSA to give the person Social Security wage credits.

(C) Only health care or work-related expenses may be paid from an IA. For any SSA Qualifying Quarter, if funds in an IA account are used for any other purpose, the account loses its IA designation and the funds in the account become a countable resource for the 12-month period beginning with the first month after the SSA Qualifying Quarter.

(2) Retirement related tax-sheltered accounts. Retirement related tax-sheltered accounts include IRAs, 401(k)s, TSAs, and KEOUGHS that comply with IRS regulations.

(3) Tuition savings programs. The Texas Health and Human Services Commission excludes funds used to establish a tuition savings program under §358.356 of this title (relating to Tuition Savings Programs).

(4) Achieving a Better Life Experience (ABLE) Program. HHSC excludes from the calculation of countable resources funds used to establish an ABLE account and funds held in an ABLE account under §358.357 of this title (relating to Achieving a Better Life Experience Program).

(5) School-Based Savings Program. HHSC excludes from the calculation of countable resources funds held in a school-based savings program under §358.358 of this title (relating to School-Based Savings Program).

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603606

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 4, 2016

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



CHAPTER 361. MEDICAID BUY-IN FOR CHILDREN PROGRAM

1 TAC §361.111

The Texas Health and Human Services Commission (HHSC) proposes amendments to §361.111, concerning Income. The rule as amended excludes Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as income when determining eligibility for Medicaid Buy-In for Children Program (MBIC).

BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for MBIC: Senate Bill (SB) 1664 and House Bill (HB) 3987. The proposed amendments implement the statutory changes adopted by these bills.

MBIC provides Medicaid benefits to eligible children with disabilities whose families "buy-in" to the program by paying a monthly premium. In determining eligibility for the MBIC program, HHSC currently considers savings account interest and payments for expenses of a child with a disability as income.

Resources are not counted in the eligibility determination for MBIC. Therefore, the proposed rules do not include exempting funds used to establish an ABLE account, funds held in an ABLE account, or funds held in a school-based savings account.

Proposed amendments to §361.111 implement provisions of SB 1664. SB 1664 amended the Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Education Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow creation of tax-exempt, state-based private savings

accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under Internal Revenue Code §529A, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including MBIC. Texas Education Code §54.9065, adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including MBIC.

The proposed amendments align policy for MBIC eligibility determinations with federal and state law. Under the proposed rules, HHSC excludes from countable income interest earned on an ABLE account and payments for disability expenses for the designated beneficiary.

Proposed rule §361.111 implements provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, School-Based Savings Program, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for MBIC. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The proposed rules align policy for MBIC eligibility determinations with HB 3987. Under the proposed rules, HHSC will exclude from countable income the interest earned on school-based savings accounts. HHSC is developing a Medicaid State Plan Amendment reflecting the proposed policy changes for the school-based savings accounts.

Related proposals for rules governing Medicaid for the Elderly and People with Disabilities, Medicare Savings Program, and Medicaid Buy-In Program also appear elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Section 361.111 excludes from countable income for purposes of an eligibility determination for MBIC payments from an ABLE account and interest earned on an ABLE account that are used for the expenses of the designated beneficiary. The section also excludes from countable income for purposes of an eligibility determination for MBIC interest earned on school-based savings accounts.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, costs and revenues of state and local governments will not be affected.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with

the proposed rules, as they will not be required to alter their business practices as a result of the proposed rules.

PUBLIC BENEFIT AND COST

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. 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 within 30 days after publication of this proposal in the *Texas Register* to Dee Church, Health and Human Services Commission, Office of Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751 or by email to OSS_PSAD@hhsc.state.tx.us.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

STATUTORY AUTHORITY (MEDICAID)

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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.

The proposed amendment implements Texas Human Resources Code §32.02611, Texas Education Code §54.9065, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§361.111. *Income.*

(a) To be eligible for MBIC, a child's family must have monthly countable income less than or equal to 150% of the Federal Poverty Level (FPL).

(b) Countable income means:

(1) earned income for purposes of the Supplemental Security Income (SSI) program minus all applicable exclusions and exemptions, as explained in 20 CFR §§416.1110 - 416.1112; and

(2) unearned income for purposes of the SSI program minus all applicable exclusions and exemptions, as explained in 20 CFR §§416.1120 - 416.1124, except HHSC does not count as income:

(A) in-kind support and maintenance; [øf]

(B) payments made from or interest earned on a tuition savings program under §358.388 of this title (relating to Tuition Savings Programs);[-]

(C) payments made from or interest earned on an Achieving a Better Life Experience (ABLE) account under §358.389 of this title (relating to Achieving a Better Life Experience Program); and

(D) income earned on a school-based savings program under §358.390 of this title (relating to School-Based Savings Program).

(c) To determine the family's monthly countable income, HHSC counts the income of the child applying for or receiving MBIC, the income of the child's parents living in the same household as the child, and the income of the child's ineligible siblings living in the same household as the child.

(1) For a stepparent's income to count, the stepparent must be the current husband or wife of a natural or adoptive parent living in the same household as the child and the natural or adoptive parent.

(2) A sibling's income counts through the month of the sibling's:

(A) 18th birthday; or

(B) 22nd birthday, if the sibling is, as determined by HHSC, regularly attending school, college, or job training.

(3) HHSC calculates the family's monthly countable income as follows:

(A) Total the following:

(i) Monthly countable income of the child applying for or receiving MBIC.

(ii) Combined monthly countable income of the child's parents.

(iii) Countable monthly income of each of the child's ineligible siblings that is in excess of 150% of the FPL for a household of one, multiplied by 2, plus \$85.

(B) Subtract \$85 from the total arrived at in subparagraph (A) of this paragraph.

(C) Divide the total arrived at in subparagraph (B) of this paragraph by 2.

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

Filed with the Office of the Secretary of State on July 20, 2016.
TRD-201603607

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900



CHAPTER 366. MEDICAID ELIGIBILITY FOR WOMEN, CHILDREN, YOUTH, AND NEEDY FAMILIES

The Texas Health and Human Services Commission (HHSC) proposes amendments to §366.319, concerning Child Support and Medical Support; §366.703, concerning Definitions; §366.707, concerning Eligible Group; §366.821, concerning Child Support and Medical Support; §366.847, concerning Exempt Resources; and §366.1107, concerning Determination of Household Composition.

BACKGROUND AND JUSTIFICATION

HHSC proposes several amendments to various sections of Chapter 366, concerning Medicaid Eligibility for Women, Children, Youth, and Needy Families. The amendments align the rules with federal policies and current HHSC policy and processes, and exclude school-based savings accounts as countable resources when determining eligibility for the Medically Needy program in accordance with state law.

HHSC proposes to amend §366.319, concerning Child Support and Medical Support for Pregnant Women's Medicaid, and §366.821, concerning Child Support and Medical Support for the Medically Needy Program, to align the rules with federal law and current HHSC policy and processes. Federal law prohibits HHSC from asking detailed questions about parents living outside of the home for certain Medicaid programs. Therefore, HHSC policy no longer requires pregnant women to provide information related to the biological father when applying for Medicaid. The proposed amendment aligns state rules with federally required changes and the Medicaid State Plan.

HHSC proposes to amend §366.703, concerning Definitions for the Medicaid for Parents and Caretaker Relatives program, to align state rules with federally required changes and the Medicaid State Plan. A dependent child must live with a parent or caretaker relative in order for the adult to be eligible for Medicaid for Parents and Caretaker Relatives. The proposed amendment removes the deprivation requirement from the definition of dependent child for Medicaid for Parents and Caretaker Relatives. Children of parents and caretaker relatives who are income eligible for Medicaid for Parents and Caretaker Relatives are considered to meet the deprivation requirement. Therefore, it is no longer required that a child meet a separate deprivation requirement to be considered a dependent child for purposes of the adult's Medicaid for Parents and Caretaker Relatives eligibility.

HHSC proposes to amend §366.707, concerning Eligible Group for the Medicaid for Parents and Caretaker Relatives program, to align state rules with federally required changes and the Medicaid State Plan. The proposed amendments implement the federal requirements from the Affordable Care Act (ACA), which amended §1902(a)(10)(A)(i)(VIII) and §1902(k)(3) of the Social Security Act, to provide that the spouse of the caretaker relative may be eligible for the Medicaid for Parents and Caretaker Relatives Program if the spouse is living with the parent or other care-

taker relative and meets all other eligibility criteria. 42 U.S.C.S. §1396a(a)(10)(A)(i)(VIII) and §1396a(k)(3).

HHSC proposes to amend §366.847, concerning Exempt Resources for the Medically Needy Program, to implement provisions of House Bill (H.B.) 3987, 84th Legislature, Regular Session, 2015. HB 3987 amended Texas Education Code by adding §28.0024, which allows school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. H.B. 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for the Medically Needy Program. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The proposed amendments align the eligibility rules for the Medically Needy Program with H.B. 3987. Under the proposed rules, HHSC will exclude from countable resources school-based savings accounts. H.B. 3987 rule changes are contingent on federal approval from the Centers for Medicare and Medicaid Services (CMS) of a Medicaid State Plan Amendment. HHSC is developing a Medicaid State Plan Amendment reflecting the proposed policy changes for the school-based savings accounts.

HHSC proposes to amend §366.1107, concerning Determination of Household Composition for the Modified Adjusted Gross Income Methodology used for Medicaid programs, to align state rules with federally required changes and the Medicaid State Plan. The proposed amendment clarifies that the number of unborn children a pregnant individual is expected to deliver is included in the household composition of that pregnant individual and in the household composition of any individual whose household includes the pregnant individual.

SECTION-BY-SECTION SUMMARY

Subchapter C (relating to Pregnant Women's Medicaid)

Section 366.319 describes the requirements for an individual to be eligible for Pregnant Women's Medicaid. The proposed amendment removes the requirement for a pregnant woman to provide the name and last known address of the father of her unborn child because this is not required when applying.

Subchapter G (relating to Medicaid for Parents and Caretaker Relatives Program)

Section 366.703 defines key terms for the subchapter. The proposed amendments align the rules with federal policy and current HHSC policy and processes by removing the requirement from the definition of "dependent child" that a child be deprived to be considered a dependent child for an adult's Medicaid for Parents and Caretaker Relatives eligibility.

Section 366.707 describes individuals who are eligible for Medicaid for the Parents and Caretaker Relatives Program. The proposed amendment allows the spouse of a parent or other caretaker relative to be eligible for the Medicaid for Parents and Caretaker Relatives Program if the spouse is living with the parent or other caretaker relative and meets all other eligibility criteria.

Subchapter H (relating to Medically Needy Program)

Section 366.821 describes the requirements for an individual to be eligible for the Medically Needy Program. The proposed amendment removes the requirement for a pregnant woman to provide the name and last known address of the father of her unborn child because it is not a requirement for the purposes of eligibility. It also amends the rule to clarify that a pregnant woman is not required to cooperate to find the absent parent to obtain child or medical support.

Section 366.847 describes exempt resources in the Medically Needy Program. The proposed amendments align the rule with state law by excluding school-based savings accounts as countable resources when determining eligibility for the Medically Needy Program.

Subchapter K (relating to Modified Adjusted Gross Income Methodology)

Section 366.1107 describes the modified adjusted gross income methodology for determining household composition when making eligibility determinations for certain Medicaid programs. The proposed amendment requires that when a pregnant woman is included in the household of another individual applying for Medicaid, the pregnant woman must be counted as herself plus the number of children she is expected to deliver.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no impact to costs and revenues of state and local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the proposed rules, as there is no requirement to alter current business practices as a result of the proposed amendments.

PUBLIC BENEFIT AND COST

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state and federal law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. 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 Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Diana Forester, Policy Analyst, 909 West 45th Street, Austin, Texas 78751; by fax to (512) 206-5141; or by e-mail to OSS_PSAD@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

SUBCHAPTER C. PREGNANT WOMEN'S MEDICAID

1 TAC §366.319

STATUTORY AUTHORITY (MEDICAID)

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

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

§366.319. *Child Support and Medical Support.*

[A pregnant woman receiving Medicaid must provide the name and last known address of the legal or biological father of her unborn child.] Applicants and recipients may volunteer to receive child support or medical support services. [There is no penalty for noncooperation.]

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603608

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 4, 2016

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



SUBCHAPTER G. MEDICAID FOR PARENTS AND CARETAKER RELATIVES PROGRAM

1 TAC §366.703, §366.707

STATUTORY AUTHORITY (MEDICAID)

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

The amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.703. *Definitions.*

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

(1) Applicant--A person seeking assistance under the Medicaid for Parents and Caretaker Relatives Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) Caretaker--A person who supervises and cares for a dependent child and who meets relationship requirements in §366.719(c) of this subchapter (relating to Relationship and Domicile).

(4) CFR--Code of Federal Regulations.

(5) Dependent child--A child who is:

(A) [~~either:~~]

[~~(i)~~] under the age of 18; or

(B) [~~(ii)~~] 18 and a full-time student in secondary school or equivalent vocational or technical training, if before attaining age 19 the child may reasonably be expected to complete such school or training.[:; and]

[~~(B)~~] is deprived of parental support by reason of the death, absence from the home, physical or mental incapacity, or unemployment of at least one parent.[-]

(6) Eligible group--A category of people who are eligible for the Medicaid for Parents and Caretaker Relatives Program.

(7) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

(8) HHSC--The Texas Health and Human Services Commission or its designee.

(9) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household."

(10) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(11) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(12) Recipient--A person receiving benefits under the Medicaid for Parents and Caretaker Relatives Program, including a person who is renewing eligibility for the Medicaid for Parents and Caretaker Relatives Program.

(13) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(14) Texas Works Handbook--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The Texas Works Handbook is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(15) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(16) U.S.C.--United States Code.

§366.707. *Eligible Group.*

To be eligible for the Medicaid for Parents and Caretaker Relatives Program, a person must be a ~~[caretaker or second]~~ parent or caretaker relative of a dependent child who receives Medicaid. The spouse of a parent or caretaker relative is also eligible for the Medicaid for Parents and Caretaker Relatives Program, if living with such parent or other caretaker relative.

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603609

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 4, 2016

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



SUBCHAPTER H. MEDICALLY NEEDY PROGRAM

1 TAC §366.821, §366.847

STATUTORY AUTHORITY (MEDICAID)

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

The amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.821. *Child Support and Medical Support.*

~~[(a) Pregnant women must provide the name and last known address of the legal parent or biological father, or both, of unborn children.]~~

~~[(b)]~~ An applicant who is a child under 19 years of age or a pregnant woman is not required to cooperate to find absent parents to obtain child or medical support.

§366.847. *Exempt Resources.*

HHSC exempts the following from countable resources:

- (1) funds in a retirement account (even if accessible, so long as the funds remain in the account);
- (2) balances in the Texas Guaranteed Tuition Plan (formerly called the Texas Tomorrow Fund) even if accessible, so long as the funds remain in the account;
- (3) crime victim's compensation payments;
- (4) earned income tax credit (EIC) payments to applicants the month of receipt and the following month, and to recipients the month of receipt and the following 11 months, unless there is a break in certification of more than 30 days, in which case any remaining portion of the EIC payment is counted as a resource;
- (5) payments or allowances made under any federal law for the purpose of energy assistance;
- (6) federal disaster payments and comparable disaster assistance provided by states, local governments, and disaster assistance organizations if the applicant or recipient is subject to legal penalties if the funds are not used as intended;
- (7) transitional living allowances;
- (8) any resource federal law excludes;
- (9) funds from veterans payments earmarked as a household allowance or as an aid and attendance allowance;
- (10) the cash value of life insurance policies;
- (11) an amount up to \$7,500 per person of prepaid burial insurance (or of a prepaid funeral plan);
- (12) loans, if the circumstances satisfy HHSC that there exists an understanding the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;
- (13) personal possessions HHSC determines are essential for daily living, such as clothing, jewelry, furniture, livestock, and farm equipment;
- (14) burial plots;
- (15) the homestead and surrounding real property, including:
 - (A) any structure, including a houseboat or a motor home, the applicant or recipient uses as its primary residence;
 - (B) surrounding real property divided by a public right-of-way (such as a street or road) but not divided by real property owned by others; and
 - (C) the homestead if it is temporarily unoccupied due to employment, training for future employment, illness, casualty, or natural disaster, as long as the household intends to return;

(16) income-producing property (any real or personal property that generates income) that:

(A) is essential to a household composition member's employment or self-employment (such as tools of a trade, farm machinery, stock, and inventory), including:

(i) during temporary periods of unemployment if the household composition member expects to return to work; and

(ii) for farmers or fishers, the value of the land or equipment for one year after the date the self-employment ceases;

(B) annually produces income consistent with a fair market value comparable in the community (as determined by HHSC through sources such as local realtors, tax assessors, and the Small Business Administration), even if used only on a seasonal basis such as rental property; or

(C) is that portion of the property that is necessary for the maintenance or use of a vehicle exempted as income-producing or as necessary for transporting a physically disabled household member;

(17) real property HHSC determines the applicant or recipient is making a good faith effort to sell;

(18) resources HHSC determines are not accessible to the applicant or recipient;

(19) funds from educational assistance payments (but only during the quarter, semester, or applicable period the payment is intended to cover);

(20) equity value of resources that are not legally available (inaccessible) to the household;

(21) a nonliquid resource if its equity is less than or equal to \$1,500;

(22) a One-Time Temporary Assistance for Needy Families (OTTANF) payment for the month of receipt and any remaining OTTANF benefits the month after receipt;

(23) a TANF One-Time Grandparent payment;

(24) reimbursements earmarked and used for replacing or repairing an exempt resource;

(25) for an applicant or recipient who lives at the same physical address as a sponsored alien, the resources of a sponsor and the sponsor's spouse to the extent allowed by federal law;

(26) resources of residents in shelters for battered women and children if:

(A) resources are jointly owned by the member of the household composition in the shelter and household composition members of the former physical living address; and

(B) shelter resident's access to the value of the resource depends on the agreement of a joint owner who still lives in the resident's former physical living address;

(27) resources of a recipient of Supplemental Security Income living in the home; ~~and~~

(28) liquid resources resulting from the earnings of a certified child who is attending school full time, or less than full time and employed less than 30 hours per week; ~~and~~[-]

(29) funds held in a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §32.02611 of the Texas Human Resources Code.

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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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

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**SUBCHAPTER K. MODIFIED ADJUSTED
GROSS INCOME METHODOLOGY**

1 TAC §366.1107

STATUTORY AUTHORITY (MEDICAID)

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and 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. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

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

§366.1107. Determination of Household Composition.

(a) To determine household composition, an individual is designated as:

(1) a taxpayer;

(2) a tax dependent who does not meet any exceptions;

(3) a tax dependent who meets one or more of the exceptions set out in 42 CFR §435.603(f)(2); or

(4) not a taxpayer or tax dependent.

(b) If the individual is a taxpayer, the following individuals are included in the taxpayer's household composition:

(1) the taxpayer;

(2) the taxpayer's spouse, if the taxpayer and the spouse live together;

(3) the taxpayer's spouse, if the taxpayer and spouse file a joint federal income tax return; and

(4) any individual the taxpayer expects to claim as a tax dependent for the taxable year in which Medicaid eligibility is requested.

(c) If the individual is a tax dependent, the following individuals are included in the tax dependent's household composition:

(1) the tax dependent;

(2) the household composition of the taxpayer claiming the tax dependent; and

(3) the tax dependent's spouse, if the tax dependent and the spouse live together.

(d) The rules in subsection (e) of this section apply to a tax dependent who:

- (1) is not the taxpayer's spouse or the taxpayer's child;
- (2) is a child who lives with both parents who did not file a joint federal income tax return and was claimed by one parent; or
- (3) is a child who is claimed as a tax dependent only by a non-custodial parent.

(e) The household composition of an individual who is not a taxpayer or a tax dependent includes:

- (1) the individual's spouse;
- (2) the individual's children; and
- (3) if a child, the individual's parents and siblings.

(f) A spouse is included in an individual's household composition if living together or filing a joint federal income tax return.

(g) Subsection (c) of this section applies to an individual who is both a tax dependent and taxpayer.

(h) The number of [An] unborn children [ehild] is included in the household composition of:

- (1) a pregnant woman; and
- (2) any individual whose [a child included in the] household composition includes the [of a] pregnant woman.

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-201603611

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes amendments to §370.307, concerning the Continuous Enrollment Period for CHIP; and §370.807, concerning Determination of Household Composition, to align the rules with federal law and current HHSC policy and processes.

BACKGROUND AND JUSTIFICATION

The proposed amendment to §370.307 is issued in accordance with the Social Security Act §2110(b)(2), and 42 CFR §457.310 and §457.315, and clarifies that an individual's continuous CHIP coverage is denied if they become a resident of an institution.

The proposed amendment to §370.807 requires that the number of unborn children a pregnant individual is expected to deliver is included in the household composition of the pregnant individual for purposes of CHIP. The proposed amendment aligns state rules with federally-required changes and the CHIP State Plan.

SECTION-BY-SECTION SUMMARY

Subchapter C (relating to Enrollment, Renewal, Disenrollment, and Cost Sharing)

Section 370.307 defines the continuous enrollment period for CHIP and lists exceptions to continuous enrollment. The proposed amendment adds to the list of exceptions to the continuous enrollment period a member becoming a resident of an institution.

Subchapter I (relating to Modified Adjusted Gross Income Methodology)

Section 370.807 describes how household composition is determined for purposes of CHIP. The proposed amendment requires that the number of unborn children a pregnant individual is expected to deliver is included in the household composition of that pregnant individual. The number of unborn children a pregnant individual is expected to deliver continues to be included in the household composition of an applicant for the CHIP-Perinatal Program under §370.401 (relating to Perinates).

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no impact to costs and revenues of state and local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the amended rules, as there is no requirement to alter current business practices as a result of the proposed amendments.

PUBLIC BENEFIT AND COSTS

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the rules will align with federal law and current HHSC policy and processes.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. 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 that has the specific intent 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.

TAKING 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 Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Diana Forester, Policy Analyst, 909 W. 45th Street, Austin, Texas 78751; by fax to (512) 206-5141; or by e-mail to OSS_PSAD@hpsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

SUBCHAPTER C. ENROLLMENT, RENEWAL, DISENROLLMENT, AND COST SHARING
DIVISION 1. ENROLLMENT AND DISENROLLMENT

1 TAC §370.307

STATUTORY AUTHORITY (CHIP)

The amendments are proposed under the authority granted to HHSC by Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties under Chapter 531 of the Government Code, and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules necessary to implement the Children's Health Insurance Program.

The proposed amendments affect Texas Health and Safety Code, Chapter 62, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

§370.307. *Continuous Enrollment Period.*

(a) CHIP enrollment always begins on the first calendar day of the month and continues for a period up to 12 consecutive months.

(b) Exceptions to continuous enrollment include, but are not limited to:

(1) a sibling member in the home has an earlier initial date of coverage, in which case the coverage period for the newly enrolled child will be the remaining period of coverage of the already enrolled sibling;

(2) aging out when the member turns 19;

(3) change in health or dental insurance status (parent acquires employer coverage);

(4) family moves out of state;

(5) death of the member;

(6) data match reveals member is enrolled in both CHIP and Medicaid;

(7) notification of member's pregnancy;

(8) failure to drop current health insurance if member was determined to be CHIP-eligible due to the 10 percent rule regarding the cost of the current insurance; [ø]

(9) direction by HHSC based on evidence that the member's original eligibility determination was incorrect; or[-]

(10) member becomes a resident of an institution as defined in 42 C.F.R. §457.310(c)(2).

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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER I. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §370.807

STATUTORY AUTHORITY (CHIP)

The amendments are proposed under the authority granted to HHSC by Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties under Chapter 531 of the Government Code, and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules necessary to implement the Children's Health Insurance Program.

The proposed amendments affect Texas Health and Safety Code, Chapter 62, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

§370.807. *Determination of Household Composition.*

(a) To determine household composition, an individual is designated as:

(1) a taxpayer;

(2) a tax dependent who does not meet any exceptions;

(3) a tax dependent who meets one or more of the exceptions; or

(4) not a taxpayer or tax dependent.

(b) If the individual is a taxpayer, the following individuals are included in the taxpayer's household composition:

(1) the taxpayer;

(2) the taxpayer's spouse, if the taxpayer and the spouse live together;

(3) the taxpayer's spouse, if the taxpayer and spouse file a joint federal income tax return; and

(4) any individual the taxpayer expects to claim as a tax dependent for the taxable year in which CHIP eligibility is requested.

(c) If the individual is a tax dependent, the following individuals are included in the tax dependent's household composition:

(1) the tax dependent;

(2) the taxpayer's household claiming the tax dependent; and

(3) the tax dependent's spouse, if the tax dependent and the spouse live together.

(d) The rules in subsection (e) of this section apply to a tax dependent who:

(1) is not the taxpayer's spouse or the taxpayer's child;

(2) is a child who lives with both parents whose parents did not file a joint federal income tax return and was claimed as a tax dependent by one parent; or

(3) is a child who is claimed as a tax dependent by a non-custodial parent pursuant to 42 CFR §435.603(f)(2).

(e) The household composition of an individual who is not a taxpayer or a tax dependent includes:

(1) the individual;

(2) the individual's spouse;

(3) the individual's children; and

(4) if the individual is a child, the individual's parents and siblings.

(f) A spouse is included in an individual's household composition if living together or filing a joint federal income tax return.

(g) Subsection (c) of this section applies to an individual who is both a tax dependent and taxpayer.

(h) The number of unborn children a pregnant individual is expected to deliver is included in the household composition of that pregnant individual or [Før] an applicant under §370.401 of this chapter (relating to Perinates) [; an unborn child is included in the household composition].

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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Karen Ray

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Texas Health and Human Services Commission

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CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

The Texas Health and Human Services Commission (HHSC) proposes amendments to §372.354, concerning Treatment of Resources in TANF; §372.355, concerning Treatment of Resources in SNAP; §372.404, concerning Countable and Excluded Income in TANF; §372.406, concerning Countable and Excluded Income in SNAP; §372.802, concerning One-Time TANF Eligibility Requirements; §372.1153, concerning Personal Responsibility Agreement Requirements; and §372.1154, concerning Cooperating with Personal Responsibility Agreement Requirements

BACKGROUND AND JUSTIFICATION

HHSC proposes the amendments to Chapter 372 to align the rules with federal law and current HHSC policy and processes, and to align the rules with state law to exclude school-based savings accounts as countable resources and interest income when determining eligibility for two programs: Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP).

First, HHSC proposes to amend §372.354 and §372.355 in Subchapter B to align the rules with House Bill 3987, 84th Legislature, Regular Session, 2015. HB 3987 amended the Texas Education Code by adopting §28.0024, School-Based Savings Program, which allows school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also adopted statutes excluding school-based savings accounts and interest earned on the accounts when determining eligibility for certain HHSC-administered programs. Thus, new Texas Human Resources Code §31.0039 and §32.0291 exclude such accounts and interest when determining eligibility for TANF and SNAP, respectively. Section 31.0039 and §33.0291, as adopted by HB 3987, limit the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

Under the proposed rules, HHSC will exclude school-based savings accounts from countable income and resources when determining eligibility, pursuant to Texas Education Code §28.0024 and Texas Human Resources Code §31.0039 and §33.0291. HB 3987 rule changes are contingent on federal approval from the Food and Nutrition Service (FNS) of a waiver request to apply the proposed policy changes for the school-based savings accounts to SNAP households that are not categorically eligible, which is pending approval.

Second, HHSC proposes to amend §372.802, concerning One-Time TANF Eligibility Requirements, to clarify the eligibility requirements for a caretaker adult to receive One-Time TANF and reorganizes the rules to better align them with current HHSC policy and processes.

And third, HHSC proposes to amend §372.1153, concerning Personal Responsibility Agreement Requirements, and §372.1154, concerning Cooperating with Personal Responsibility Agreement Requirements, to align with federal requirements. Federal rules at 45 Code of Federal Regulations §264.30 require HHSC to refer families requesting TANF cash assistance to the Office of the Attorney General (OAG) when paternity has not been established for a child or when a child support order needs to be established, modified, or enforced. HHSC refers all appropriate individuals in the family of a child for whom paternity has not been established or for whom a child support order needs to be established, modified, or enforced to the OAG. The OAG determines if establishing paternity of the dependent child is necessary to establish or enforce child support orders.

The proposed changes strengthen the rules and align with current federal requirements and HHSC policy and processes of making referrals to OAG.

SECTION-BY-SECTION SUMMARY

Subchapter B (relating to Eligibility)

Section 372.354 describes the treatment of resources in TANF. The proposed amendments align the rule with state law by excluding school-based savings accounts as countable resources when determining eligibility for TANF.

Section 372.355 describes the treatment of resources in SNAP. The proposed amendments align the rule with state law by excluding school-based savings accounts as countable resources when determining eligibility for SNAP.

Section 372.404 describes countable and excluded income in TANF. The proposed amendments align the rule with state law by excluding school-based savings accounts as countable income when determining eligibility for TANF.

Section 372.406 describes countable and excluded income in SNAP. The proposed amendments align the rule with state law by excluding school-based savings accounts as countable income when determining eligibility for SNAP.

Subchapter C (relating to Associated Programs)

Section 372.802 defines the eligibility requirements for One-Time TANF. The proposed amendments clarify the eligibility requirements to align the rules with current HHSC policy and processes.

Subchapter E (relating to Participation Requirements)

Section 372.1153 describes participation agreement requirements for the TANF program. The proposed amendment requires caretakers to establish paternity, when necessary, for the purposes of pursuing child support.

Section 372.1154 describes participation agreement requirements and parental cooperation for the TANF program. The proposed amendment requires caretakers to provide any necessary information for HHSC to make a referral to the OAG.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no impact to costs and revenues of state and local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rule. The proposed amendments affect eligibility for publicly funded health and human services programs by clarifying existing requirements. There is no impact on small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state and federal law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. 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 Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Diana Forester, Policy Analyst, 909 West 45th Street, Austin, Texas 78751; by fax to (512) 206-5141; or by e-mail to OSS_PSAD@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

SUBCHAPTER B. ELIGIBILITY DIVISION 6. RESOURCES

1 TAC §372.354, §372.355

STATUTORY AUTHORITY (TANF)

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth TANF financial eligibility requirements for school-based savings accounts.

The amendments affect Chapters 31 and 33 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§372.354. Treatment of Resources in TANF.

(a) In the TANF Program, the countable resources limit is \$1,000.

(b) Unless a resource is excluded under subsection (c) of this section, the Texas Health and Human Services Commission (HHSC) counts the resources of:

- (1) the members of the certified group;
- (2) each parent of a child in the certified group living in the household and ineligible or disqualified from receiving TANF benefits;

(3) each sibling of a dependent child in the certified group living in the household and disqualified from receiving TANF benefits; and

(4) the sponsors and the sponsors' spouses, for a household containing a sponsored alien.

(c) HHSC excludes the following resources:

(1) an amount up to \$7,500 per person of prepaid burial insurance (or of a prepaid funeral plan);

(2) burial plots;

(3) crime victim compensation funds;

(4) earned income tax credit payments to applicants the month of receipt and the following month, and to recipients the month of receipt and the following 11 months;

(5) the homestead and surrounding real property, including:

(A) any structure, including a houseboat or a motor home, the household uses as its residence;

(B) surrounding real property divided by a public right-of-way (such as a street or road) but not divided by real property owned by others; and

(C) the homestead if it is temporarily unoccupied due to employment, training for future employment, illness, casualty, or natural disaster, as long as the household intends to return;

(6) resources HHSC determines are not accessible to the household, including:

(A) jointly owned property as described for SNAP in 7 CFR §273.8(d); and

(B) trust funds as described for SNAP in 7 CFR §273.8(e)(8);

(7) business property, including property retained for income-producing business purposes;

(8) vehicles used to transport a disabled household member and property used to maintain such vehicles;

(9) the cash value of all life insurance policies;

(10) funds from the earned income of a child as described in §372.404(2) of this subchapter (relating to Countable and Excluded Income in TANF);

(11) personal possessions HHSC determines are essential for daily living, such as clothing, jewelry, furniture, livestock, and farm equipment;

(12) funds from a reimbursement intended for and actually used in the month of receipt to repair or replace a lost or damaged resource excluded under this section, but HHSC counts the funds from such a reimbursement, beginning in the month after receipt, to the extent the funds were not used as intended to repair or replace the lost or damaged resource;

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

(14) any resource federal law excludes;

(15) funds in a retirement account excluded under 7 U.S.C. §2014(g);

(16) funds in an education account excluded under 7 U.S.C. §2014(g);

(17) loans, if the circumstances satisfy HHSC that there exists an understanding the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;

(18) funds from educational assistance payments (but only during the quarter, semester, or applicable period the payment is intended to cover);

(19) the value of real property the household is making a good faith effort to sell at a reasonable price;

(20) funds excluded under §372.355(d) of this division (relating to Treatment of Resources in SNAP);

(21) funds excluded under §372.404(25) of this subchapter; [and]

(22) the fair market value of one automobile up to \$4,650; and[-]

(23) funds held in a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §31.0039 of the Texas Human Resources Code.

§372.355. *Treatment of Resources in SNAP.*

(a) In SNAP, the Texas Health and Human Services Commission (HHSC) follows 7 CFR §273.8(a) and (b) to determine the countable resources limit. Unless a household is considered categorically eligible for SNAP under 7 CFR §273.2(j) by receiving Supplemental Security Income, TANF cash, or TANF non-cash benefits, the countable resource limit for a household is the amount of liquid resources and excess vehicle values specified in 7 CFR §273.8(b).

(b) HHSC follows 7 CFR §273.8 to determine whose resources to count in SNAP.

(c) HHSC follows 7 CFR §273.8 to determine what resources are counted, and 7 CFR §273.8(e) and 7 U.S.C. §2014(g) to determine what resources are excluded.

(d) HHSC also excludes:

(1) up to \$2,000 of gifts annually from tax-exempt organizations provided to children with life-threatening conditions;

(2) independent living payments to youths who are leaving foster care, as provided by the Social Security Act, Title IV-E (42 U.S.C. §670 et seq.);

(3) funds from payments up to \$2,000 to Native Americans made under the federal Old Age Assistance Claims Settlement Act (25 U.S.C. §2301) or the federal Alaska Native Claims Settlement Act (43 U.S.C. §1601);

(4) funds from payments made to volunteers under Title I of the Domestic Volunteer Services Act of 1973 (regardless of whether the recipient was receiving SNAP benefits at the time of receipt);

(5) funds from adoption subsidy payments made under Title IV-A and Title IV-E of the Social Security Act;

(6) funds from insurance policy dividends;

(7) funds from veterans payments earmarked as a household allowance or as an aid and attendance allowance;

(8) \$15,000 for the first vehicle and \$4,650 for each additional vehicle; [and]

(9) resources of categorically eligible households as described in 7 CFR §273.8(a); and[-]

(10) funds held in a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §33.0291 of the Texas Human Resources Code.

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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Karen Ray

Chief Counsel

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DIVISION 7. INCOME

1 TAC §372.404, §372.406

STATUTORY AUTHORITY (TANF)

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth TANF financial eligibility requirements for school-based savings accounts .

The amendments affect Chapters 31 and 33 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§372.404. *Countable and Excluded Income in TANF.*

In the TANF program, the Texas Health and Human Services Commission (HHSC) counts all income of a person described in §372.403 of this division (relating to Determining Whose Income Counts in TANF), except HHSC excludes the following:

- (1) any income federal law excludes;
- (2) the earned income of a child who is:
 - (A) a full-time student, as defined by the school (regardless of how many hours the child works); or
 - (B) a part-time student employed less than 30 hours a week;
- (3) up to \$300 per federal fiscal quarter in cash gifts and contributions from private, nonprofit organizations and based on need;
- (4) up to \$75 per month in regular child support payments per household, except HHSC counts all child support payments a household receives if HHSC determines the household violated an agreement to assign child support to the State;
- (5) income legally diverted before actual receipt, such as payments a parent makes for alimony, child support, and to dependents outside the home;

(6) proceeds from claims on insurance policies to compensate a loss or used to pay medical expenses;

(7) payments from federal volunteer programs for volunteer service, such as payments:

(A) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §5000 et seq.);

(B) for volunteer service to Volunteers in Service to America (VISTA), under 42 U.S.C. §§4951 - 4960; and

(C) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12656);

(8) payments under the Workforce Investment Act of 1998;

(9) the value of any benefits received under a government nutrition assistance program based on need, including benefits under SNAP, the Child Nutrition Act of 1966, the National School Lunch Act, and the Older Americans Act of 1965;

(10) foster care payments;

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

(12) energy assistance payments;

(13) job training payments that:

(A) are earmarked as reimbursement for training-related expenses; and

(B) do not duplicate payment for an item covered by budgetary needs;

(14) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions, except HHSC does not exclude amounts from lump sums used for another purpose;

(15) reimbursements for monies spent on items not covered by budgetary needs;

(16) amounts deducted from royalties for production expenses and severance taxes;

(17) all income of Supplemental Security Income recipients;

(18) third-party funds received and used for a third-party beneficiary who is not a household member;

(19) vendor payments from funds not legally obligated to the household;

(20) veterans benefits for special needs items not covered by budgetary needs;

(21) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(22) the amount of any nonfarm self-employment income offsetting a tax deduction taken that year for a farm loss, for households with farms generating income of at least \$1,000 annually;

(23) any income described in §372.355(d) of this subchapter (relating to Treatment of Resources in SNAP);

(24) any income described in §372.354(c)(4), (13), (17), and (18) of this subchapter (relating to Treatment of Resources in TANF);

(25) crime victim's compensation payments; [and]

(26) the earned income of a person who marries a caretaker or payee, for the first six months from the date of the marriage, if:

(A) the caretaker or payee is receiving TANF benefits on the date of the marriage; and

(B) the combined income of the person and the caretaker or payee, countable under this section, not exceeding 200% of the Federal Poverty Guidelines, as calculated based on the total number of the following persons:

(i) the caretaker or payee;

(ii) the person who marries the caretaker or payee;

(iii) each child living in the household who is related to the caretaker, payee, or person within the degree described in §372.108 of this chapter (relating to Relationship Requirement); and

(iv) a required member if not disqualified or ineligible; and[-]

(27) interest earned on a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §31.0039 of the Texas Human Resources Code.

§372.406. *Countable and Excluded Income in SNAP.*

(a) In SNAP, the Texas Health and Human Services Commission (HHSC) follows 7 CFR §273.9 to determine what income to count, and 7 CFR §273.9(c) and 7 U.S.C. §2014(d) to determine what income to exclude.

(b) HHSC also excludes:

(1) payments described in §372.404(7) of this division (relating to Countable and Excluded Income in TANF);

(2) any income described in §372.355(d) of this subchapter (relating to Treatment of Resources in SNAP); ~~and~~

(3) amounts deducted from royalties for production expenses and severance taxes; and[-]

(4) interest earned on a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §33.0291 of the Texas Human Resources Code.

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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER C. ASSOCIATED PROGRAMS DIVISION 5. ONE-TIME TANF (OTTANF)

1 TAC §372.802

STATUTORY AUTHORITY (TANF)

The amendment is proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to

operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which sets forth TANF financial eligibility requirements for school-based savings accounts.

The amendment affects Chapters 31 and 33 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§372.802. *One-Time TANF Eligibility Requirements.*

(a) A One-Time TANF (OTTANF) applicant must:

(1) meet all TANF eligibility and participation requirements in this chapter, except the requirement at §372.1154(g) of this chapter (relating to Cooperating with Personal Responsibility Agreement Requirements) to participate in the Choices work program;

(2) not have received an OTTANF benefit during the 12 months before the application month;

(3) be experiencing a short-term crisis; and

(4) not be a member of a household that is currently receiving TANF benefits.

~~[(3) be in need of emergency assistance; and]~~

~~[(4) be employed or likely to be employed within a short period of time.]~~

(b) The household meets the criteria in subsection (a)(3) ~~[(a)(2) and (3)]~~ of this section if a caretaker adult:

(1) lost employment during the period beginning two months before the application month through the month HHSC determines the household's eligibility (loss of employment does not include voluntary quit without good cause);

(2) is the only adult in the certified group and:

(A) within the last 12 months before the application month through the month HHSC determines household eligibility, a child in the household lost the financial support of a parent or stepparent through death, divorce, separation, abandonment, or termination, or the child's financial support was reduced; and

(B) the adult has a history of employment within the 12 months before the application month or the month HHSC determines household eligibility;

(3) graduated from a university, college, junior college, or technical training school within the 12 months before the application month through the month HHSC determines household eligibility and:

(A) is unemployed or underemployed;

(B) is not currently enrolled in an institution of higher learning;

(C) provides proof of his or her degree or certificate of completion from a university, college, junior college, or technical training school; and

(D) received TANF benefits or a OTTANF benefit any-time in the 12 months before enrolling or while attending a university, college, junior college, or technical training school; or

(4) is currently employed and facing a crisis due to the loss or potential loss of transportation or shelter, or due to a medical emergency that temporarily prevents the person from working during the

period beginning two months before the application month through the month HHSC determines the household's eligibility.

[(1) is facing a crisis due to the loss or potential loss of transportation or shelter, or due to a medical emergency that temporarily prevents the person from working;]

[(2) lost employment during the period beginning two months before the application month through the month the Texas Health and Human Services Commission (HHSC) determines the household's eligibility (loss of employment does not include voluntary quit without good cause); or]

[(3) graduated from a university, college, junior college, or technical training school within the 12 months before the application month through the month HHSC determines household eligibility and;]

[(A) is unemployed or underemployed;]

[(B) is not currently enrolled in an institution of higher learning;]

[(C) provides proof of his or her degree or certificate of completion from a university, college, junior college, or technical training school; and]

[(D) received TANF benefits or an OTTANF benefit anytime in the 12 months before enrolling or while attending a university, college, junior college, or technical training school.]

[(e) In the case of a household with only one adult in the certified group, the household meets the criteria in subsection (a)(2) and (3) of this section if:]

[(1) a child in the household lost the financial support of a parent or stepparent through death, divorce, separation, abandonment, or termination or reduction of financial support within the last 12 months before the application month through the month HHSC determines household eligibility; and]

[(2) the adult has a history of employment within the 12 months before the application month or the month HHSC determines household eligibility.]

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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER E. PARTICIPATION REQUIREMENTS

DIVISION 2. THE TANF PERSONAL RESPONSIBILITY AGREEMENT (PRA)

1 TAC §372.1153, §372.1154

STATUTORY AUTHORITY (TANF)

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of

HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth TANF financial eligibility requirements for school-based savings accounts.

The amendments affect Chapters 31 and 33 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§372.1153. Personal Responsibility Agreement Requirements.

(a) A Personal Responsibility Agreement (PRA) of a payee contains the following requirements:

(1) Child support. The parent of a dependent child must cooperate if necessary to:

(A) establish the paternity of the dependent child; or [and]

(B) to establish or enforce child support.

(2) Children's health checkups. A dependent child must complete early and periodic screening, diagnosis, and treatment checkups on schedule.

(3) Children's immunizations. A dependent child must be immunized unless the child is exempt, as prescribed by the Texas Health and Safety Code, §161.004.

(4) Children's school attendance. A dependent child under 18 years of age and a parent under 19 years of age must attend school regularly, if the child or parent has not completed high school or its equivalent, unless the child or parent is exempt under the Texas Education Code, §25.086.

(5) No drug or alcohol abuse. A person must refrain from abusing alcohol and from possessing, using, or selling marijuana or a controlled substance in violation of the Texas Health and Safety Code, Chapter 481.

(b) The PRA of an adult in a certified group and a minor parent in a certified group whom the Texas Health and Human Services Commission (HHSC) has certified as an adult contains all the requirements in subsection (a) of this section and the following requirements:

(1) Retaining employment. The person must refrain from voluntarily quitting employment of at least 30 hours per week without good cause.

(2) Activities toward becoming self-sufficient. The person must engage in an activity toward becoming self-sufficient through participation in an education, job placement, employment skills, volunteer, or work program.

(3) Parenting skills training. If appropriate, the person must attend appropriate parenting skills training classes.

§372.1154. Cooperating with Personal Responsibility Agreement Requirements.

(a) Child support.

(1) A person cooperates with this requirement:

(A) for a person who is not exempt, by:

(i) assigning the right to receive child support payments to the State of Texas;

(ii) providing information to the Texas Health and Human Services Commission (HHSC) for a referral to the Office of the Attorney General (OAG) to, if necessary, establish the paternity of a dependent child; ~~and to~~

~~(iii) providing information to HHSC for a referral to the OAG to, if necessary, establish or enforce child and medical support; or [and]~~

(iv) ~~[(iii)]~~ cooperating with Title IV-D program rules as specified in §55.3 and §55.4 of this title (relating to Cooperation Required for Recipients of Child Support Services; and Determination of Cooperation); or

(B) for a person who claims to be exempt, by providing HHSC any requested information to verify the exemption.

(2) A person is exempt from the child support requirement if the OAG or HHSC determines:

(A) the person is a participant in the TANF State Program;

(B) the child was conceived as a result of incest or rape;

(C) adoption proceedings for the child are pending and the parent of the child, for three months or less, has been working with an agency to decide whether to place the child for adoption;

(D) the child may be physically or emotionally harmed by cooperation;

(E) the parent may be physically harmed, or emotionally harmed to the extent of impairing the parent's ability to care for the child, by cooperation; or

(F) the requirement is waived under 45 CFR §260.52(c) in accordance with the requirements of the Texas Human Resources Code, §31.0322.

(b) Children's health checkups.

(1) A person cooperates with this requirement by:

(A) enrolling the child in the Texas Health Steps Program administered by the Texas Department of State Health Services (DSHS);

(B) ensuring that the child participates in the Texas Health Steps Program; and

(C) providing DSHS any requested verification of cooperation.

(2) HHSC communicates with DSHS, or the Medicaid insurance carrier that DSHS contracts with, to verify cooperation with this requirement.

(c) Children's immunizations. A person cooperates with this requirement:

(1) for a child who is not exempt, by:

(A) ensuring that the child receives all appropriate immunization shots on schedule (or in accordance with any alternate immunization schedule prescribed for the child); and

(B) submitting verification to HHSC in the form of an immunization record from a licensed medical professional or a record showing the child attends a public school; or

(2) for a child who is exempt under the Texas Health and Safety Code, §161.004, by verifying the exemption to HHSC with information such as:

(A) medical records indicating or a statement from a licensed physician stating that immunization is not in the child's best medical interests; or

(B) a statement by the caretaker or parent that the requirement violates the caretaker's or parent's religious beliefs or conscience.

(d) Children's school attendance. A person cooperates with this requirement:

(1) for a child who is not exempt, by:

(A) ensuring regular school attendance by each person in the household subject to the requirement; and

(B) submitting verification to HHSC on request, such as a written or oral statement from the school; or

(2) for a child who is exempt under the Texas Education Code, §25.086, by providing HHSC any requested information that would verify the exemption.

(e) No drug or alcohol abuse. HHSC verifies cooperation with this requirement by obtaining criminal history information on the person from the Texas Department of Public Safety or another law enforcement agency. HHSC considers a person to be cooperating with this requirement if the person is neither convicted of nor receives deferred adjudication for:

(1) a crime involving alcohol abuse; or

(2) an offense under the Texas Health and Safety Code, Chapter 481, involving marijuana or another controlled substance.

(f) Retaining employment. A person cooperates with this requirement by not voluntarily quitting a job of 30 or more hours per week without good cause to do so. HHSC determines cooperation with this requirement. When HHSC learns that the person no longer has the job, HHSC investigates and decides whether the work separation was a voluntary quit, and if so, whether there was good cause to quit under §372.1156 of this division (relating to Good Cause for Noncooperation with Personal Responsibility Agreement Requirements).

(1) Voluntarily quitting a job means any separation from employment that HHSC determines was initiated by the person, regardless of whether the employer or the person claims that the person resigned or was fired. For example, HHSC may decide the work separation was not a voluntary quit if a person resigned at the employer's demand. Similarly, HHSC may decide the work separation was a voluntary quit when a person is fired for reasons such as leaving a job unannounced.

(2) HHSC does not consider either of the following to be a separation from employment:

(A) a reduction in work hours below 30 per week, if the person continues to work for the same employer; or

(B) the ending of a self-employment enterprise.

(g) Activities toward becoming self-sufficient.

(1) A person who is not exempt cooperates with this requirement by enrolling and participating in the Choices work program administered by the Texas Workforce Commission (TWC). TWC determines cooperation with the Choices work program and informs HHSC of noncooperation.

(2) A person who claims to be exempt from this requirement cooperates by demonstrating the exemption to HHSC or TWC.

(3) A person is exempt from this requirement (but may choose to voluntarily participate, as applicable) if the person:

(A) chooses the One-Time TANF benefit instead of regular TANF benefits, as explained in §372.802 of this chapter (relating to One-Time TANF Eligibility Requirements);

(B) lives in a county that does not offer Choices work program services;

(C) is a caretaker relative of a disabled person who lives in the home and requires the caretaker relative's presence, or is a single person caring for a child under one year of age;

(D) is a single grandparent 50 years of age or older caring for a child under three years of age;

(E) is disabled and the disability is expected to last more than 180 days;

(F) is pregnant and unable to work as a result of the pregnancy; or

(G) is 60 years of age or older.

(h) Parenting skills training. A person cooperates with this requirement by:

(1) ensuring that each minor parent in the certified group and each parent in the certified group with a child in the home under five years of age attends parenting skills training classes; and

(2) submitting verification to HHSC, such as a written or oral statement from the provider of the training.

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

Filed with the Office of the Secretary of State on July 20, 2016.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 27. TEXAS CITRUS PEST AND DISEASE MANAGEMENT CORPORATION SUBCHAPTER H. CREATION OF PEST MANAGEMENT ZONES

4 TAC §§27.801 - 27.804

The Texas Department of Agriculture (Department) proposes new Title 4, Part 1, Chapter 27, Creation of Pest Management Zones, Subchapter H, §§27.801 - 27.804. New Subchapter H is proposed to implement rules related to the creation of pest management zones under Chapter 80 of the Texas Agriculture Code (the Code) in order for the Texas Citrus Pest and Disease Management Corporation, Inc. (Corporation), a Texas nonprofit

corporation, the recognized entity by the Department, to plan, carry out, and operate suppression programs to manage and control citrus pests and diseases in this state under the supervision of the Department.

Proposed Subchapter H includes the authority and procedures for creation of a pest management zone, including a public hearing and a required citrus producer referendum. The proposal also defines the counties that will be within the initial proposed Lower Rio Grande Valley Pest Management Zone.

Mr. Stuart Strnad, Coordinator for Agriculture Commodity Boards and Producer Relations, has determined that for the first five-year period the proposed new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Strnad has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the rules will be the reduction and management of the spread of citrus pests and diseases. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Written comments on the proposal may be submitted to Mr. Stuart Strnad, Coordinator for Agriculture Commodity Boards and Producer Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: Stuart.Strnad@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new rules are proposed under Chapter 80 of the Texas Agriculture Code, which authorizes the Department to adopt rules as necessary for the Texas Citrus Pest and Disease Management Corporation to plan, carry out, and operate suppression programs to manage and control pests and diseases in citrus plants in the state under the supervision of the Department as provided by Chapter 80.

The code affected by the proposal is Texas Agriculture Code, Chapter 80.

§27.801. Authority and Purpose.

The Texas Agriculture Code, §80.005, provides the Commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed pest management zone.

§27.802. Public Hearing.

The commissioner may hold a public hearing in the proposed pest management zone to discuss the proposed geographic boundaries of the zone. The public hearing may include any other topic allowed under this chapter.

§27.803. Zone Activation; Grower Approval.

(a) Once a pest management zone has been designated by adoption of a rule under the Texas Agriculture Code, §80.005, the pest management zone is not established until approved by a referendum of citrus producers in the new zone held in accordance with the Texas Agriculture Code, §80.006.

(b) Once a pest management zone has been designated by rule and established by approval of citrus producers in the zone, as provided in this section, the zone shall operate in accordance with the provisions of the Texas Agriculture Code, Chapter 80, and rules adopted thereunder.

§27.804. Lower Rio Grande Valley Pest Management Zone.

The Lower Rio Grande Valley Pest Management Zone shall consist of the following areas: Cameron, Hidalgo, and Willacy Counties.

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

Filed with the Office of the Secretary of State on July 25, 2016.

TRD-201603659

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 4, 2016

For further information, please call: (512) 463-4075



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §24.1, relating to Purpose and Scope of this Chapter; §24.3, relating to Definitions of Terms; §24.8, relating to Administrative Completeness; §24.101, relating to Certificate Required; §24.102, relating to Criteria for Considering and Granting Certificates of Convenience and Necessity or Amendments; §24.103, relating to Certificates Not Required; §24.104, relating to Applicant; §24.105, relating to Contents of Certificate of Convenience and Necessity Applications; §24.106, relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications; §24.107, relating to Action on Applications; §24.109, relating to Report of Sale, Merger, Etc.; Investigation, Disallowance of Transaction; §24.110, relating to Foreclosure and Bankruptcy; §24.111, relating to Purchase of Voting Stock in Another Utility; §24.115, relating to Cessation of Operations by a Retail Public Utility; §24.117, relating to Contracts Valid and Enforceable; §24.118, relating to Contents of Request for Commission Order Under TWC §13.252; §24.119, relating to Filing of Maps; §24.120, relating to Single Certification in Incorporated or Annexed Areas; §24.142, relating to Operation of a Utility that Discontinues Operation or is Referred for Appointment of a Receiver; §24.143, relating to Operation of a Utility by a Temporary Manager; and the repeal of §24.112, relating to Transfer of Certificate of Convenience and Necessity. The proposed amendments and repeal will update provisions regarding applications and mapping requirements for new certificates of convenience and necessity (CCNs) and CCN amendments, administrative completeness, sale/transfer/mergers, and other non-rate related water and sewer provisions. Project Number 45111 is assigned to this proceeding.

Tammy Benter, Division Director, Water Utility Regulation Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Benter has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be to add clarity and simplicity to the rules governing applications for new water CCNs, amendments to existing CCNs, and the sale, transfer, or merger of existing CCN areas. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Ms. Benter has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on September 26, 2016. The request for a public hearing must be received by September 6, 2016.

Comments on the amendments and repeal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by September 6, 2016. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by September 19, 2016. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 45111.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§24.1, 24.3, 24.8

The amendments are proposed under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b)

§24.1. Purpose and Scope of this Chapter

(a) This chapter is intended to establish a comprehensive regulatory system under Texas Water Code [(TWC)], Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct and determination of all water and sewer rate causes and proceedings before the commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

(b) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality (TCEQ) related to a power,

duty, function, program, or activity transferred pursuant to House Bill 1600 and Senate Bill 567, 83rd Legislature, Regular Session (this Act), continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas (commission) and remains in effect until amended or replaced by the commission. Any jurisdiction ceded to the TCEQ continues in effect and shall be deemed to be ceded to the commission [Beginning September 1, 2013, the commission may propose rules, forms, policies, and procedures related to a function to be transferred to the commission under this Act].

(c) (No change.)

(d) An application received by the commission and file stamped in the commission's Central Records office shall be processed in accordance with the rules in effect on the date that the application was received by Central Records.

§24.3. Definitions of Terms.

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

(1) - (19) (No change.)

~~[(20) Code--The Texas Water Code (TWC).]~~

(20) ~~[(21)]~~ Commission--The Public Utility Commission of Texas or a presiding officer, as applicable.

(21) ~~[(22)]~~ Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the TWC.

(22) ~~[(23)]~~ Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(23) ~~[(24)]~~ Customer class--A description of utility service provided to a customer that denotes such characteristics as nature of use or type of rate. For rate-setting purposes, a group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.

(24) ~~[(25)]~~ Customer service line or pipe--The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.

(25) District--Any district or authority created by authority of either Section 52(b)(1) and (2), Article II, or Section 59, Article XVI, Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law, any consideration and reclamation district created pursuant to Chapter 62, Acts of the 52nd Legislature, 1952 (Article 8280-141, Vernon's Texas Civil Statutes), or any conservation and reclamation district governed by Chapter 36 of the Water Code unless a special law creating the district or amending the law creating the district states that Chapter 49 of the Water Code applies to that district.

(26) Facilities--All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(27) - (31) (No change.)

(32) Intervenor--A person, other than the applicant, respondent, or the commission staff representing the public interest, who is permitted by this chapter or by ruling of the presiding officer, to become a party to a proceeding.

(33) ~~[(32)]~~ Incident of tenancy--Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(34) ~~[(33)]~~ Known and measurable (K&M)--Verifiable on the record as to amount and certainty of effectuation. Reasonably certain to occur within 12 months of the end of the test year.

(35) ~~[(34)]~~ Landowner--An owner or owners of a tract of land including multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(36) ~~[(35)]~~ License--The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(37) ~~[(36)]~~ Licensing--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission in accordance with its authority under the TWC.

(38) ~~[(37)]~~ Main--A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.

(39) ~~[(38)]~~ Mandatory water use reduction--The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(40) ~~[(39)]~~ Member--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(41) ~~[(40)]~~ Membership fee--A fee assessed each water supply or sewer service corporation service applicant that entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed under said bylaws. For purposes of TWC §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.

(42) ~~[(41)]~~ Multi-jurisdictional--A utility that provides water and/or wastewater service in more than one state, country, or separate rate jurisdiction by its own operations, or through an affiliate.

(43) ~~[(42)]~~ Municipality--A city, existing, created, or organized under the general, home rule, or special laws of this state.

(44) [(43)] Municipally owned utility--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(45) [(44)] Net Book Value--The amount of the asset that has not yet been recovered through depreciation. It is the original cost of the asset minus accumulated depreciation.

(46) [(45)] Nonfunctioning system or utility--A system that is operating as a retail public utility that is required to have a CCN and is operating without a CCN; or a retail public utility under supervision pursuant to §24.141 of this title (relating to Supervision of Certain Utilities); or a retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §24.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.143 of this title (relating to Operation of a Utility by a Temporary Manager).

(47) [(46)] Person--Includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations [Any natural person, partnership, cooperative, corporation, association, or public or private organization of any character other than an agency or municipality].

(48) [(47)] Point of use or point of ultimate use--The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.

(49) [(48)] Potable water--Water that is used for or intended to be used for human consumption or household use.

(50) [(49)] Potential connections--Total number of active plus inactive connections.

(51) [(50)] Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(52) Protestor--A person who is not a party to the case who submits oral or written comments. A person classified as a protestor does not have rights to participate in a proceeding other than by providing oral or written comments.

(53) [(51)] Public utility--The definition of public utility is that definition given to water and sewer utility in this subchapter.

(54) [(52)] Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(55) [(53)] Purchased water--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(56) [(54)] Rate--Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in TWC §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(57) [(55)] Ratepayer--Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

(58) [(56)] Rate region--An area within Texas for which the applicant has set or proposed uniform tariffed rates by customer class.

(59) [(57)] Reconnect fee--A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §24.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request

(60) [(58)] Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(61) [(59)] Retail water or sewer utility service--Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(62) [(60)] Return on invested capital--The rate of return times invested capital.

[(61)] Safe drinking water revolving fund--The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal program established under the provisions of the Safe Drinking Water Act and as defined in TWC §15.602.

(63) [(62)] Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the TWC to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(64) [(63)] Service line or pipe--A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(65) [(64)] Sewage--Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(66) [(65)] Stand-by fee--A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

(67) [(66)] Tap fee--A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.

(68) [(67)] Tariff--The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

(69) [(68)] TCEQ--Texas Commission on Environmental Quality.

(70) [(69)] Temporary water rate provision for mandatory water use reduction--A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

(71) [(70)] Temporary rate for services provided for a non-functioning system--A temporary rate for a retail public utility that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider.

(72) [(71)] Test year--The most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.

(73) Tract of land--Any piece of land that has common ownership and is contiguous. To be contiguous, all portions of the property must be in uninterrupted physical contact. A single tract may not be separated by other property with different ownership, such as roads and railroads, whether owned by government entities or private parties. A single tract of land may be part of separate surveys or be acquired through multiple deeds.

(74) TWC--Texas Water Code.

(75) [(72)] Utility--The definition of utility is that definition given to water and sewer utility in this subchapter.

(76) [(73)] Water and sewer utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(77) [(74)] Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the utility [system] due to emergency conditions or drought.

(78) [(75)] Water supply or sewer service corporation--Any nonprofit corporation organized and operating under TWC Chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer utility service to a person who is not a member, except that the corporation may provide retail water or sewer utility service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions.

(A) All members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.

(B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.

(C) A majority of the directors and officers of the corporation must be members of the corporation.

(D) The corporation's bylaws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.

(79) [(76)] Wholesale water or sewer service--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§24.8. *Administrative Completeness.*

(a) An application to change rates, including a minor rate change, applications for sale, transfer, merger, consolidation, acquisition, lease, or rental, [~~merger, or consolidation,~~] assignment of facilities or certificates; requests for purchase of voting stock or change in controlling interest of a utility; applications for cessation of operations by a retail public utility and applications for certificates of convenience and necessity (CCN) shall be reviewed for administrative completeness within 30 [~~thirty~~] calendar days from the date the application is file stamped by the commission's Central Records office [~~of receipt of the application~~]. If the applicant is required to issue notice, the applicant shall be notified [If notice is required,] upon determination that the notice or application is administratively complete[; the applicant shall be notified of that determination].

(b) (No change.)

(c) In cases involving a proposed sale, transfer, merger, consolidation, acquisition, lease, or rental, [~~merger, or consolidation~~] of any water or sewer system or utility owned by an entity required by law to possess a CCN [~~certificate of convenience and necessity~~], the proposed effective date of the transaction must be at least 120 days after the date that an application is received and file stamped by the commission's Central Records office [~~commission~~] and public notice is provided, unless notice is waived for good cause shown.

(d) Applications for the [~~A report of~~] sale, transfer, merger, consolidation, acquisition, lease, or rental, of a retail public utility [~~merger, or consolidation~~]; requests for purchase of voting stock or change in controlling interest of a utility; applications for cessation of operations by a retail public utility; [~~and~~] applications to obtain or amend a CCN [for certificates of convenience and necessity] are not considered filed until the commission makes a determination that the application is administratively complete [of administrative completeness].

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

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SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.101 - 24.107, 24.109 - 24.111, 24.115, 24.117 - 24.120

The amendments are proposed under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b)

§24.101. Certificate of Convenience and Necessity Required.

(a) Unless otherwise specified, a utility, a utility operated by an affected county ~~except an affected county to which Local Government Code, §412.017 applies,~~ or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate of convenience and necessity (CCN) ~~[that the present or future public convenience and necessity requires or will require that installation, operation, or extension]~~. Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first obtaining ~~[having obtained]~~ a CCN ~~[certificate of public convenience and necessity]~~ that includes the area in which the consuming facility is located.

(b) A person that is not a retail public utility, ~~[or] a utility,~~ or a water supply or sewer service corporation that is operating under provisions pursuant to ~~[the] TWC,~~ §13.242(c) may not construct facilities to provide retail water or sewer utility service to more than one service connection not on the property owned by the person and that is ~~[are]~~ within the CCN ~~[certificated]~~ service area of a retail public utility without first obtaining written consent from the retail public utility.

(c) A district may not provide services within the CCN boundaries of ~~[an area for which]~~ a retail public utility ~~[holds a certificate of convenience and necessity]~~ or within the boundaries of another district without the retail public utility's or district's consent, unless the district has a valid CCN ~~[certificate of convenience and necessity]~~ to provide retail water or sewer utility services to that area.

(d) A retail public utility may not provide retail water or sewer utility service within the boundaries of a district that provides the same type of retail water or sewer utility service without the district's consent, unless the retail public utility has a valid CCN to provide service to that area.

(e) ~~[(d)]~~ A supplier of wholesale water or sewer service may not require a purchaser to obtain a CCN ~~[certificate of public convenience and necessity]~~ if the purchaser is not otherwise required by this chapter to obtain a CCN ~~[the certificate]~~.

§24.102. Criteria for Granting or Amending a Certificate of Convenience and Necessity ~~[Criteria for Considering and Granting Certificates or Amendments]~~.

(a) In determining whether to grant or amend a certificate of ~~[public] convenience and necessity (CCN)~~, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For retail water utility service, the commission shall ensure that the applicant has:

(A) a TCEQ approved public water system that it is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341, TCEQ's ~~[and TCEQ]~~ rules, and the TWC, ~~[and]~~ and

(B) [has] access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirement of paragraph (1)(A) of this subsection.

(2) For retail sewer utility service, the commission shall ensure that the applicant has:

(A) a TCEQ approved system that it is capable of meeting the TCEQ's design criteria for sewer treatment plants, TCEQ rules, and the TWC; and

(B) access to sewer treatment and/or capacity or a long-term contract for purchased sewer treatment and/or capacity with an entity whose system meets the requirements of paragraph (2)(A) of this subsection.

(b) When applying for a new CCN or a CCN amendment ~~[Where a new CCN is being issued]~~ for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) for applications to obtain or amend a water CCN, a list of all retail public water and/or sewer utilities within two miles from the outer boundary of the proposed service area(s) [a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system];

(2) for applications to obtain or amend a sewer CCN, a list of all retail public sewer utilities within two miles from the outer boundary of the proposed service area(s);

(3) ~~[(2)]~~ copies of written requests seeking to obtain service from each of the retail public utilities referenced in paragraph (1) and/or (2) of this subsection or evidence that it is not economically feasible to obtain service from the retail public utilities referenced in paragraph (1) or (2) of this subsection [public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system];

(4) ~~[(3)]~~ copies of written responses from each of the retail public utilities referenced in paragraph (1) and/or (2) of this subsection [systems] from which written requests for service were made or evidence that they failed to respond within 30 days of the date of the request;

(5) ~~[(4)]~~ if a neighboring retail public utility has agreed to provide service to an area where a new CCN is being requested, then the following information must also be provided by the applicant:

(A) a description of the type of service that the ~~[a]~~ neighboring retail public utility ~~[public drinking water supply system or sewer system]~~ is willing to provide and comparison with service the applicant is proposing;

(B) ~~[(5)]~~ an analysis of all necessary costs for constructing, operating, and maintaining the new facilities [system] for at least the first five years of operations, including such items as taxes and insurance; and

(C) ~~[(6)]~~ an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility [public drinking water supply system or sewer system] for at least the first five years of operations.

(c) The commission may approve applications and grant or amend a CCN ~~[certificate]~~ only after finding that granting or amending the CCN ~~[the certificate or amendment]~~ is necessary for the service, accommodation, convenience, or safety of the public. The commis-

sion may grant [issue] or amend the CCN [certificate] as applied for, or refuse to grant [issue] it, or grant [issue] it for the construction of a portion only of the contemplated facilities [system or facility] or extension thereof, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a CCN [certificate], the commission shall also consider:

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

(3) the effect of granting or amending a CCN on the CCN recipient, on the landowner(s) in the area, and on any retail public utility that provides the same service and that is [the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind] already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the TCEQ and the commission, taking into consideration the current and projected density and land use of the area;

(5) - (9) (No change.)

(e) The commission may require an applicant seeking to obtain a new CCN or CCN amendment to provide a bond or other form of financial assurance to ensure that continuous and adequate retail water or sewer [for a certificate or for an amendment to provide a bond or other financial assurance to ensure that continuous and adequate] utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(f) Where applicable, in addition to the other factors in this chapter [section] the commission shall consider the efforts of the applicant to extend retail water and/or sewer utility service to any economically distressed areas located within the applicant's requested CCN service areas [certificated to the applicant]. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC §15.001.

(g) For two or more retail public utilities that apply for a CCN to provide retail water and/or [or] sewer utility service to an uncertificated area located in an economically distressed area as defined in TWC §15.001, the commission shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted considering the following information [using a standard form designed by the commission and will include]:

(1) - (7) (No change.)

(8) credit-worthiness [credit worthiness];

(9) - (11) (No change.)

(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed CCN service area may elect to exclude some or all of the landowner's property from the proposed CCN service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of an

[a new] application for a CCN or for a CCN [an] amendment of [to an existing CCN]. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the proposed area in the application shall be modified to remove [so that] the electing landowner's property [is not included in the proposed service area]. An applicant [for a CCN] that has land removed from its proposed CCN [certificated] service area because of a landowner's election under this subsection may not be required to provide retail water or sewer utility service to the removed land for any reason, including the violation of law or commission rules [by the water or sewer system of another person].

(1) The landowner's request to opt-out of the proposed CCN service area shall be filed with the commission shall include the following information:

(A) the commission docket number and CCN number(s) if applicable;

(B) the total acreage amount of the tract of land subject to the landowner's opt-out request; and

(C) a metes and bounds survey (legal description) for the tract of land subject to the landowner's opt-out request, certified by a licensed state land surveyor or registered professional land surveyor.

(2) The applicant shall file the following maps, and information, to address each landowner's opt-out request:

(A) a large scale (detailed) map showing the revised proposed service area(s) after removing the tract(s) of land subject to each landowner's opt-out request. The map shall also show the outer boundary of each tract of land, subject to each landowner's opt-out request, in relation to the revised proposed service area(s). The map shall have enough detail to accurately locate each tract of land and the proposed service area(s) in reference to verifiable man-made and/or natural landmarks such as roads, rivers, or railroads;

(B) digital data as required by §24.106(e)(3) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications) for the revised proposed service area(s) after the removing each tract of land subject to landowner's opt-out request(s); and

(C) the approximate total acreage for the revised proposed service area(s) after the removing each tract of land subject to landowner's opt out requests. The total acreage for the revised proposed service area(s) must correspond to the approximate total acreage included with the digital data.

(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to file a request to intervene in order to contest the inclusion of the landowner's property in the proposed service area at a hearing regarding the application if the proposed CCN service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a retail public utility owned by the municipality is the applicant.

§24.103. Certificates Not Required.

(a) Extension of Service.

(1) Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of [public] convenience and necessity (CCN), a retail public utility is not required to obtain a CCN [secure a certificate of public convenience and necessity] for:

(A) an extension into territory contiguous to that already served by the retail public utility if:

(i) the point of ultimate use is within one quarter mile of the outer boundary of its existing CCN area;

(ii) the area is not receiving similar service from another retail public utility; and

(iii) the area is not located inside another retail public utility's CCN [it, if the point of ultimate use is within one quarter mile of the boundary of its certificated area; and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility]; or

(B) an extension within or to territory already served by it or to be served by it under a CCN [certificate of public convenience and necessity].

(2) Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the service [certificated] area clearly showing the extension, accompanied by a written explanation of the extension.

(b) Construction of Facilities. A CCN is not required for the construction or upgrading of distribution facilities within the retail public utility's service area, or for the purchase or condemnation of real property for use as facility sites or rights-of-way. Prior acquisition of facility sites or rights-of-way, and prior construction or upgrading of distribution facilities, does not entitle a retail public utility to be granted a CCN or CCN amendment without a showing that the proposed CCN or CCN amendment [A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension] is necessary for the service, accommodation, convenience, or safety of the public.

(c) Municipality Pursuant to [the] TWC[⁵] §13.255.

(1) A municipality which has given notice under TWC §13.255 that it intends to provide retail water or sewer utility service to an area or to customers not currently being served is not required to obtain a CCN prior to commencing service in the area if the municipality:

(A) provides a copy of the notice required in TWC §13.255, to the retail public utility;

(B) files a copy of the notice provided pursuant to paragraph (1) of this subsection with the commission;

(C) files mapping documents showing the area affected under TWC §13.255 as required by §24.106(e) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications), and the location of new connections in the area affected which the municipality proposes to serve.

(2) This subsection applies only in cases where:

(A) the retail public utility that is authorized to serve in the CCN area that is annexed or incorporated by the municipality is a non-profit water supply or sewer service corporation, a special utility district under TWC Chapter 65, or a fresh water supply district under TWC Chapter 53; or

(B) the retail public utility that is authorized to serve in the CCN area that is annexed or incorporated by the municipality that is

a retail public utility, other than a non-profit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census. [A municipality which has given notice under the TWC, §13.255 that it intends to provide retail water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:]

[(1) a copy of the notice required pursuant to the TWC, §13.255; and]

[(2) a map showing the area affected under the TWC, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.]

(d) Municipal Systems in Unserved Area

(1) This section applies only to a home-rule municipality that is:

(A) located in a county with a population of more than 1.75 million; and

(B) adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district.

(2) If a district does not establish a fire department under TWC §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment.

(3) For purposes of this subsection, a municipality may obtain single certification in the manner provided by TWC §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by TWC §13.255(b).

(e) [(d)] Water Utility or Water Supply Corporation With Less Than 15 Potential Connections.

(1) A water utility or water supply corporation is exempt from the requirement to possess a CCN [certificate of convenience and necessity in order] to provide retail water utility service if it:

(A) has less than 15 potential service connections;

(B) is not owned by or affiliated with a retail public water utility or any other provider of potable water service;

(C) is not located within the CCN service [certificated] area of another retail public water utility; and

(D) is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.

(2) Water utilities [Utilities] or water supply corporations with less than 15 potential connections currently operating under a CCN [certificate of convenience and necessity] may request revocation of the CCN [certificate] at any time.

(3) The commission may revoke the current CCN [certificate of convenience and necessity] upon written request by the exempt utility or water supply corporation.

(4) An exempt [exempted] utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the commission which shall not be more stringent than those in §§24.80 - 24.90 of this title (relating to Customer Service and Protection).

(5) The exempt [exempted] utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.

(6) An applicant requesting exempt utility registration status from the commission shall comply with the mapping documents as prescribed in §24.106(e)(2)-(3) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications).

(7) [(6)] Exempt Utility Tariff and Rate Change Requirements. An exempt [exempted] utility operating under exempt utility registration status [with or without a certificate of convenience and necessity]:

(A) must maintain a current copy of the exempt utility's tariff [utility tariff form] with its current rates at its business location; and

(B) may change its rates without following the requirements in §24.22 of this title (relating to Notice of Intent to Change Rates) if it provides each customer with written notice of the rate change [rate changes] prior to the effective date of the rate change indicating the old rates, the new rates, the effective date of the new rates and the address of the commission along with a statement that written comments or requests to intervene may be filed with the commission at the following mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. If the commission receives written comments or requests to intervene to a [protests may be submitted to the commission at that address. If the commission receives written protests to a proposed] rate change from at least 50% of the customers of an exempt utility following this procedure within 90 days after the effective date of the rate change, the commission shall [will] review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments or requests to intervene from customers or the exempt utility, the commission shall [will] establish the rates to be charged by the exempt utility which shall be effective on the date originally noticed by the exempt utility unless a different effective date is agreed to by the exempt utility and customers. These rates may not be changed for 12 months after the proposed effective date without authorization by the commission. The exempt utility shall refund any rates collected in excess of the rates established by the commission in accordance with the time frames or other requirements established by the commission.

(C) The exempt utility or water supply corporation, Office of Public Utility Counsel [office of public utility counsel], commission staff, or any affected customer may file a written motion for rehearing. The rates determined by the commission shall remain in effect while the commission considers the request to intervene or comments [or protest].

[(D)] A rate change application filed by an exempt utility that follows the rate change procedures in §24.22 of this title will be processed according to the requirements and procedures which apply to rate changes under that section.]

(8) [(7)] Unless authorized in writing by the commission, an exempt water [a] utility or a water supply corporation operating under these requirements may not cease [utility] operations. An exempt water [A] utility may not discontinue service to a customer with or without notice except in accordance with its commission approved [the] Exempt Utility Tariff [Form] and an exempt [a] water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.

(9) [(8)] An exempt water [A] utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the Exempt Utility Tariff approved [specified] by the commission shall be subject to any and all enforcement remedies provided by this chapter and [the] TWC[,] Chapter 13.

[(e)] This subsection applies only to a home-rule municipality that is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district. If a district does not establish a fire department under TWC, §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment. For purposes of this subsection, a municipality may obtain single certification in the manner provided by TWC, §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by TWC, §13.255(b).]

§24.104. Applicant.

(a) It is the responsibility of the owner of the utility, the utility's designated representative or authorized agent, [or] the president of the board of directors or designated representative of the water supply or sewer service corporation, affected county, as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality to file [submit] an application for a certificate of convenience and necessity (CCN) with the commission to obtain or amend a CCN.

(b) (No change.)

§24.105. Contents of Certificate of Convenience and Necessity Applications.

(a) Application. To obtain or amend a certificate of convenience and necessity (CCN), a person, public water or sewer utility, water supply or sewer service corporation, affected county as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality shall file an application for a new CCN or CCN amendment with the commission. Applications must contain the following materials, unless otherwise specified in the application form [To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment. Applications for CCNs or for an amendment to a certificate must contain the following materials, unless otherwise specified in the application]:

(1) (No change.)

(2) mapping documents as prescribed in §24.106(e) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications) and §24.119 of this title (relating to Filing of Maps); [a map and description of only the proposed service area by:]

[(A)] metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;]

[(B)] the Texas State Plane Coordinate System or any standard map projection and corresponding metadata;]

[(C)] a state county base map; scale one inch equals two-miles showing the area to be served that clearly defines the proposed

location of the applicant and each neighboring water or sewer utility within five miles of the applicant's proposed service area for a CCN and within two miles of the applicant's proposed service area for a CCN amendment;]

~~[(D) verifiable landmarks, including a road, creek, or railroad line; or a copy of the recorded plat of the area, if it exists, with lot and block number;]~~

~~[(E) maps as described in §24.119 of this title (relating to Filing of Maps);]~~

~~[(F) a separate map for each county in which the applicant seeks a CCN or CCN amendment;]~~

~~[(G) a general location map; and]~~

~~[(H) other maps as requested]~~

(3) information to demonstrate a need [a description of any requests] for service in the proposed service area, including:[]

(A) a copy of each written request for service received, if any; and

(B) a map showing the location of each request for service, if any;

(4) if applicable, a statement that the proposed service area overlaps with the corporate boundaries of a district, municipality, or other public authority, including:

(A) a list of the entities that overlap with the proposed area; and

(B) evidence to show that the applicant has received the necessary approval(s) including consent(s), franchise(s), permit(s), or license(s) to provide retail water or sewer utility service in the proposed service area(s) from the applicable municipality, district, or other public authority that:

(i) currently provides retail water or sewer utility service in the proposed service area;

(ii) is authorized to provide retail water or sewer service by enabling statute or order; or

(iii) has an ordinance in effect that allows it to provide retail water or sewer service in the proposed service area, if any. [any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;]

(5) If the proposed service area overlaps with the corporate boundaries of a district, and the district does not intervene in the docket by the intervention deadline after propose notice of the application is given, the commission will determine that the district is consenting to the applicant's request to provide service in the proposed area.

(6) an explanation from the applicant demonstrating that issuance of a new CCN or CCN amendment is necessary for the service, accommodation, convenience, or safety of the public;

~~[(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;]~~

(7) [(6)]if the infrastructure is not already in place or if existing infrastructure needs repairs and improvements to provide continuous and adequate service to the proposed area, a capital improvement [improvements] plan, including a budget and an estimated time line for construction of all facilities necessary to provide full service to the en-

tire proposed service area, keyed to a map [maps] showing where such facilities will be located to provide service;

(8) [(7)] a description of the sources of funding for all facilities that will be constructed to serve the proposed service area, if any;

~~[(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;]~~

(9) disclosure of all affiliated interests as defined by §24.3 of this title [(relating to Definitions of Terms)];

(10) to the extent known, a description of current and projected land uses, including densities;

(11) a current financial statement of the applicant;

(12) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owner(s) [owners] of each tract of land that is:

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

(13) if dual certification is being requested, a copy of the executed agreement that allows for dual certification of the proposed service area(s) [and an agreement between the affected utilities exists, a copy of the agreement];

(14) if decertification is being requested with an existing CCN holder, a copy of the executed agreement to decertify the existing CCN area; [for a water CCN for a new or existing system, a copy of:]

[(A) the approval letter for the plans approved by the TCEQ and specifications for the system or proof that the applicant has submitted either a preliminary engineering report or plans and specification for the first phase of the system unless 30 TAC §290.39(j)(1)(D) (relating to General Provisions) applies;]

[(B) other information that indicates the applicant is in compliance with §24.93 of this title (relating to Adequacy of Water Utility Service) for the system; or]

[(C) a contract with a wholesale provider that meets the requirements in §24.93 of this title;]

(15) for an application for a new water CCN or CCN amendment that will require the construction of a new public drinking water system or facilities to provide retail water utility service, a copy of:

(A) the approval letter for the plans and specifications issued by the TCEQ for the public drinking water system(s) or facilities. Proof that the applicant has submitted plans and specifications for the proposed drinking water system is sufficient for a determination of administrative completeness. The applicant shall notify the commission within ten days upon receipt of any TCEQ disapproval letter. If the applicant receives a TCEQ disapproval letter, the application for a new water CCN or CCN amendment will be dismissed without prejudice. Approval letter(s) for the proposed public drinking water system or facilities must be filed with the commission before the issuance of a new CCN or CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in the dismissal of the application without prejudice. Plans and specifications are only required if the proposed change in the existing capacity is required pursuant to TCEQ rules;

(B) other information that indicates the applicant is in compliance with §24.93 of this title (relating to Adequacy of Water Utility Service) for the system; or

(C) a contract with a wholesale provider that meets the requirements in §24.93 of this title;

~~{(15) for a sewer CCN for a new or existing facility; a copy of:}~~

~~{(A) a wastewater permit or proof that a wastewater permit application for that facility has been filed with the Texas Commission on Environmental Quality;}~~

{(B) other information that indicates that the applicant is in compliance with §24.94 of this title (relating to Adequacy of Sewer Service) for the facility; or}

{(C) a contract with a wholesale provider that meets the requirements in §24.94 of this title; and}

(16) for an application for a new sewer CCN or CCN amendment that will require the construction of a new sewer system or new facilities to provide retail sewer utility service, a copy of:

(A) a wastewater permit or proof that a wastewater permit application for the additional facility has been filed with the TCEQ. Proof that the applicant has submitted an application for a wastewater permit is sufficient for a determination of administrative completeness. The applicant shall notify the commission within ten days upon receipt of any TCEQ disapproval letter. If the applicant receives a TCEQ disapproval letter, the application for a new sewer CCN or CCN amendment will be dismissed without prejudice. Approval letter(s) for the permit application must be filed with the commission before the issuance of a new CCN or CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in the dismissal of the application within prejudice. Plans and specifications are only required if the proposed change in the existing capacity is required pursuant to TCEQ rules.

(B) other information that indicates that the applicant is in compliance with §24.94 of this title (relating to Adequacy of Sewer Service) for the facility; or

(C) a contract with a wholesale provider that meets the requirements in §24.94 of this title; and

(17) [(46)] any other item or information required by the commission.

(b) If an applicant is a utility as defined in §24.3(75) of this title, and does not currently have a tariff applicable to the area subject to the CCN application being proposed (e.g., a subdivision currently being built or proposed), the utility shall file a proposed tariff with the commission. The application requesting the new tariff shall provide:

(1) a rate study or other documentation supporting the proposed rates, which may include the costs of existing invested capital or estimates of future invested capital;

(2) all calculations supporting the proposed rates;

(3) all assumptions for any projections included in the rate study;

(4) an estimated completion date(s) for the physical plant(s);

(5) an estimate of the date(s) service will begin for all phases of construction;

(6) notice to the commission once billing for service begins; and

(7) a Class A or B rate change application within 18 months from the date service begins to adjust the rates to a historic test year with the appropriate regulatory authority and true up the new tariff rates to the historical test year.

(c) [(b)] Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

(1) This subsection applies only to a municipality with a population of 500,000 or more.

(2) Except as provided by paragraphs (3) - (7) of this subsection, the commission may not grant to a retail public utility a CCN for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the CCN without the consent of the municipality if the commission finds that the municipality:

(A) does not have the ability to provide service; or

(B) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(4) If a municipality has not consented under this subsection before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvement [improvements] plan required by TWC[, §13.244(d)(3)] or a subdivision plat, the commission may grant the new CCN or CCN amendment without the consent of the municipality if:

(A) the commission makes the findings required by paragraph (3) of this subsection;

(B) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the commission before the 180th day after the date the formal request was made; and

(C) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

(i) comply with the municipality's service extension and development process; or

(ii) enter into a contract for retail water or sewer utility service [services] with the municipality.

(5) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(6) The commission must include as a condition of a CCN granted under paragraph (4) or (5) of this subsection that all water and

sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

(7) Paragraphs (4) - (6) of this subsection do not apply in the following counties: Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson.

(8) A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(9) If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.

(d) ~~(e)~~ Extension beyond extraterritorial jurisdiction.

(1) Except as provided by paragraph (2) of this subsection, if a municipality extends its extraterritorial jurisdiction to include an area in the CCN of [certificated to] a retail public utility, the retail public utility may continue and extend service in its CCN service area [of public convenience and necessity] under the rights granted by its CCN [certificated] and this chapter.

(2) The commission may not extend a municipality's CCN beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with TWC[-] §13.246(h). This subsection does not apply to a sale, transfer, merger, consolidation, acquisition, lease, or rental of a CCN [transfer of a certificate] as approved by the commission.

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(4) To the extent of a conflict between this subsection and TWC[-] §13.245, TWC[-] §13.245 prevails.

(e) ~~(d)~~ Area within municipality.

(1) If an area is within the boundaries of a municipality, all retail public utilities holding or entitled to hold a CCN [certified or entitled to certification] under this chapter to provide retail water and sewer utility service or operate facilities in that area may continue and extend service in its CCN area [of public convenience and necessity] within the area under the rights granted by its CCN [certificated] and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this subsection. Except as provided by TWC[-] §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the CCN area of [certificated to] another retail public utility without first having obtained from the commission a CCN that includes the area(s) [area] to be served.

(2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code, §182.025.

(3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's

boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.

(A) A municipality shall notify the commission no later than seven days after filing an eminent domain lawsuit to acquire a substandard water or sewer system and also notify the commission no later than seven days after acquiring the system.

(B) With the notification of filing its eminent domain lawsuit, the municipality, in its sole discretion, shall either request that the commission cancel the CCN of the acquired system or transfer the certificate to the municipality and the commission shall take such requested action upon notification of acquisition of the system.

§24.106. *Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications.*

(a) If an application to obtain a new [for issuance or amendment of a] certificate of [public] convenience and necessity (CCN) or CCN amendment is filed, the applicant will prepare the notice(s) [a notice or notices], as prescribed in the commission's application form, which will include the following:

(1) (No change.)

(2) all information stipulated in the commission's instructions for completing an application for a CCN; ~~and~~

(3) a statement that persons who wish to intervene or comment upon the action sought must file a request with the commission, within 30 days of mailing or publication of notice, whichever occurs later; ~~and[-]~~

(4) except for publication of notice, the notice(s) must include a map showing the proposed service area.

(b) After reviewing and, if necessary, modifying the proposed notice(s) [notice], the commission will provide the notice(s) [send the notice] to the applicant for publication and/or mailing.

(1) For applications for [issuance of] a new CCN or CCN amendment, the applicant shall mail the notice to the following:

(A) cities, districts, and neighboring retail public utilities providing the same utility service whose corporate boundaries or CCN service area(s) are located within two miles from the outer boundary of the proposed service area(s); [cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within five miles of the requested service area boundaries, and any city with an extraterritorial jurisdiction that overlaps the proposed service area boundaries. Applicants are also required to provide notice to the county judge of each county and to each groundwater conservation district that is wholly or partly included in the area proposed to be certified.]

(B) the county judge of each county that is wholly or partially included in the proposed service area; and

(C) each groundwater conservation district that is wholly or partially included in the proposed service area(s);

{(2) For applications for an amendment of a CCN, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles of the requested service area boundaries, and any city with an extraterritorial jurisdiction that overlaps the proposed service area boundaries. If decertification or dual certification is being requested, the applicant shall provide notice by certified mail to the current CCN holder. Applicants are also required to provide notice to the county judge of each county and to each

groundwater conservation district that is wholly or partly included in the area proposed to be certified.]

(2) [(3)] Except as otherwise provided by this subsection, in addition to the notice required by subsection (a) of this section, the applicant shall mail notice to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the proposed service area(s) [area proposed to be certified]. Notice required under this subsection must be mailed by first class mail to the owner of the tract of land according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the CCN [certificate or amendment]. Good faith efforts to comply with the requirements of this subsection shall be considered adequate mailed notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:

(A) TWC[,] §13.248 or §13.255; or

(B) TWC[,] Chapter 65.

[(4) Applicants previously exempted for operations or extensions in progress as of September 1, 1975; must provide individual mailed notice to all current customers. The notice must contain the information required in the application.]

(3) [(5)] Utilities that are required to possess a CCN [certificate] but that are currently providing service without a CCN [certificate] must provide individual mailed notice to all current customers. The notice must contain the current rates, the effective date those rates were instituted, and any other information required by the application or notice form or by the commission [in the application].

(4) [(6)] Within 30 days of the date of the notice, the applicant shall file in the docket [submit to the commission] an affidavit specifying the persons(s) and entity(ies) [persons] to whom notice was provided and the date [of] that the notice was provided.

(c) - (d) (No change.)

[(e) In this section, utility service provider means a retail public utility other than a district subject to TWC, §49.452.]

(e) [(f)] An application for a new CCN or CCN amendment shall provide the following mapping documents [A utility service provider shall]:

(1) a small scale (general location) map showing only the location of the proposed service area(s) in the vicinity of the nearest town, city, or county; [record in the real property records of each county in which the service area, or a portion of the service area is located, a certified copy of the map of the CCN and of any amendment to the certificate as contained in the commission's records, and a boundary description of the service area by:]

[(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;]

[(B) the Texas State Plane Coordinate System;]

[(C) verifiable landmarks, including a road, creek, or railroad line; or]

[(D) if a recorded plat of the area exists, lot and block number; and]

(2) a large scale (detailed) map showing only the location of the proposed service area(s) with enough detail to accurately locate the proposed service area(s) in reference to verifiable landmarks, such as roads, rivers, or railroads; and [submit to the commission evidence of the recording.]

(3) a metes and bounds survey and/or a recorded plat of the proposed service area(s) certified by a licensed state land surveyor or a registered professional land surveyor; or digital mapping data using an industry standard file format acceptable to the commission containing feature class subcomponents of a geodatabase and capable of being manipulated by the commission staff. The digital mapping data shall be provided in a coordinate system and datum (project) in either Texas State Plane Coordinate System or a projection the commission utilizes.

(f) [(g)] The recording in the county records required by this section must be completed not later than the 31st day after the date a CCN holder receives a final order from the commission granting a new CCN or CCN amendment which results in a change to the CCN holder's service area [The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area].

[(h) The recording required by this section for holders of certificates of public convenience and necessity already in existence as of September 1, 2005 must be completed not later than January 1, 2007.]

§24.107. *Action on Applications.*

(a) (No change.)

(b) After proper notice is given, the commission may take action on an application which is uncontested at the end of the intervention period or for which all interventions are subsequently withdrawn [The commission may take action on an application at a regular meeting without holding a public hearing if 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing has been requested].

[(e) The commission may take action on an application which is uncontested at the end of the 30 day protest period following mailed or published notice or for which all protests are subsequently withdrawn.]

(c) [(d)] If a hearing is requested, the application will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

§24.109. *Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental. [Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction.]*

(a) Any water or sewer utility, or water and sewer utility, owned by an entity required by law to possess a certificate of convenience and necessity (CCN) shall, and a retail public utility that possesses a CCN may, file a written application with the commission and give public notice of any sale, transfer, merger, consolidation, acquisition, lease, or rental at least 120 days before the effective date of the transaction. The 120-day period begins on the most recent of:

(1) the last date the applicant mailed the required notice(s) as stated in the applicant's affidavit of notice; or

(2) the last date of the publication of the notice in the newspaper as stated in the affidavit of publication, if required.

[(a) On or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission and give public notice of the action. The notification shall be on the form required by the commission and the comment period will not be less

than 30 days. Public notice may be waived by the commission for good cause shown. The 120-day period begins on the last date of whichever of the following events occur]:

~~[(1) the date the applicant files an application under this section;]~~

~~[(2) if mailed notice is required, the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or]~~

~~[(3) if newspaper notice is required, the last date of the publication of the notice in the newspaper as stated in the affidavit of publication.]~~

~~(b) The notice shall be on the form required by the commission and the intervention period shall not be less than 30 days. Public notice may be waived by the commission for good cause shown [A person purchasing or acquiring the water or sewer system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person].~~

~~(c) Unless notice is waived by the commission for good cause shown, proper notice shall be given to affected customers and to other affected parties as determined by the commission and on the form prescribed by the commission which shall include the following:~~

~~(1) the name and business address of the current utility holding the CCN (transferor) and the retail public utility or person which will acquire the facilities or CCN (transferee);~~

~~(2) a description of the proposed service area being transferred; and~~

~~(3) a statement that persons who wish to protest or intervene upon the action sought should file comments with the commission within 30 days of mailing or publication of notice, whichever occurs later~~

~~(d) If notice is not waived by the commission for good cause shown, the transferee shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or CCN boundaries are within two miles from the outer boundary of the proposed service area, and any city with an extraterritorial jurisdiction which overlaps the proposed service area.~~

~~(e) The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located.~~

~~(f) The commission may allow published notice in lieu of individual notice as required in this subsection.~~

~~(g) A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system (transferee) must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area(s) and any area(s) currently located within the CCN of the transferee as required by §24.102(a) of this title (relating to Criteria for Granting or Amending Certificates of Convenience and Necessity).~~

~~(h) [(e)] If the transferee [person purchasing or acquiring the water or sewer system] cannot demonstrate adequate financial capability, the commission may require that the transferee [person] provide financial assurance to ensure continuous and adequate retail water and/or sewer utility service is provided to the requested area plus any area already being served under the transferee's existing CCN and any related affiliates. The commission shall set the amount of financial assur-~~

ance. The form of the financial assurance shall [must] be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this title [chapter] does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

~~(i) [(d)] The commission shall, with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisition, lease, or rental, [merger or consolidation] to determine whether the transaction will serve the public interest.~~

~~(j) [(e)] Prior to the expiration of the 120-day [notification] period, the commission shall either approve the sale administratively or require a public hearing to determine if the transaction will serve the public interest. The commission may require a hearing if:~~

~~(1) the application filed with the commission or the public notice was improper;~~

~~(2) the transferee [person purchasing or acquiring the water or sewer system] has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the transferee [that person];~~

~~(3) the transferee [person or an affiliated interest of the person purchasing or acquiring the water or sewer system] has a history of:~~

~~(A) noncompliance with the requirements of the TCEQ, the commission or the Texas Department of State Health Services; or~~

~~(B) continuing mismanagement or misuse of revenues as a utility service provider;~~

~~(4) the transferee [person purchasing or acquiring the water or sewer system] cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the proposed service area(s); or [customers of the water or sewer system;]~~

~~(5) there are concerns that the transaction does not serve the public interest. It [it] is in the public interest to investigate the following factors:~~

~~(A) whether the transferor or transferee have [seller has] failed to comply with any [a] commission or TCEQ order. The commission may refuse to approve a sale, transfer, merger, consolidation, acquisition, lease, or rental where conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met;~~

~~(B) the adequacy of service currently provided to the area;~~

~~(C) the need for additional service in the requested area;~~

~~(D) the effect of approving the transaction on the transferee [utility or water supply or sewer service corporation], the transferor [person purchasing or acquiring the water or sewer system], and on any retail public utility of the same kind already serving the proximate area;~~

~~(E) the ability of the transferee [person purchasing or acquiring the water or sewer system] to provide adequate service;~~

~~(F) the feasibility of obtaining service from an adjacent retail public utility;~~

~~(G) the financial stability of the transferee [person purchasing or acquiring the water or sewer system], including, if applicable, the adequacy of the debt-equity ratio of the transferee [person~~

purchase or acquiring the water or sewer system] if the transaction is approved;

(H) the environmental integrity; and

(I) the probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.

(k) ~~[(f)]~~ Unless the commission requires that a public hearing be held, the sale, transfer, merger, consolidation, acquisition, lease, or rental [or merger or consolidation] may be completed as proposed:

(1) at the end of the 120-day period; or

(2) ~~[or may be completed]~~ at any time after the transferee [utility or water supply or sewer service corporation] receives notice from the commission that a hearing will not be requested.

(l) If the commission decides to hold a hearing, or if the transferee fails to process the application as required, or to provide public notice, the transaction proposed in the application may not be completed unless the commission determines that the proposed transaction serves the public interest.

(m) Within 30 days of the commission order that allows the sale, transfer, merger, consolidation, acquisition, lease, or rental to proceed as proposed, the transferee shall provide a written update on the status of the transaction, and every 30 days thereafter, until such a time that the transaction is complete. The transferee shall inform the commission of any changes in financial, managerial, and technical capability for providing continuous and adequate service to the requested area plus any area already being lawfully served by the transferee during the time before the transaction has been approved.

(n) Within 30 days of the actual effective date of the transaction, the transferor and transferee shall file with the commission, under oath, in addition to other information, a list showing the following:

(1) the names and addresses of all customers who have a deposit on record with the transferor;

(2) the date such deposit was made;

(3) the amount of the deposit; and

(4) the unpaid interest thereon. All such deposits shall be refunded to the customer or transferred to the transferee, along with all accrued interest.

(o) ~~[(g)]~~ Within 30 days after the actual effective date of the transaction, the transferee and transferor shall [utility or water supply or sewer service corporation must] file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed in the corresponding docket. The signed contract, bill of sale, or other documents, must be signed by both the transferor and transferee. The transferor and transferee shall also file [been made final and] documentation as evidence that customer deposits have been transferred or refunded to the customers [customer] with interest as required by this section [these rules].

~~[(h) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, merger, consolidation, or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.]~~

(p) The commission's approval of a sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility expires 180 days following the date of the commission order allowing the transaction to proceed as proposed. If the sale has not been consummated within that period and unless the transferee

or transferor have requested and received an extension from the commission, the approval is void.

(q) If the commission does not require a hearing, and the transaction is closed as proposed, the commission may issue an order approving the transaction.

(r) ~~[(f)]~~ A sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility required by law to possess a CCN, or transfer of customers and/or service area, owned by an entity required by law to possess a CCN [certificate of public convenience and necessity] that is not completed in accordance with the provisions of [the] TWC §13.301 is void.

(s) ~~[(f)]~~ The requirements of [the] TWC §13.301 do not apply to:

(1) the purchase of replacement property;

(2) a transaction under [the] TWC §13.255; or

(3) foreclosure on the physical assets of a utility.

(t) [(k)] If a utility's [utility] facility or system is sold and the utility's facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its CCN [certificate of convenience and necessity] or controlling interest in an incorporated utility, unless the utility provides to the [purchaser or] transferee and to the commission before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(u) A retail public utility that holds a CCN, or that is required by law to hold a CCN, that proposes to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area or controlling interest shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities.

~~[(t) A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.]~~

§24.110. Foreclosure and Bankruptcy.

(a) If a utility that is required by law to possess a certificate of convenience and necessity (CCN) [A utility that] receives notice that all or a portion of the utility's or system's facilities or property used to provide utility service is [are] being posted for foreclosure, the utility shall notify the commission in writing of that fact and shall provide a copy of the foreclosure notice to the commission not later than the tenth day after the date on which the retail public utility or system receives the notice.

(b) A person other than a financial institution that forecloses on facilities used to provide utility services shall not charge or collect rates for providing retail public water or sewer services [utility service] unless the person has a completed application for a CCN [certificate of convenience and necessity] or to transfer the current CCN [certificate of convenience and necessity] on file with the commission within 30 days after the foreclosure is completed.

(c) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide util-

ity service is not required to provide the 120-day notice prescribed by TWC^[5] §13.301, but shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

(d) The financial institution may operate the utility for an interim period not to exceed 12 months before selling, transferring, merging, consolidating, acquiring, leasing, or renting its facilities or otherwise obtaining a CCN unless the commission in writing extends the time period for good cause shown [transferring or otherwise obtaining a certificate of convenience and necessity unless the commission in writing extends the time period]. A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.

(e) Not later than the 48th hour after a retail public [the hour in which a] utility files a bankruptcy petition, the retail public utility shall report this fact to the commission and the TCEQ in writing.

§24.111. Purchase of Voting Stock or Acquisition of a Controlling Interest in a [in Another] Utility.

(a) A utility may not purchase voting stock in and a person may not acquire a controlling interest in a utility doing business in this state unless the utility or person files a written application with the commission no [not] later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as a person or a combination of a person and other family members possessing at least 50% of the voting stock of the utility; or a person that controls at least 30% of the stock and is the largest stockholder.

(b) A person purchasing voting stock or acquiring a controlling interest in a utility shall [may] be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing voting stock or acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require [that] the person provide financial assurance to ensure continuous and adequate utility service is provided to the CCN service area. The commission shall set the amount of financial assurance. The form of the financial assurance shall [must] be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(d) - (e) (No change.)

~~(f) The utility or person must notify the commission within 30 days after the date that the transaction is completed.]~~

~~(f) [(g)] If a hearing is required or if the person or utility fails to make the application to the commission as required, the purchase of voting stock or acquisition of a controlling interest may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.~~

(g) The utility or person shall notify the commission within 30 days after the date that the transaction is completed.

(h) Within 30 days of the commission order that allows the purchase of voting stock or acquisition of a controlling interest to proceed as proposed, the person purchasing voting stock or acquiring a controlling interest shall provide a written update on the status of the transaction, and every 30 days thereafter, until such time that the transaction has been completed.

(i) The commission's approval of the purchase of voting stock or acquisition of a controlling interest in a utility expires 180 days following the date of the commission order that allows the purchase of stock or a controlling interest to proceed as proposed. If the transaction has not been consummated within the 180-day time period and unless the utility or person purchasing voting stock or acquiring a controlling interest has requested and received an extension from the commission, the approval is void.

§24.115. Cessation of Operations by a Retail Public Utility.

(a) Any retail public utility which possesses or is required to possess a certificate of convenience and necessity (CCN) desiring to discontinue, reduce or impair retail water or sewer utility service, except under the conditions listed in [the] TWC^[5] §13.250(b), must file a petition with the commission which sets out:

(1) - (3) (No change.)

(4) the area affected by the action, including maps as described by §24.106(e)(1) - (2)[(4)] of this title (relating to Notice and Mapping Requirements for Certificates of Convenience and Necessity Applications).

(b) The retail public utility shall file a proposed notice to customers and any other affected parties. The proposed notice shall include [The retail public utility shall submit a proposed notice to be provided to customers of the utility and other affected parties which will include the following]:

(1) the name, CCN number(s) (if any), mailing [and business] address, and business telephone number of the retail public utility which seeks to cease operations;

(2) (No change.)

(3) the anticipated effect of the cessation of operations on the rates and services provided to the customers; and

(4) [and] a statement that persons(s) [persons] who wish to intervene or comment upon the action sought should file a request to intervene or comments with the commission at the commission's mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 [within 30 days of mailing or publication of notice, whichever occurs later].

(c) After reviewing and, if necessary, modifying the proposed notice, [review by] the commission will provide the notice to[.] the applicant for mailing [shall mail the notice] to cities and neighboring retail public utilities providing the same utility service within two miles of the outer boundary of the petitioner's service area and any city whose extraterritorial jurisdiction overlaps the petitioner's [applicant's] service area, [and] to the customers of the petitioner [applicant] proposing to cease operations, and to any person(s) that have requested service from the petitioner but that have not yet received service.

(d) The petitioner [applicant] may be required by the commission to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the county(ies) [county] of operation which shall include, in addition to the information specified in subsection (b) of this section:

(1) (No change.)

(2) the name, CCN number(s) (if any), and mailing address of the owner(s) or authorized representative [owner] of the retail public utility; and

(3) the business telephone of the retail public utility.

(e) The commission may require the petitioner [applicant] to deliver notice to other affected persons or agencies.

(f) If, 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing is requested, the commission may consider the petition [application] for final decision without further hearing.

(g) If a hearing is requested, the petition [application] will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

(h) In no circumstance may a retail public utility which possesses or is required to possess a CCN [certificate of convenience and necessity], a person who possesses facilities used to provide retail water or sewer utility service, or a water utility or water supply corporation with less than 15 connections that is operating without a CCN [certificate of convenience and necessity] pursuant to §24.103 of this title (relating to Certificates Not Required) cease operations without commission authorization.

(i) In determining whether to grant authorization to the retail public utility for discontinuation, reduction, or impairment of retail water or sewer utility service, the commission shall consider, but is not limited to, the following factors:

(1) the effect on the customer(s) [customers] and landowner(s) [landowners];

(2) the costs associated with bringing the utility [system] into compliance;

(3) (No change.)

(4) the applicant's efforts to sell the utility [system], such as running advertisements, contacting similar adjacent retail public utilities, or discussing cooperative organization with the customers;

(5) the asking price for purchase of the utility [system] as it relates to the undepreciated original cost of the system for ratemaking purposes;

(6) - (8) (No change.)

(j) If a utility abandons [does abandon] operation of its facilities without commission authorization, the commission may appoint a temporary manager or place the utility into supervision to take over operations, management, and finances of the utility and its facilities to ensure continuous and adequate retail water and/or sewer utility service is provided.

§24.117. *Contracts Valid and Enforceable.*

(a) Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after notice and hearing, are valid and enforceable and are incorporated into the corresponding certificates of [public] convenience and necessity (CCNs). This section is applicable to the transfer of service area(s) and customer(s) only between existing CCN holders. Nothing in this provision negates the requirements of TWC[,;] §13.301 to obtain a new CCN and document the transfer of assets and facilities between retail public utilities.

(b) Retail public utilities may request approval of a contract by filing a written petition with the commission [contracts by filing a written request with the commission] including:

(1) maps of the area(s) [area] to be transferred pursuant to §24.119(a) of this title (relating to Filing of Maps);

(2) a copy of the executed contract or agreement;

(3) the number of customer(s) to be transferred, if any; [if applicable, an affidavit that notice has been provided under TWC, §13.301; and]

(4) information described in subsection (c)(3) of this section; and

(5) any other information required by the commission.

(c) For the purpose of this section, notice under §24.106 of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications) does not apply. Notice for a petition requesting approval of a contract between retail public utilities designating areas to be served and customers to be served shall be as follows:

(1) if there are affected customers to be transferred as part of the contract, then individual notice to the affected customers shall be provided by mail, e-mail, or hand delivery. The notice must contain the current rates, the effective date those rates were instituted, and any other information required by the commission;

(2) if the decision to enter into a contract between parties designating area to be transferred was discussed at a city council, board meeting of a water supply or sewer service corporation, district board meeting, county commissioner's court, or other regulatory authority meeting, a copy of the meeting agenda and minutes where the item was discussed may be considered sufficient notice;

(3) if notices pursuant to paragraphs (1) and/or (2) of this subsection were provided, an affidavit attesting to the date that notice was provided and copies of the items in paragraphs (1) and (2) of this subsection.

§24.118. *Contents of Request for Cease and Desist Order by the Commission Under TWC [Commission Order Under the Texas Water Code,] §13.252.*

(a) If a retail public utility in constructing or extending a line, plant or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of [public] convenience and necessity (CCN), the commission may issue an order prohibiting the construction, extension, or provision of service, or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for commission order shall include the following:

(1) the name, CCN number(s) (if applicable), e-mail address, phone number, and mailing [business] address of the retail public utility making the request;

(2) the name, CCN number(s) (if applicable), mailing address, phone number (if known) and e-mail address (if known) [and business address] of the retail public utility which is to be the subject of the order;

(3) a description of the alleged interference;

(4) a map showing the service area of the requesting utility which clearly shows the location of the alleged interference;

(5) copies of any other information or documentation which would support the position of the requesting utility; and

(6) other information as required by the commission [may require].

(b) A request for commission order under this section shall be filed with the commission in the form of a petition and shall contain the

necessary information under subsection (a) of this section. The petition must be filed within 180 days from the date the petitioner becomes aware that another retail public utility is interfering or attempting to interfere with the operation of a line, plant or system or making available, rendering or extending retail water or sewer utility service to any portion of another retail public utility that possesses or is required to possess a CCN, unless the petitioner can demonstrate good cause for its failure to file such action within the 180 days.

§24.119. Filing of Maps.

(a) Applications to obtain or amend a certificate of convenience and necessity (CCN) shall contain:

(1) a small scale (general location) map showing only the location of the proposed service area(s) in the vicinity of the nearest town, city, or county;

(2) a large scale (detailed) map showing only the proposed service area(s) with enough detail to accurately locate the proposed service area(s) in reference to verifiable landmarks, such as roads, rivers, or railroads;

(3) a metes and bounds survey and/or a recorded plat of the proposed service area(s) certified by a licensed state land surveyor or a registered professional land surveyor; or digital mapping data using an industry standard file format, acceptable to the commission containing feature class subcomponents of a geodatabase and capable of being manipulated by the commission staff. The digital mapping data shall be provided in a coordinate system and datum (project) in either Texas State Plane Coordinate System or a projection the commission utilizes; and

(4) if applicable, a map(s) showing any facilities for production, transmission, and distribution of its services, customers, or area currently being served outside its certificated areas. Facilities shall be shown on subdivision plats, engineering planning maps, or other large scale maps. Color coding [With applications to obtain or amend a certificate of convenience and necessity, each public utility and water supply or sewer service corporation shall file with the commission a map or maps of the area or areas being requested in the application showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas. Facilities shall be shown on United States Geological Survey 7.5"-minute series maps; subdivision plats, engineering planning maps, or other large scale maps. A color code] may be used to distinguish the types of facilities indicated. The location of any such facility shall be described with such exactness that the facility can be located "on the ground" from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location.

(b) All maps should be filed pursuant to §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (Formal Requisites of Pleadings and Documents to be Filed with the Commission).

§24.120. Single Certification in Incorporated or Annexed Areas.

(a) If [In the event that] an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides retail water or sewer utility service to all or part of the area under a certificate of convenience and necessity (CCN) may agree in writing that all or part of the CCN area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase "franchised utility" [franchised utility] means a retail public utility that

has been granted a franchise by a municipality to provide retail water or sewer utility service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed on a completed form prescribed by the commission for an application pursuant to TWC §13.255, along with mapping information filed in accordance with §24.106(e) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications). After these items have been properly filed, the commission [with the commission, and the commission, on receipt of the agreement,] shall incorporate the terms of the agreement into the respective CCNs [certificates of convenience and necessity] of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail water or sewer utility service to the area, the municipality, prior to providing service to the area, shall file a completed [an] application with the commission along with the corresponding mapping information in accordance with §24.106(e) to grant single certification to the municipally owned retail water or sewer utility or to a franchised utility. The municipality shall also provide to the retail public utility a copy of the application and corresponding mapping information filed with the commission. If an application for single certification is filed without an executed agreement between the parties to the agreement, the commission shall fix a time and place for a hearing and shall give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility. Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

(1) file a written list with the name(s) and address(es) of the lienholder(s) and the amount of outstanding debt with the commission [submit to the commission a written list with the names and addresses of the lienholders and the amount of debt]; and

(2) notify the lienholder(s) [lienholder] of the decertification process and request that the lienholder(s) [lienholder] provide information to the commission sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

(c) The commission shall grant single certification to the municipality. The commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the commission shall also determine in its order the adequate and just compensation to be paid for such property under the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered under TWC[.] §13.255(d) or (e). The granting [grant] of single certification by the commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation in accordance with the court order, or pays an amount into the registry of the court or to the retail public utility under TWC[.] §13.255(f). If the court judgment

provides that the retail public utility is not entitled to any compensation, the granting [~~grant~~] of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the name and contact information [~~identity~~] of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) - (h) (No change.)

(i) A municipality or a franchised utility may dismiss an application for single certification without prejudice at any time before a judgment becomes final provided the municipality or the franchised public utility has not taken physical possession of property of the retail public utility or made payment for such right under TWC[~~;~~] §13.255(f).

(j) (No change.)

(k) This section shall apply only in a case where:

(1) the retail public utility that is authorized to serve in the CCN [~~certificated~~] area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under TWC[~~;~~] Chapter 65, or a fresh water supply district under TWC[~~;~~] Chapter 53; or

(2) (No change.)

(l) - (m) (No change.)

(n) The commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the TCEQ's minimum design requirements for public drinking water and/or has failed to demonstrate compliance with TCEQ's wastewater permit rules [~~The commission shall deny an application for single certification by a municipality that fails to obtain a finding from TCEQ that it will demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems, pursuant to 30 TAC Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems)].~~

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

Filed with the Office of the Secretary of State on July 25, 2016.

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: September 4, 2016

For further information, please call: (512) 936-7223



16 TAC §24.112

The repeal is proposed under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b)

§24.112. *Transfer of Certificate of Convenience and Necessity.*

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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Rules Coordinator

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SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §24.142, §24.143

The amendments are proposed under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b)

§24.142. *Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver.*

(a) The commission, after providing to a [the] utility notice and an opportunity for a hearing, may authorize a willing person, municipality, or political subdivision to temporarily manage and/or [~~and~~] operate a utility that:

(1) (No change.)

(2) is being referred to the attorney general for the appointment of a receiver under TWC[~~;~~] §13.412 for:

(A) - (C) (No change.)

(b) The commission may appoint a person, municipality, or political subdivision under this section by emergency order under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities). A corporation may be appointed as a temporary manager.

(c) - (d) (No change.)

§24.143. *Operation of a Utility by a Temporary Manager.*

(a) By emergency order under TWC[~~;~~ §5.507 ~~and~~] §13.4132, the commission may appoint a person, municipality, or political subdivision under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities) to temporarily manage and/or [~~and~~] operate a utility that has discontinued or abandoned operations or the provision of service, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC[~~;~~] §13.412.

(b) A person, municipality, or political subdivision appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate service [~~services~~] to customers, including the power and duty to:

(1) - (9) (No change.)

(c) (No change.)

(d) The temporary manager shall serve a term of 180 days [~~one year~~], unless:

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

(e) - (i) (No change.)

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

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Public Utility Commission of Texas

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 357. REGIONAL WATER PLANNING

The Texas Water Development Board ("TWDB" or "board") proposes amendments to §§357.10 - 357.12, 357.20 - 357.22, 357.30 - 357.35, 357.40, 357.42 - 357.45, 357.50, 357.51, 357.60, 357.62, and 357.64, relating to the regional water planning process. New §357.46 is proposed.

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

The purpose of the amendments and new section is to implement legislative changes from Senate Bill (SB) 1101, 84th Legislative Session, House Bill (HB) 4, 83rd Legislative Session, and HB 3357 and HB 30, 84th Legislative Session; improve the planning process and increase flexibility in planning; reduce certain unessential reporting requirements; address stakeholder concerns raised during the previous planning cycle; standardize language; and clarify rules and refine definitions to make them more understandable and user-friendly. The specific provisions being amended or added and the reasons for the amendments and new section are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS AND NEW SECTION.

Subchapter A. General Definitions.

Section 357.10. Definitions and Acronyms.

The proposed amendments to 31 Texas Administrative Code (TAC) §357.10 (relating to Definitions and Acronyms) proposes multiple changes to existing definitions and definitions for multiple new terms, as well as capitalization of defined terms as reflected throughout the proposed chapter revision. The amended and new definitions are intended to clarify the meanings of terms commonly used in the regional and state water planning process. The section has been renumbered to reflect the addition of new definitions.

The definition of "Agricultural Water Conservation" is added to clarify this commonly-used water management strategy (WMS) in the state and regional water plans. Title 31 TAC §363.1302 de-

finer agricultural water conservation, and the proposed amendment references that definition.

The definition of "Availability" is revised to clarify its meaning and distinguish "Availability" from "Existing Water Supply". The distinction being that availability is the total amount of raw water that could be produced from a source during drought of record conditions, while existing water supply is the amount of that water that is physically and legally available for use by a water user group (WUG).

The discussion of "consistency between a regional water plan (RWP) and a desired future condition" is relocated to 31 TAC §357.32(d)(1) and adds references to a modeled available groundwater (MAG) peak factor. The current definition requires an existing water supply or a recommended WMS to not exceed modeled available groundwater to be consistent. The proposed amendment modifies the measure of consistency to include a MAG peak factor greater than the modeled available groundwater value or to allow for other availability estimates where there is no modeled available groundwater value or where 31 TAC §357.32(d)(2) applies.

The definition of "County-Other" is revised to accommodate the revised definition of "Water User Group" under the approach of utility-based planning as delineated by water provider service areas.

The definition of "Drought Management Water Management Strategy" is added to clarify the term as used in practice since regional water planning groups (RWPGs) evaluate and recommend drought management measures as quantified strategies in RWPs.

The definition of "Drought of Record" is revised to add the words "historical records indicate that" and "would have" to clarify that a drought of record is based on historical records and modeling that indicate a period of least amount of water supply.

The definition of "Existing Water Supply" is revised to clarify its meaning and more clearly distinguish it from "Availability". The distinction being that availability is the total amount of raw water that could be produced from a source during drought of record conditions, while existing water supply is the amount of that water that is physically and legally available for use by a WUG.

The definition of "Firm Yield" is revised to specify that a firm yield calculation must assume that applicable permit conditions are met. Adding this requirement is consistent with the firm yield definition in Texas Commission on Environmental Quality rules, 30 TAC §297.1(20). The definition is also amended to replace the word "reasonable" with "anticipated" before "sedimentation rates" because "anticipated" more accurately describes the use of sedimentation rates in the planning process due to its predictive nature.

The definition of "Major Water Provider", or "MWP", is added to define this category of water supplier. An MWP is a significant public or private WUG or wholesale water provider (WWP), whose significance is determined by the RWPG, and provides water for any water use category in a regional water planning area (RWPA). Major water provider is defined because it is a category of water provider that is proposed to be used for reporting purposes in regional and state water planning instead of previous WWP-based reporting requirements. Wholesale water providers were previously defined based upon a static volumetric threshold of water supplied that resulted in fluctuations in categories during each planning cycle due to changes in reported

annual water use. The revision gives RWPGs more flexibility in deciding on which large water provider they want to report information in their RWPs and facilitates the use of a single, stable list of entities.

The definition "Modeled Available Groundwater (MAG) Peak Factor" is added, along with an amendment to §357.32(d), to provide flexibility in planning for groundwater availability while ensuring consistency with long-term desired future conditions and integrity of the planning process. The definition specifies that a MAG peak factor would be expressed as a percentage of modeled available groundwater (e.g., greater than 100 percent) and would represent the quantified annual groundwater availability temporarily available, for planning purposes. The MAG peak factor may accommodate anticipated fluctuations in pumping between wet and dry periods or may account for other shifts in the timing of pumping while remaining consistent with desired future conditions. This is a quantified groundwater availability for pumping, not permitting, to be utilized for planning purposes only and is not intended as a limit to permits.

The definition of "Planning Decades" is added to clarify the significance of demands, supplies, needs, and strategy volumes as reported in regional and state water plans (2020, 2030, 2040, etc.). The new definition clarifies that data associated with a particular year represent conditions occurring in that single year. A WMS associated with a particular decade year "snapshot" (e.g. 2030) in a regional or state water plan would come online before or in that year.

The definition of "RWPG-Estimated Groundwater Availability" is added along with an amendment to §357.32(d) to implement changes required by Senate Bill (SB) 1101, 84th Legislative Session (relating to the Authority to Determine the Supply of Groundwater in and Potential Impacts on Public Health of Certain Regional Water Plans) and to reflect the planning practice of groundwater availability estimation for areas where no desired future condition has been adopted. Senate Bill 1101 amended Texas Water Code (TWC), §16.053(e)(2-a) to require an RWPG with no groundwater conservation districts (GCDs) within its regional water planning area (RWPA) to determine the supply of groundwater for regional planning purposes.

The definition of "Reuse" is added to clarify this commonly-used WMS in the state and regional water plans. Board rule, 31 TAC §363.1302(14), defines reuse, and the proposed amendment references that definition to make it consistent with the Board's State Water Implementation Fund for Texas (SWIFT) rules.

The definition of "State Water Planning Database" is added to explain that the database, maintained by TWDB, is used to collect, store, and disseminate regional and state water planning data such as population, water demand projections, existing water supplies, WMSs, and capital projects.

The definition of "Unmet Water Need" is added to clarify the portion of a water need that is not met by recommended WMSs in a regional or state water plan. The new definition of "Unmet Water Need", along with the new definition for "Water Need", are intended to clarify the use of these terms in the water planning process.

The definition of "Water Conservation Measures" is revised to add language from the definition of "Water Conservation" in 31 TAC §363.1302(18) to make it more consistent with the Board's State Water Implementation Fund for Texas rules. The amendment also adds new language to clarify that, for planning purposes, water conservation measures do not include projects

that develop new supplies, such as new reservoirs or aquifer storage and recovery projects. This clarification is proposed to reduce confusion regarding the delineation between strategies or projects which conserve existing supplies and strategies or projects that develop new supplies, for example, by storing water for later use.

The definition of "Water Conservation Plan" is revised to remove the words "more than" from the first sentence because those words are redundant and inconsistent with the language in TWC, §11.1271. The revised definition also adds a period at the end of the first sentence.

The definition of "Water Conservation Strategy" is added to discuss a WMS that saves quantified volumes of water using water conservation measures.

The definition of "Water Demand" is added to discuss the volume of water that a WUG would require during drought of record conditions for its anticipated domestic, public, and/or economic activities.

The definition of "Water Management Strategy", or "WMS", is revised to remove the words "or specific project" to distinguish between a "Water Management Strategy" and a "Water Management Strategy Project", which is defined in proposed §357.10(39). The revision is intended to clarify that a strategy is a plan to meet a water need of a WUG, which may or may not require capital projects to be implemented.

The definition of "Water Management Strategy Project", or "WMSP", is added to distinguish between a "Water Management Strategy Project" and a "Water Management Strategy". As discussed above, a water management strategy is a plan to meet a water need; however, a water management strategy project is an infrastructure project that may be required to implement a water management strategy. The proposed definition specifies that water management strategy projects have non-zero capital costs and would develop, deliver, or treat additional water supply volumes, or conserve water for water user groups or wholesale water suppliers. The proposed definition also clarifies that one water management strategy project may be associated with multiple WMSs. For example, the construction of a single reservoir project may support multiple water user group strategies that use that new supply.

The definition of "Water Need" is added to explain the difference between projected water demands and existing water supplies. When existing water supply is less than the projected demand, there is the potential for a water shortage, or water need. The new definition for water need is intended to clarify the use of the term in the water planning process.

The definition of "Water User Group", or "WUG", is revised to be more consistent across all municipal water users and to reflect a utility-based planning approach. The current definition qualifies municipal water user groups on both a population threshold (500) for cities and a different, volumetric threshold (280 acre-feet) for non-city water utilities, creating a significant disparity between the size thresholds of the included entities. The revision would create a single, standard, volume-based criterion of 100 acre-feet per year for all municipal retail water utilities owned by a public or non-profit organization (not including private investor-owned utilities). The proposed 100-acre-foot threshold is designed to put rural and urban municipal use on an even footing regarding who is planned for and to increase the rural population that is planned for in discreet water user groups, as opposed to being classified as county-other. The 100-acre-foot threshold

will result in what is considered a manageable increase in the number of WUGs for which population and water demands must be projected for by the agency and planned for by RWPGs using existing resources.

The proposed rule also adds the 100 acre-feet per year criteria for privately-owned utilities that request inclusion as a water user group. Under this proposed revision, the 100 acre-feet per year requirement is for each owned water system and must be for municipal use. Additionally, the associated RWPG must concur with the request for inclusion. This change is proposed as §357.10(41)(B).

The proposed rule also adds the 100 acre-feet per year criteria for institutions or facilities that request inclusion as a municipal water user group, with the associated RWPG required to concur with the request for inclusion. This change is proposed as §357.10(41)(C).

The proposed rule also amends the definition of WUG to require that the inclusion of a collective reporting unit as water user group must be requested by the RWPG. This change is proposed as §357.10(41)(D).

The definition of "Wholesale Water Provider", or "WWP", is revised to eliminate the annual 1,000 acre-foot delivery or sales threshold and stipulate that the RWPG will determine the wholesale water providers in its region. The definition also inserts language to specify that a wholesale water provider may deliver or sell treated or raw wholesale water to water user groups or other wholesale water providers. The intent of this proposed revision is to provide flexibility to RWPGs and to clarify how wholesale water providers are designated.

Subchapter B. Guidance Principles and Notice Requirements.

Section 357.21. Notice and Public Participation.

Section 357.21 is revised to implement changes consistent with HB 3357, 84th Legislative Session. HB 3357 (relating to Permitted Methods for Certain Political Subdivisions to Post Notice of a Meeting) amended Texas Government Code, §551.053(a) and (c), allowing a political subdivision or district to post notice of its meetings on its website as an alternative to providing notice to the county clerk of the county in which its administrative offices are located, which was the previous statutory requirement. While an RWPG is not a political subdivision or district, the administrators for the planning groups are, and a number of them had asked for flexibility in notice requirements.

Section 357.21(b)(4) is revised to add the words "in writing" to clarify that notice to RWPG members, and to people and entities who have requested notice, must be made in writing, which includes by email notification. As a result of this change, the words "either in writing or email as requested by the person or entity" are removed from §357.21(b)(4)(B) because they are no longer necessary. Section 357.21(b)(4) is also amended to remove subparagraph (C), which requires the RWPG to provide notice to each county clerk in the regional water planning area (RWPA). The removal of subparagraph (C) is proposed to make the rule consistent with HB 3357, which gives a political subdivision or district the option to give notice to the county clerk in the county where its administrative offices are located, or post the notice on its website.

Section 357.21(b)(5)(A) is revised to add language allowing an RWPG to post its meeting notice and agenda on its website or the website of the host political subdivision - or to provide the notice and agenda in writing to the county clerk of the county in

which the administrative offices of the political subdivision are located and to remove the option for an RWPG to post its meeting notice and agenda on the board's website instead of its own.

Section 357.21(c)(4) is revised to add the words "in writing" to clarify that notice to RWPG members, and to people and entities who have requested notice, must be made in writing. As a result of this change, the words "either in writing or email as requested by the person or entity" are removed from §357.21(c)(4)(B) because they are no longer necessary. Section 357.21(c)(4) is also amended to remove subparagraph (C), which requires the RWPG to provide notice to each county clerk in the RWPA. The removal of subparagraph (C) is proposed to make the rule consistent with HB 3357, which gives a political subdivision or district the option to give notice to the county clerk in the county where its administrative offices are located, or post the notice on its website.

Section 357.21(c)(5)(A) is revised to add language allowing an RWPG to post its meeting notice and agenda on its website or the website of the host political subdivision - or to provide the notice and agenda in writing to the county clerk of the county in which the administrative offices of the political subdivision are located and to remove the option for an RWPG to post its meeting notice and agenda on the board's website instead of its own.

Section 357.21(d)(1) is revised to remove the words "requesting research and planning funds from the board" so the notice requirements in §357.21(d) would no longer apply to that action. Section 357.21(d)(2)(B) and (4) are also proposed to be removed for the same reason. The words "as follows:" are proposed to be removed and §357.21(d)(2)(A) is consolidated into §357.21(d)(2), since the proposed deletion of §357.21(d)(2)(B) would eliminate the need for a list. Section 357.21(d) is proposed to be renumbered to accommodate the deletions. Before rule amendments were made in August 2012, requesting research and planning funds did not require that notice be posted on the Secretary of State's website or in the *Texas Register*. The 2012 rule amendments inadvertently added those posting requirements, and this proposed amendment would remove them. To specify the notice requirements for requesting research and planning funds from the board, the board proposes to add new §357.21(e), which will be discussed below.

Section 357.21(d)(5) is revised by renumbering it to §357.21(d)(4) and by substituting the words "electronic media" for the words "an electronic disc, or drive" in the list of acceptable formats. The term electronic media is proposed to be inserted because it is a catch-all term for future formats that may be used by an RWPG to transmit copies of an initially prepared plan (IPP). Electronic media includes electronic discs or drives, so this proposed change does not limit the use of those formats, but instead, expands the present or future formats that may be used. The format used is still limited by the capability of the facility being provided the IPP. Section 357.21(d)(4) is also revised to add the words "through an electronic web link" to the list of acceptable formats that an RWPG may use to provide copies of its IPP. As with the other proposed revisions to the list of acceptable formats, the intent is to expand the present and future formats that may be used. Section 357.21(d)(4) is also revised to specify that the public inspection requirement only applies to IPPs. This change is proposed to clearly reflect the statutory requirement in TWC, §16.053(i).

Section 357.21(d)(7) is renumbered to §357.21(d)(6) and revised to add language to proposed §357.21(d)(6)(A) allowing

an RWPG to post its meeting notice and agenda on its website or the website of the host political subdivision - or to provide the notice and agenda in writing to the county clerk of the county in which the administrative offices of the political subdivision is located and remove the option for an RWPG to post its meeting notice and agenda on the board's website instead of its own.

Section 357.21 is revised to add new §357.21(e) designating notice requirements for RWPGs that are requesting research and planning funds from the board. Rule changes in August 2012 inadvertently required that notice of RWPG requests for research and planning funds from the board be posted on the Secretary of State's website and in the *Texas Register*. The intent of the proposed change is to restore the previous notice requirements.

Section 357.22. General Considerations for Development of Regional Water Plans.

Section 357.22(a) is revised to implement a change to TWC, §16.053(e)(5)(A), made by SB 1101, 84th Legislative Session (relating to the Authority to Determine the Supply of Groundwater in and Potential Impacts on Public Health of Certain Regional Water Plans). The SB 1101 change to §16.053(e)(5)(A) requires that each RWPG must submit an RWP that includes consideration of potential impacts on public health, safety, or welfare in the state. Section 357.22(a) is revised to reflect the change to §16.053(e)(5)(A) by inserting "potential impacts on public health, safety, or welfare" into the list of factors considered by the RWPG in developing its plan as §357.22(a)(13) and the list is renumbered to reflect the addition. Other proposed rule changes resulting from SB 1101 are discussed below in §357.32.

Subchapter C. Planning Activities for Needs Analysis and Strategy Recommendations.

Section 357.30. Description of the Regional Water Planning Area.

Section 357.30(4) is revised to change the requirement from identifying "wholesale water providers" to identifying "major water providers". The revision gives RWPGs more flexibility in deciding on which large water providers they want to report information in their regional water plans.

Section 357.31. Projected Population and Water Demands.

Section 357.31(b) is revised to require RWPGs to report projected water demands for MWP instead of WWP. The proposed rule would also remove the requirements that RWPGs report projected water demands of WWP for each county or portion of a county in the RWPA and for each river basin within each county or portion of a county. This change is proposed to clarify and ensure consistency of reporting requirements in the RWPs and to remove nonessential reporting.

The revision would also change the RWPG's requirement from "report" to "evaluate" regarding contractual obligations of WUGs and WWP beyond the projected demands for those entities. This change is proposed to retain required analysis during plan development yet remove nonessential reporting requirements associated with proposed changes to §357.31(b).

Section 357.31(d) is revised to change the requirement from "determine and report" to only "report" how changes in plumbing fixtures would affect municipal water demands. In practice, the effects of plumbing code savings are currently determined by the TWDB, and RWPGs only report them in the RWP. The proposed change is intended to more accurately reflect actual practice and expectations.

The proposed rule would also change §357.31(f) reporting requirements for projections to present data for MWPs rather than WWPs. This change is proposed to clarify and ensure consistency of reporting requirements in the RWPs and to remove nonessential reporting.

Section 357.32. Water Supply Analysis.

Section 357.32(c) is revised to reorganize, improve, and clarify the requirements and specify how evaluations of run of river surface water (water available for diversion when stream flow levels are sufficient) should be conducted in line with planning practice. Language regarding evaluation of existing stored surface water is moved from the beginning of §357.32(c) to new §357.32(c)(1) and the word "stored" is added to clarify that the requirement applies to stored water. Section 357.32(c)(2) is added to specify that evaluation of existing run of river surface water availability for municipal WUGs must be based on the minimum monthly diversion amounts that are available 100% of the time, if that run of river supply is the only supply for the municipal WUG. The revision is intended to clarify and improve the requirements for evaluation of existing surface water supplies by RWPGs by specifying more realistic and sensible modeling criteria that must be followed in evaluating water supply during drought of record conditions.

Section 357.32(c) is revised to clarify water availability evaluation requirements for existing surface water. In the first sentence of proposed amended §357.32(c), the plural "analyses" is inserted to replace the singular "analysis" because RWPGs perform multiple water supply analyses in the development of the RWP. In the second sentence of revised §357.32(c), the words "As the default approach for evaluating existing supplies" are added at the beginning of the sentence to clarify that the listed assumptions are to be used unless a variance is approved by the EA.

Section 357.32(c) is revised to include the words "use anticipated sedimentation" as the default assumption that RWPGs should use in the evaluation of existing water supplies. Sedimentation is not considered in the unmodified TCEQ WAM Run 3, because it is not considered in permitting of water rights; however, the physical effects of sedimentation on the firm yield of surface water reservoirs is relevant for planning purposes and is consistent with the proposed definition in §357.10(15).

Section 357.32(c) is revised to include the words "better, more representative" to replace the word "other". The intent of this proposed change is to emphasize to RWPGs that they should use the best available site-specific information and the most appropriate modeling assumptions for planning. The RWPGs are encouraged to consider using assumptions that are appropriate for evaluating existing supplies in their planning areas. The words "and approved in writing by the EA" are included at the end of the last sentence of §357.32(c) to clarify and reinforce that using information different than that available from TCEQ requires written approval from the EA.

The availability requirements for existing supplies of stored and run of river water are split out from §357.32(c) as §357.32(c)(1) and (2) respectively. Proposed §357.32(c)(2) clarifies that availability of existing run of river supplies for municipal WUGs with run of river supplies as their sole source of water will be based on minimum amounts available for diversion in 100% of months in the TCEQ Water Availability Model period of record.

Section 357.32(d) is revised to replace "Board" with "EA" in reference to issuance of modeled available groundwater volumes.

The existing rule incorrectly states that modeled available groundwater volumes are issued by the board; the proposed change is intended to correct the statement.

A new §357.32(d)(1) is added to implement SB 1101. The new language states that the RWPG shall determine groundwater availability for planning purposes where applicable; the board shall review and approve that the availability is physically compatible with desired future conditions in relevant aquifers; and the EA shall use the board's groundwater availability models to conduct the physical compatibility review. The intent of the proposed rule is to implement SB 1101.

SB 1101, 84th Legislative Session (relating to the Authority to Determine the Supply of Groundwater in and Potential Impacts on Public Health in Certain Regional Water Plans), amended TWC, §16.053(e)(2-a) to require an RWPG with no GCDs within its RWPA to determine the supply of groundwater for regional planning purposes. The bill stipulates that the board shall review and approve that the groundwater supply determined by the RWPG is physically compatible with desired future conditions for the relevant aquifers in the groundwater management area (GMA) that are regulated by GCDs. The bill requires that the review of physical compatibility be done using the board's groundwater availability models. At this time, the bill only applies to the North East Texas RWPG (Region D) because it is the only RWPG in the state with no GCDs in its RWPA as of the date of this proposed revision.

Section 357.32(d)(3) is added to allow RWPGs to request use of a MAG peak factor to accommodate temporary increases in annual availability. TWC, §36.1132 requires management of groundwater production on a long-term basis which, in practice, may include variations in availability from year to year in response to relative wet and dry periods. Additionally, most of the modeled available groundwater values were developed for long-term average, not drought of record, conditions.

The new §357.32(d)(3) would allow RWPGs to request the application of a MAG peak factor, in the form of a percentage of a modeled available groundwater value (e.g., greater than 100 percent) to better reflect, for regional water planning purposes, the quantified, temporary, projected groundwater pumping. The MAG peak factor may accommodate anticipated fluctuations in pumping between wet and dry periods or may account for other shifts in the timing of pumping while remaining consistent with desired future conditions. The purpose of proposed new §357.32(d)(3) is to provide relief from the stricter limit on groundwater availability in current §357.32(d). The intent is to allow regional water plans to reflect more realistic groundwater pumping, where appropriate and approved by relevant regulatory or permitting districts, while maintaining consistency with the desired future conditions and maintaining the integrity of the planning process.

A MAG peak factor, requested under proposed §357.32(d)(3), would be submitted to the board in the form of a percentage of a modeled available groundwater value (e.g., greater than 100 percent). If approved, the MAG peak factor would be applied to the associated modeled available groundwater volume in the state water planning database to calculate the modified availability volume that would be used by RWPGs for planning.

Section 357.32(d)(3) states that the EA shall consider a request from an RWPG to apply a MAG peak factor. The proposed rule explains that the MAG peak factor must be expressed as a percentage (e.g., greater than 100 percent) of the modeled ground-

water availability value to accommodate temporary increases in availability.

The new §357.32(d)(3)(A) stipulates that the request must include written concurrence from the GCD, or representatives of the groundwater management area, if no GCD exists. The new §357.32(d)(3)(B) requires that the request must also provide its technical basis, and the new §357.32(d)(3)(C) requires that the request must document how the temporary increase would not prevent the GCD from managing groundwater resources to achieve desired future conditions.

Section 357.32(g) is amended to change the reporting requirement for evaluation results under §357.31(a) and (b) from reporting by WUG and WWP to reporting by WUG and MWP.

Section 357.33. Needs Analysis: Comparison of Water Supplies and Demands.

Section 357.33 is revised to clarify reporting requirements and ensure that RWPGs report and present surpluses, needs, and secondary needs for the most significant water suppliers as identified by the RWPGs.

Section 357.33(b) is revised to replace the requirement to report surpluses or needs for WWPs with MWPs. The requirement to report surpluses and needs for WUGs would remain unchanged.

Section 357.33(d) is revised to change reporting of results for WUGs and WWPs to reporting for WUGs and MWPs.

Section 357.33(e) is revised to change the requirement to present secondary water needs volumes from presenting for WUGs and WWPs to presenting for WUGs and MWPs.

Section 357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

Consistent with the proposed definition of "water management strategy project", §357.34 is revised to add "and Water Management Strategy Projects" to its title and add the words "and the WMSPs required to implement those strategies" to §357.34(a) to specifically require RWPGs to identify and evaluate WMSPs in RWPs. Similarly, the revision inserts the words "and associated WMSPs" in renumbered §357.34(e) and inserts the words "and WMSPs" in renumbered §357.34(f).

Section 357.34(c)(2) is revised to specify seawater and brackish groundwater as desalination WMSs that RWPGs must consider when identifying potentially feasible strategies during the development of RWPs. The proposed revision is to implement changes consistent with House Bill (HB) 30, 84th Legislative Session. HB 30 (relating to the Development of Seawater and Brackish Groundwater) which specifically requires that seawater desalination and brackish groundwater desalination be considered by RWPGs.

Section 357.34(d) is added to clarify that all recommended WMSs and WMSPs that are entered into the state water planning database and prioritized by RWPGs must reduce water consumption, reduce water loss or waste; improve water use efficiency; or develop, deliver, or treat additional water supply volumes to WUGs or WWPs in at least one planning decade such that during drought of record conditions water is available. The language also stipulates that WMSs that do not meet those requirements must be identified and presented separately in the RWP and are not eligible for SWIFT funding. Examples of WMSs and WMSPs that do not meet the requirements of §357.34(d) could include, but are not limited to, new retail dis-

tribution facilities that do not convey additional water supplies; new wells required to replace aging wells; and maintenance of, or upgrades to, existing equipment or facilities that do not increase volumetric water supply.

The intent of proposed §357.34(d) is to clarify a SWIFT eligibility requirement for WMSs and WMSPs and to accommodate the inclusion of WMSs or WMSPs to facilitate permitting or other activities associated with other agencies that may not conserve or develop supplies under drought of record conditions.

Section 357.34 is renumbered to accommodate the addition of §357.34(d).

Section 357.35. Recommended and Alternative Water Management Strategies and Water Management Strategy Projects.

Section 357.35 is revised to add the words "and Water Management Strategy Projects" to the end of the title. The purpose of the proposed amendment is to require RWPGs to recommend WMSPs separately from WMSs.

Section 357.35 was also revised to add the text "and water management strategy projects required to implement them" and "and Water Management Strategy Projects" to §357.35(a).

Section 357.35(g)(1) is revised to remove the requirement to report WWP data split by river basins, counties, or RWPA. This change is proposed to remove unessential reporting requirements in the RWPs.

Section 357.35(g)(2) is revised to change the term "safety factor" to "management supply factor" and clarify that the board calculates these values and provides them to the RWPGs to include in their RWPs for reporting purposes only.

Subchapter D. Impacts, Drought Response, Policy Recommendations, and Implementation.

Section 357.40. Impacts of Regional Water Plan.

Section 357.40(b) is revised to renumber references to correctly reflect revisions from §357.34.

Section 357.44. Infrastructure Financing Analysis.

Section 357.44 is revised to add the words "and associated WMSPs" to specify that reporting of infrastructure financing must also include WMSPs.

Section 357.46. Prioritization of Projects by Regional Water Planning Groups.

New §357.46 is added to require each RWPG to prioritize the recommended WMSPs in its RWP and submit the prioritization separately with its adopted RWP. The proposed new section specifies that the prioritization of projects must be performed in accordance with the uniform standards developed by the stakeholder committee established under TWC, §15.436(c), in place at the time it adopts its RWP. Prioritization of WMSPs is necessary to implement HB 4, 83rd Legislative Session, which requires prioritization of recommended projects for SWIFT.

Subchapter E. Adoption, Submittal, and Amendments to Regional Water Plans.

Section 357.50. Adoption, Submittal, and Approval of Regional Water Plans.

Section 357.50(a) is revised to correctly reference the appropriate subsection of the rule.

Section 357.50(g)(2)(B) is revised to include the words "state water" in front of "planning" in the first sentence and insert "state water planning" in front of "database" in the second sentence. These changes are intended to specify that the rule refers to the state water planning database, as that term is defined in §357.10 of this rule revision.

A new §357.50(j) is added to address the inclusion of unmet municipal water needs in RWPs. The intent of the proposed new subsection is to explain the basic elements that must be included in an RWP to justify including unmet municipal water needs. The rule requires that, in order for the board to consider approval of an RWP with unmet municipal water needs, the RWP must provide adequate justification including: document that the RWPG considered all potentially feasible WMSs and explain why additional conservation and/or drought management were not recommended to address the need; describe how municipal WUGs will protect public health, safety, and welfare in a repeat of the drought of record; and explain whether the unmet municipal needs could be addressed with an amendment before the next IPP. The new subsection is inserted after §357.50(i), as §357.50(j), and the rest of the section renumbered.

Section 357.51. Amendments to Regional Water Plans.

Section 357.51(a)(2) is revised to include language to more explicitly describe how the board considers and acts upon a petition to amend an RWP, if the RWPG does not act upon the petition. The proposed amendment inserts language specifying that within 90 days after a request by a political subdivision, the RWPG is required to provide a written explanation to the EA if it does not amend its plan. The proposed amendment also inserts language specifying that at the public meeting, which is required by existing rule, the board may direct the RWPG to amend its RWP based on the local political subdivision's request.

Section 357.51(b) is revised by removing §357.51(b)(3)(B), which currently requires that a proposed major amendment shall not produce unmet needs to the adopted RWP. This proposed change is intended to make requirements for major amendments consistent with, and no more restrictive than, the requirements for adoption of the RWP, which may contain unmet needs. As a result of the deletion of §357.51(b)(3)(B), the rest of §357.51(b)(3) is renumbered.

Section 357.51(c)(1) is revised to remove the words "Minor Amendment to RWP" because they are unnecessary and redundant in the context of the rule language.

Section 357.51(c)(2) is revised to add a requirement specifying that a minor amendment "does not increase unmet needs or produce new unmet needs in the adopted RWP". The intent of this proposed new requirement is to distinguish minor amendments from major amendments and RWP adoption, both of which may include unmet needs. The new requirement is in §357.51(c)(2)(C), and the rest of the subsection is renumbered.

Section 357.51(e) is revised to specify how RWPGs may substitute alternative WMSs for recommended WMSs. The board proposes to amend §357.51(e) to insert the words "without over-allocating any source". The proposed change is intended to specify that when substituting an alternative WMS for a recommended WMS, the substitution cannot result in an over-allocation of a source in the same manner that sources may not be over-allocated in adopted plans.

Subchapter F. Consistency and Conflicts in Regional Water Plans.

Section 357.60. Consistency of Regional Water Plans.

Section 357.60(b)(1) is revised to replace the words "a current" with the words "an existing" because "an existing" is more accurately descriptive in the context of the rules and add the words "or water source" after the words "water supply" to clarify that a project can be an enhancement to an existing water source to meet the parameters for consistency with an RWP.

Section 357.60(b)(2) is revised to replace the word "and" with "or" because in practice a project only needs to meet one of the requirements to be considered consistent with an RWP. These amendments to §357.60(b) are intended to clarify the parameters for determining consistency of a project with an RWP.

Non-substantive changes are made to the following sections: §§357.11, 357.12, 357.20, 357.40, 357.42, 357.43, 357.45, 357.62, and 357.64, relating to the regional water planning process.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no significant 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 are not expected to be additional costs to state or local governments resulting from their administration.

These rules are expected to result in a minor reduction in costs to local governments. The reduction in costs is due to changes to notice requirements for RWPGs. The cost savings would be incurred by the RWPG-designated political subdivisions that hold regional water planning contracts. The savings would be allocated elsewhere in RWPG contracts. These rules are not expected to result in reductions in costs to state government.

These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules.

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, there will be no impact to the public.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because they 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. These rules are designed to implement legislative changes, improve the planning process and increase flexibility in planning, reduce certain unessential reporting requirements, and standardize and clarify language.

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 implement legislative changes, improve processes, increase flexibility, and provide greater clarity regarding the TWDB's rules related to regional water planning.

Even if the proposed rules were major environmental rules, 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 federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §16.053. Therefore, these proposed rules do 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 implement legislative changes, improve processes, increase flexibility, and provide greater clarity regarding the TWDB's rules related to regional water planning. The proposed rulemaking would substantially advance this stated purpose by adding language related to legislative changes, clarifying definitions, and incorporating agency and stakeholder input into the TWDB rules related to regional water planning.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the regional water planning process in order to develop a state water plan.

Nevertheless, the board further evaluated this proposed rules and performed an assessment of whether they constitute 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, these rules require compliance with state law regarding the regional water planning process. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

ANNOUNCEMENT OF HEARING

The board will hold a public hearing on this proposal on August 24, 2016, in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701 at 1:00 p.m. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon. Open discussion and questions to the board will not be permitted during the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Merry Klonower at (512) 463-8165 as far in advance as possible, and no later than five (5) work days prior to the hearing so that appropriate arrangements can be made.

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, 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 INFORMATION

31 TAC §§357.10 - 357.12

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.10. Definitions and Acronyms.

The following words, used in this chapter, have the following meanings.

(1) Agricultural Water Conservation--Defined in §363.1302 of this title (relating to Definition of Terms).

(2) [(4)] Alternative Water Management Strategy [water management strategy]--A fully evaluated Water Management Strategy [water management strategy] that may be substituted into a Regional Water Plan [regional water plan] in the event that a recommended Water Management Strategy [water management strategy] is no longer recommended.

(3) [(2)] Availability--Maximum amount of raw water that could be produced by [available from] a source during a repeat of the Drought of Record [drought of record], regardless of whether the supply is physically connected to or legally accessible by Water User Groups [or legally available to water user groups].

(4) [(3)] Board--The Texas Water Development Board.

(5) [(4)] Collective Reporting Unit--A grouping of utilities located in the Regional Water Planning Area. Utilities within a Col-

lective Reporting Unit must have a logical relationship, such as being served by common Wholesale Water Providers [wholesale water providers], having common sources, or other appropriate associations.

(6) [(5)] Commission--The Texas Commission on Environmental Quality.

[(6)] Consistency between a regional water plan and a desired future condition--A regional water plan is consistent with a desired future condition if the groundwater availability amount in the regional water plan and on which an existing water supply or recommended water management strategy relies does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers. The desired future condition must be either the desired future condition adopted as of the date the Board most recently adopted a state water plan or, at the option of the regional water planning group, a desired future condition adopted on a subsequent date.]

(7) County-Other [other]--An aggregation of [residential, commercial, and institutional water users in cities with less than 500 people or] utilities that provide less than an average of 100 acre-feet per year [250,000 gallons per day], as well as [unincorporated] rural areas not served by a water utility in a given county.

(8) Drought Contingency Plan [contingency plan]--A plan required from wholesale and retail public water suppliers and irrigation districts pursuant to Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders). The plan may consist of one or more strategies for temporary supply and demand management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies as required by the Commission.

(9) Drought Management Measures [management measures]--Demand management activities to be implemented during drought that may be evaluated and included as Water Management Strategies [water management strategies].

(10) Drought Management Water Management Strategy--A drought management measure or measures evaluated and/or recommended in a State or Regional Water Plan that quantifies temporary reductions in demand during drought conditions.

(11) [(10)] Drought of Record [record]--The period of time when historical records indicate that natural hydrological conditions would have provided the least amount of water supply.

(12) [(11)] Executive Administrator [administrator] (EA)--The Executive Administrator [executive administrator] of the Board or a designated representative.

(13) [(12)] Existing Water Supply--Maximum amount of water [available from existing sources for use during drought of record conditions] that is physically and legally accessible from existing sources [available] for immediate use by a Water User Group under a repeat of Drought of Record conditions [water user group].

(14) [(13)] Firm Yield--Maximum water volume a reservoir can provide each year under a repeat of the Drought of Record [drought of record] using anticipated [reasonable] sedimentation rates and assuming that all senior water rights will be totally utilized and all applicable permit conditions met.

(15) [(14)] Interbasin Transfer of Surface Water [transfer of surface water]--Defined and governed in Texas Water Code §11.085 (relating to Interbasin Transfers) as the diverting of any state water from a river basin and transfer of that water to any other river basin.

(16) [(15)] Interregional Conflict [conflict]--An interregional conflict exists when:

(A) more than one Regional Water Plan [regional water plan] includes the same source of water supply for identified and quantified recommended Water Management Strategies [water management strategies] and there is insufficient water available to implement such Water Management Strategies [water management strategies]; or

(B) in the instance of a recommended Water Management Strategy [water management strategy] proposed to be supplied from a different Regional Water Planning Area [regional water planning area], the Regional Water Planning Group [RWPG] with the location of the strategy has studied the impacts of the recommended Water Management Strategy [water management strategy] on its economic, agricultural, and natural resources, and demonstrates to the Board that there is a potential for a substantial adverse effect on the region as a result of those impacts.

(17) [(16)] Intraregional Conflict [conflict]--A conflict between two or more identified, quantified, and recommended Water Management Strategies [water management strategies] in the same Initially Prepared Plan [initially prepared plan] that rely upon the same water source, so that there is not sufficient water available to fully implement all Water Management Strategies [water management strategies] and thereby creating an over-allocation of that source.

(18) [(17)] Initially Prepared Plan (IPP)--Draft Regional Water Plan [regional water plans] that is [are] presented at a public hearing in accordance with §357.21(d) of this title (relating to Notice and Public Participation) and submitted for Board review and comment.

(19) Major Water Provider (MWP)--A Water User Group or a Wholesale Water Provider of particular significance to the region's water supply as determined by the Regional Water Planning Group. This may include public or private entities that provide water for any water use category.

(20) Modeled Available Groundwater (MAG) Peak Factor--A percentage (e.g., greater than 100 percent) that is applied to a modeled available groundwater value reflecting the annual groundwater availability that, for planning purposes, shall be considered temporarily available for pumping consistent with desired future conditions.

(21) Planning Decades--Temporal snapshots of conditions anticipated to occur and presented at even intervals over the planning horizon used to present simultaneous demands, supplies, needs, and strategy volume data. A Water Management Strategy that is shown as providing a supply in the 2040 decade, for example, is assumed to come online in or prior to the year 2040.

(22) [(18)] Political Subdivision [subdivision]--City, county, district, or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other Political Subdivision [political subdivision] of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code Chapter 67 (relating to Nonprofit Water Supply or Sewer Service Corporations).

(23) [(19)] Regional Water Plan [water plan] (RWP)--The plan adopted or amended by a Regional Water Planning Group [regional water planning group] pursuant to Texas Water Code §16.053 (relating to Regional Water Plans) and this chapter.

(24) [(20)] Regional Water Planning Area [water planning area] (RWPA)--Area designated pursuant to Texas Water Code §16.053.

(25) [(21)] Regional Water Planning Group [water planning group] (RWPG)--Group designated pursuant to Texas Water Code §16.053.

(26) RWPG-Estimated Groundwater Availability--The groundwater Availability used for planning purposes as determined by RWPGs to which §357.32(d)(2) of this title (relating to Water Supply Analysis) is applicable or where no desired future condition has been adopted.

(27) [(22)] Retail Public Utility [public utility]--Defined in Texas Water Code §13.002 (relating to Water Rates and Services) as "any person, corporation, public utility, water supply or sewer service corporation, municipality, Political Subdivision [political subdivision] or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation."

(28) Reuse--Defined in §363.1302 of this title (relating to Definition of Terms).

(29) [(23)] State Drought Preparedness Plan--A plan, separate from the State Water Plan [state water plan], that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code §16.0551 (relating to State Drought Preparedness Plan).

(30) [(24)] State Drought Response Plan--A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the State Water Plan and the State Drought Preparedness Plan pursuant to Texas Water Code §16.055 (relating to Drought Response Plan).

(31) [(25)] State Water Plan--The most recent state water plan adopted by the Board under the Texas Water Code §16.051 (relating to State Water Plan).

(32) State Water Planning Database--Database maintained by TWDB that stores data related to population and Water Demand projections, water Availability, Existing Water Supplies, Water Management Strategy supplies, and Water Management Strategy Projects. It is used to collect, analyze, and disseminate regional and statewide water planning data.

(33) Unmet Water Need--The portion of an identified Water Need that is not met by recommended Water Management Strategies.

(34) [(26)] Water Conservation Measures [conservation measures]--Practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or [of] waste of [of] water, or improve the efficiency in the use of water that may be presented as Water Management Strategies, so that a water supply is made available for future or alternative uses. For planning purposes, Water Conservation Measures do not include reservoirs, aquifer storage and recovery, or other types of projects that develop new water supplies. [water management strategies.]

(35) Water Conservation Strategy--A Water Management Strategy with quantified volumes of water associated with Water Conservation Measures.

(36) [(27)] Water Conservation Plan--The most current plan required by Texas Water Code §11.1271 (relating to Water Conservation Plans) from an applicant for a new or amended water rights permit and from any holder of a permit, certificate, etc. who is authorized to appropriate [more than] 1,000 acre-feet per year or more for municipal, industrial, and other non-irrigation uses and for those who are authorized to appropriate 10,000 acre-feet per year or

more for irrigation, and the most current plan required by Texas Water Code §13.146 from a Retail Public Utility [retail public utility] that provides potable water service to 3,300 or more connections. These plans must include specific, quantified 5-year and 10-year targets for water savings.

(37) Water Demand--Volume of water required to carry out the anticipated domestic, public, and/or economic activities of a Water User Group during drought conditions.

(38) [(28)] Water Management Strategy (WMS)--A plan [or specific project] to meet a need for additional water by a discrete Water User Group [user group], which can mean increasing the total water supply or maximizing an existing supply, including through reducing demands. A Water Management Strategy may or may not require associated Water Management Strategy Projects to be implemented.

(39) Water Management Strategy Project (WMSP)--Water project that has a non-zero capital costs and that when implemented, would develop, deliver, or treat additional water supply volumes, or conserve water for Water User Groups or Wholesale Water Providers. One WMSP may be associated with multiple WMSs.

(40) Water Need--A potential water supply shortage based on the difference between projected Water Demands and Existing Water Supplies.

(41) [(29)] Water User Group (WUG)--Identified user or group of users for which Water Demands [water demands] and Existing Water Supplies [water supplies] have been identified and analyzed and plans developed to meet Water Needs [water needs]. These include:

[(A) Incorporated Census places of a population greater than 500, including select Census Designated Places, such as significant military bases or cases in which the Census Designated Place is the only Census place in the county;]

(A) [(B)] Retail Public Utilities owned by a Political Subdivision [public utilities] providing more than 100 [280] acre-feet per year for municipal use;

(B) Privately-owned utilities that request inclusion as an individual Water User Group, provide more than 100 acre-feet per year for municipal use for each owned water system, and are approved for inclusion as an individual Water User Group by the RWPG;

(C) Water systems serving institutions or facilities owned by the state or federal government that request inclusion as an individual Water User Group, provide more than 100 acre-feet per year for municipal use, and are approved for inclusion as an individual Water User Group by the RWPG;

(D) [(C)] Collective Reporting Units, or groups of retail public utilities that have a common association and are requested for inclusion by the RWPG;

(E) [(D)] Municipal and domestic water use, referred to as County-Other [county-other], not included in subparagraphs (A) - (D) [(C)] of this paragraph; and

(F) [(E)] Non-municipal water use including manufacturing, irrigation, steam electric power generation, mining, and live-stock watering for each county or portion of a county in an [a] RWPA.

(42) [(30)] Wholesale Water Provider (WWP)--Any person or entity, including river authorities and irrigation districts, that delivers or sells water wholesale (treated or raw) to WUGs or other WWPs [has contracts to sell more than 1,000 acre-feet of water wholesale in any one year during the five years immediately preceding the adoption of the last regional water plan]. The RWPGs [regional water planning

groups] shall determine the Wholesale Water Providers within each region [include as wholesale water providers other persons and entities that enter or that the regional water planning group expects or recommends to enter contracts to sell more than 1,000 acre-feet of water wholesale during the period covered by the plan].

§357.11. *Designations.*

(a) The Board shall review and update the designations of RW-PAs as necessary but at least every five years, on its own initiative or upon recommendation of the EA [executive administrator]. The Board shall provide 30 days notice of its intent to amend the designations of RWPAs by publication of the proposed change in the *Texas Register* and by mailing the notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPAs proposed to be impacted, to each water district or river authority located in whole or in part in the RWPA based upon lists of such water districts and river authorities obtained from the Commission, and to each county judge of a county located in whole or in part in the RWPAs proposed to be impacted. After the 30 day notice period, the Board shall hold a public hearing at a location to be determined by the Board before making any changes to the designation of an [a] RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RWPAs [regional water plans] shall be developed, taking into consideration factors such as:

- (1) River basin and aquifer delineations;
- (2) Water utility development patterns;
- (3) Socioeconomic characteristics;
- (4) Existing RWPAs [regional water planning areas];
- (5) Political Subdivision [subdivision] boundaries;
- (6) Public comment; and
- (7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a RWPG [regional water planning group] is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the EA [executive administrator] shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the EA [executive administrator]. The bylaws adopted by the RWPG shall at a minimum address the following elements:

- (1) definition of a quorum necessary to conduct business;
- (2) method to be used to approve items of business including adoption of RWPAs [regional water plans] or amendments thereto;
- (3) methods to be used to name additional members;
- (4) terms and conditions of membership;
- (5) methods to record minutes and where minutes will be archived as part of the public record; and
- (6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

(d) RWPGs shall maintain at least one representative of each of the following interest categories as voting members of the RWPG. However, if an [a] RWPA does not have an interest category below, then the RWPG shall so advise the EA and no membership designation is required.

(1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 100 employees or less than \$1 million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;

(9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority and Palo Duro River Authority;

(10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

(11) Water utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within an [a] RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.

(e) The RWPGs shall add the following non-voting members, who shall receive meeting notifications and information in the same manner as voting members:

(1) Staff member of the Board to be designated by the EA;

(2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;

(3) Member designated by each adjacent RWPG to serve as a liaison;

(4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA; and

(5) Staff member of the Texas Department of Agriculture designated by its commissioner.

(f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.

(g) Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.

(h) Each RWPG, at its discretion, may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d) of this section.

(i) RWPGs may enter into formal and informal agreements to coordinate, avoid conflicts, and share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in an [a] RWP only upon approval of the RWPG.

(j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding Drought Management Measures [drought management measures] and water conservation practices.

§357.12. General Regional Water Planning Group Responsibilities and Procedures.

(a) Prior to the preparation for the RWPs, in accordance with the public participation requirements in §357.21 of this title (relating to Notice and Public Participation), the RWPGs shall:

(1) hold at least one public meeting to gather suggestions and recommendations from the public as to issues that should be addressed or provisions that should be included in the next regional or state water plan;

(2) prepare a scope of work that includes a detailed description of tasks to be performed, identifies responsible parties for task execution, a task schedule, task and expense budgets, and describes interim products, draft reports, and final reports for the planning process;

(3) approve any amendments to the scope of work only in an open meeting of the RWPG where notice of the proposed action was provided in accordance with §357.21 of this title; and

(4) designate a Political Subdivision [political subdivision] as a representative of the RWPG eligible to apply for financial assistance for scope of work and RWP development pursuant to Chapter 355, Subchapter C of this title (relating to Regional Water Planning Grants).

(b) An [A] RWPG shall hold a public meeting to determine the process for identifying potentially feasible WMSs [water management strategies]; the process shall be documented and shall include input received at the public meeting; after reviewing the potentially feasible strategies using the documented process, then the RWPG shall list all possible WMSs [water management strategies] that are potentially feasible for meeting a Water Need [need] in the region. The public meeting under this subsection shall be in accordance with the requirements of §357.21(b) of this title.

(c) If applicable, and approved by the EA, implement simplified planning in accordance with guidance to be provided by the EA. If an [a] RWPG determines in its analysis of Water Needs [water needs] that it has sufficient Existing Water Supplies [supplies] in the RWPA to meet Water Needs [water needs] for the 50-year planning period, RWPGs may conduct simplified regional water planning as follows:

(1) identify Existing Water Supplies [water supplies] that are available for voluntary redistribution in an [a] RWPA or to other RWPAs;

(2) where appropriate, adopt previous RWP or State Water Plan [state water plan] information, updated as necessary, as the RWP; and

(3) other activities upon approval of the EA necessary to complete an [a] RWP that meets rule and statute requirements.

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

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Texas Water Development Board

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For further information, please call: (512) 463-7686



SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

31 TAC §§357.20 - 357.22

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.20. *Guidance Principles for State and Regional Water Planning.*

Development of the State Water Plan [state water plan] and of RWPAs shall be guided by the principles stated in §358.3 of this title (relating to Guidance Principles).

§357.21. *Notice and Public Participation.*

(a) RWPGs shall conduct all business in meetings posted and held in accordance with the Texas Open Meetings Act, Texas Government Code Chapter 551, with a copy of all materials presented or discussed available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections.

(b) All public notices required by this subsection shall comply with this section and shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: regular RWPG meetings; amendments to the regional water planning scope of work or budget; process of identifying potentially feasible WMSs [water management strategies]; meetings to replace RWPG members or addition of new RWPG members; and adoption of RWPs [regional water plans].

(2) Published 72 hours prior to the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken; and

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted.

(4) Entities to be notified in writing include:

(A) all voting and non-voting RWPG members; and

(B) any person or entity who has requested notice of [or] RWPG activities. [either in writing or email, as requested by the person or entity; and]

~~[(C) each County Clerk, in writing, within the RWPA.]~~

(5) Notice and agenda to be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of the county in which the administrative office of the host Political Subdivision is located [political subdivision or on the Board website if requested by the RWPG]; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials presented or discussed at the meeting.

(c) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: population projection and Water Demand [water demand] projection revision requests to officially adopted Board projections; substitution of Alternative WMSs [alternative water management strategies]; and minor amendments to RWPAs.

(2) Notice of meetings under this subsection shall be published/postmarked on the internet, emailed, and mailed to the public before the 14th day preceding the date of the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the meetings and information on how the public may submit written comments separate from such meetings. The RWPG shall specify a deadline for submission of public written comments of not earlier than 14 days after the meeting.

(4) Entities to be notified in writing include:

(A) all voting and non-voting RWPG members;

(B) any person or entity who has requested notice of RWPG activities [either in writing or email, as requested by the person or entity]; and

~~[(C) each County Clerk, in writing, within the RWPA; and]~~

~~[(C) [(D)] each RWPG County Clerk in counties outside the RWPA where a recommended or Alternative WMS [alternative water management strategy] being considered would be located.~~

(5) Notice and associated meeting agenda to be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of the county in which the administrative office of the host Political Subdivision is located [political subdivision or on the Board website if requested by the RWPG]; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials, reports, plans presented or discussed at the meeting.

(7) Public comments to be accepted as follows:

(A) Written comments for 14 days prior to meeting with comments considered by RWPG members prior to action;

(B) Oral and written public comment during meeting; and

(C) Written comments must also be accepted for 14 days following the meeting and all comments received during the comment period must be submitted to the Board by the RWPG.

(d) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: holding a preplanning public meeting to obtain public input on development of the next RWP; major amendments to RWPs; and holding hearings for IPPs; and requesting research and planning funds from the Board].

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA [as follows:]

~~[(A)] before the 30th day preceding the date of the public meeting or hearing; and]~~

~~[(B) when applying for Board funding, at least 30 days prior to Board consideration of funding applications.]~~

(3) Notice of the public meetings and public hearings shall include:

(A) a date, time, and location of the public meeting or hearing;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the hearings and information on how the public may submit written comments separate from such hearings. The RWPG shall specify a deadline for submission of public written comments as specified in paragraph ~~(7)(A) [(8)(A)]~~ of this subsection.

~~[(4) If applying for Board funding, the notice shall include the name and address of the eligible applicant and the name of the applicant's manager or official representative; a brief description of the regional water planning area; the purposes of the planning project; the Board's name, address, and the name of a contact person with the Board; a statement that any comments must be filed with the EA and the applicant within 30 days of the date on which the notice is mailed or published. Prior to action by the Board, the applicant must provide one copy of the notice sent, a list of those to which the notice was sent, the date on which the notice was sent, copies of all notices as published showing name of the newspaper and the date on which the notice was published.]~~

~~[(5)] RWPGs shall make copies of the IPP available for public inspection at least 30 days before a public hearing required or held by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA and include locations of such copies in the notice for public hearing. For distribution of the IPP and adopted RWP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate location in the county courthouse to ensure maximum accessibility to the public during business hours. Additionally, the RWPG may consult with local and county officials in determining which public library in the county can provide maximum accessibility to the public. According to the capabilities of the facility, the RWPG may provide the copy electronically, on electronic media, through an internet web link [an electronic disc or drive], or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).~~

~~[(6)] Notice shall be mailed to, at a minimum, the following:~~

(A) Notification of all entities that are to be notified under subsection (c)(4) of this section;

(B) Each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPA;

(C) Each county judge of a county located in whole or in part in the RWPA;

(D) Each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission;

(E) Additionally, for public hearings or meetings to obtain input on development of a future RWP or a meeting or hearing associated with IPPs or major RWP amendments:

(i) each Retail Public Utility [~~retail public utility~~], defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and

(ii) each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission; and

(F) Additionally, an [a] RWPG that intends to request Board funds for regional water planning must provide written notice to all other RWPGs.

(6) [(7)] Notice and associated hearing and meeting agenda shall also be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of the county in which the administrative office of the host Political Subdivision is located [~~political subdivision or on the Board website if requested by the RWPG~~];

(B) Texas Secretary of State website; and

(C) In the *Texas Register*.

(7) [(8)] Public comments to be accepted as follows:

(A) Written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(i) Until not earlier than 30-days following the date of the public hearing on a major amendment to an [a] RWP.

(ii) Until not earlier than 60 days following the date of the public hearing on an IPP.

(B) Verbal public comments at the noticed meeting or hearing;

(C) Comments received must be considered as follows:

(i) Comments associated with hearings must be considered by RWPG members when adopting an [a] RWP or adopting a major amendment to an [a] RWP.

(ii) Comments associated with a preplanning meeting, scope of work development, and an application for funding to the Board must be considered prior to taking RWPG action.

(e) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply when an RWPG is requesting research and planning funds from the Board.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA at least 30 days prior to Board consideration of funding applications.

(3) Notice shall include the name and address of the eligible applicant and the name of the applicant's manager or official representative; a brief description of the RWPA; the purposes of the planning project; the Board's name, address, and the name of a contact person with the Board; a statement that any comments must be filed with the EA and the applicant within 30 days of the date on which the notice is mailed or published. Prior to action by the Board, the applicant must

provide one copy of the notice sent, a list of those to which the notice was sent, the date on which the notice was sent, copies of all notices as published showing name of the newspaper and the date on which the notice was published.

(4) Notice shall be mailed to, at a minimum, the following:

(A) Each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPA;

(B) Each county judge of a county located in whole or in part in the RWPA;

(C) Each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission; and

(D) All other RWPGs.

(5) Notice shall also be posted on the website of the RWPG or host Political Subdivision.

§357.22. *General Considerations for Development of Regional Water Plans.*

(a) RWPGs shall consider existing local, regional, and state water planning efforts, including water plans, information and relevant local, regional, state and federal programs and goals when developing the RWP [~~regional water plan~~]. The RWPGs shall also consider:

(1) Water Conservation Plans [~~water conservation plans~~];

(2) drought management and Drought Contingency Plans [~~drought contingency plans~~];

(3) information compiled by the Board from water loss audits performed by Retail Public Utilities [~~retail public utilities~~] pursuant to §358.6 of this title (relating to Water Loss Audits);

(4) publicly available plans for major agricultural, municipal, manufacturing and commercial water users;

(5) local and regional water management plans;

(6) water availability requirements promulgated by a county commissioners court in accordance with Texas Water Code §35.019 (relating to Priority Groundwater Management Areas);

(7) the Texas Clean Rivers Program;

(8) the U.S. Clean Water Act;

(9) water management plans;

(10) other planning goals including, but not limited to, regionalization of water and wastewater services where appropriate;

(11) approved groundwater conservation district management plans and other plans submitted under Texas Water Code §16.054 (relating to Local Water Planning);

(12) approved groundwater regulatory plans; [and]

(13) potential impacts on public health, safety, or welfare;

and

(14) [(13)] any other information available from existing local or regional water planning studies.

(b) The RWP shall contain a separate chapter for the contents of §§357.30, 357.31, 357.32, 357.33, 357.42, 357.43, 357.44, 357.45, and 357.50 of this title and shall also contain a separate chapter for the contents of §§357.34 and §§357.35, 357.40 and 357.41 of this title for a total of eleven separate chapters.

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) 463-7686



SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS

31 TAC §§357.30 - 357.35

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.30. *Description of the Regional Water Planning Area.*

RWPGs shall describe their RWPA [regional water planning area] including the following:

- (1) social and economic aspects of a region such as information on current population, economic activity and economic sectors heavily dependent on water resources;
- (2) current water use and major water demand centers;
- (3) current groundwater, surface water, and Reuse [reuse] supplies including major springs that are important for water supply or protection of natural resources;
- (4) Major Water Providers [wholesale water providers];
- (5) agricultural and natural resources;
- (6) identified water quality problems;
- (7) identified threats to agricultural and natural resources due to water quantity problems or water quality problems related to water supply;
- (8) summary of existing local and regional water plans;
- (9) the identified historic drought(s) of record within the planning area;
- (10) current preparations for drought within the RWPA;
- (11) information compiled by the Board from water loss audits performed by Retail Public Utilities [retail public utilities] pursuant to §358.6 of this title (relating to Water Loss Audits); and
- (12) an identification of each threat to agricultural and natural resources and a discussion of how that threat shall [will] be addressed or affected by the WMSs [water management strategies] evaluated in the plan.

§357.31. *Projected Population and Water Demands.*

(a) RWPs shall present projected population and Water Demands [water demands] by WUG as defined in §357.10 of this title (relating to Definitions and Acronyms). If a WUG lies in one or more

counties or RWPA or river basins, data shall be reported for each river basin, RWPA, and county split.

(b) RWPs shall present projected Water Demands [water demands] associated with MWPs [WWPs] by category of water use, including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock for [each county or portion of a county in] the RWPA. [If a county or portion of a county is in more than one river basin, data shall be reported for each river basin.]

(c) RWPs shall evaluate [report] the current contractual obligations of WUGs [WUG] and WWPs to supply water in addition to any demands projected for the WUG or WWP. Information regarding obligations to supply water to other users must also be incorporated into the water supply analysis in §357.32 of this title (relating to Water Supply Analysis) in order to determine net existing water supplies available for each WUG's own use.

(d) Municipal demands shall be adjusted to reflect water savings due to plumbing fixture requirements identified in the Texas Health and Safety Code, Chapter 372. RWPGs shall [will determine and] report how changes in plumbing fixtures would affect projected municipal Water Demands [water demands] using projections with plumbing code savings provided by the Board or by methods approved by the EA.

(e) Source of population and Water Demands [water demands]. In developing RWPs, RWPGs shall use:

(1) Population and Water Demand [water demand] projections developed by the EA that shall [will] be contained in the next State Water Plan [state water plan] and adopted by the Board after consultation with the RWPGs, Commission, Texas Department of Agriculture, and the Texas Parks and Wildlife Department.

(2) RWPGs may request revisions of Board adopted population or Water Demand [water demand] projections if the request demonstrates that population or Water Demand [water demand] projections no longer represents a reasonable estimate of anticipated conditions based on changed conditions and or new information. Before requesting a revision to population and Water Demand [water demand] projections, the RWPG shall discuss the proposed revisions at a public meeting for which notice has been posted in accordance with §357.21(c) of this title (relating to Notice and Public Participation). The RWPG shall summarize public comments received on the proposed request for projection revisions. The EA shall consult with the requesting RWPG and respond to their request within 45 days after receipt of a request from an [a] RWPG for revision of population or Water Demand [water demand] projections.

(f) Population and Water Demand [water demand] projections shall be presented for each Planning Decade [planning decade] for WUGs and MWPs [each of the above reporting categories].

§357.32. *Water Supply Analysis.*

(a) RWPGs shall evaluate:

(1) source water Availability [availability] during Drought of Record [drought of record] conditions; and

(2) existing water supplies that are legally and physically available to WUGs and wholesale water suppliers within the RWPA for use during the Drought of Record [drought of record].

(b) Evaluations shall consider surface water and groundwater data from the State Water Plan [state water plan], existing water rights, contracts and option agreements relating to water rights, other planning and water supply studies, and analysis of water supplies existing in and available to the RWPA during Drought of Record [drought of record] conditions.

(c) [Evaluation of the existing surface water available during drought of record shall be based on firm yield. The analysis may be based on justified operational procedures other than firm yield. The EA shall consider a written request from a RWPG to use procedures other than firm yield.] For surface water supply analyses [analysis], RWPGs shall [will] use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. As the default approach for evaluating existing supplies, RWPGs shall use anticipated sedimentation and [will] assume full utilization of existing water rights and no return flows when using Water Availability Models. RWPGs may use better, more representative, [other] water availability modeling assumptions or better site-specific information with written approval from the EA. Information available from the Commission shall be incorporated by RWPGs unless better site-specific information is available and approved in writing by the EA.

(1) Evaluation of existing stored surface water available during Drought of Record conditions shall be based on Firm Yield. The analysis may be based on justified operational procedures other than Firm Yield. The EA shall consider a written request from an RWPG to use procedures other than Firm Yield.

(2) Evaluation of existing run of river surface water available for municipal WUGs during Drought of Record conditions shall be based on the minimum monthly diversion amounts that are available 100 percent of the time, if those run of river supplies are the only supply for the municipal WUG.

(d) RWPGs shall use modeled available groundwater volumes for groundwater Availability [availability], as issued by the EA [Board], and incorporate such information in its RWP unless no modeled available groundwater volumes are provided. Groundwater Availability [availability] used in the RWP must be consistent with the desired future conditions as of the date the Board most recently adopted a State Water Plan [state water plan] or, at the discretion of the RWPG, established subsequent to the adoption of the most recent State Water Plan [state water plan].

(1) An RWP is consistent with a desired future condition if the groundwater Availability amount in the RWP and on which an Existing Water Supply or recommended WMS relies does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers, in accordance with paragraph (2) of this subsection or as modified by paragraph (3) of this subsection, if applicable. The desired future condition must be either the desired future condition adopted as of the date the Board most recently adopted a State Water Plan or, at the option of the RWPG, a desired future condition adopted on a subsequent date.

(2) If no groundwater conservation district exists within the RWPA, then the RWPG shall determine the Availability of groundwater for regional planning purposes. The Board shall review and consider approving the RWPG-Estimated Groundwater Availability, prior to inclusion in the IPP, including determining if the estimate is physically compatible with the desired future conditions for relevant aquifers in groundwater conservation districts in the co-located groundwater management area or areas. The EA shall use the Board's groundwater availability models as appropriate to conduct the compatibility review.

(3) In RWPA that have at least one groundwater conservation district, the EA shall consider a written request from an RWPG to apply a MAG Peak Factor in the form of a percentage (e.g., greater than 100 percent) applied to the modeled available groundwater value of any particular aquifer-region-county-basin split within the jurisdiction of a groundwater conservation district, or groundwater management area if no groundwater conservation district exists, to allow temporary increases in annual availability for planning purposes. The request must:

(A) Include written approval from the groundwater conservation district, if a groundwater conservation district exists in the particular aquifer-region-county-basin split, and from representatives of the groundwater management area;

(B) Provide the technical basis for the request; and

(C) Document the basis for how the temporary availability increase will not prevent the groundwater conservation district from managing groundwater resources to achieve the desired future condition.

(e) RWPGs shall evaluate the Existing Water Supplies [existing water supplies] for each WUG and WWP.

(f) Water supplies based on contracted agreements shall [will] be based on the terms of the contract, which may be assumed to renew upon contract termination if the contract contemplates renewal or extensions.

(g) Evaluation results shall be reported by WUG in accordance with §357.31(a) of this title (relating to Projected Population and Water Demands) and MWP [WWPs] in accordance with §357.31(b) of this title.

§357.33. Needs Analysis: Comparison of Water Supplies and Demands.

(a) RWPGs shall include comparisons of existing water supplies and projected Water Demands [water demands] to identify Water Needs [water needs].

(b) RWPGs shall compare projected Water Demands [water demands], developed in accordance with §357.31 of this title (relating to Projected Population and Water Demands), with existing water supplies available to WUGs and WWPs in a planning area, as developed in accordance with §357.32 of this title (relating to Water Supply Analysis), to determine whether WUGs will experience water surpluses or needs for additional supplies. Results shall [will] be reported for WUGs [and for WWPs] by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for each county or portion of a county in an [a] RWPA. Results shall be reported for WWPs by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for the RWPA.

(c) The social and economic impacts of not meeting Water Needs shall [water needs will] be evaluated by RWPGs and reported for each RWPA.

(d) Results of evaluations shall [will] be reported by WUG in accordance with §357.31(a) of this title and MWP [WWPs] in accordance with §357.31(b) of this title.

(e) RWPGs shall perform a secondary water needs analysis for all WUGs and WWPs for which conservation WMSs [water management strategies] or direct Reuse WMSs [reuse water management strategies] are recommended. This secondary water needs analysis shall [will] calculate the Water Needs [water needs] that would remain after assuming all recommended conservation and direct Reuse WMSs [reuse water management strategies] are fully implemented. The resulting secondary water needs volumes shall be presented in the RWP by WUG and MWP [WWP] and decade.

§357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

(a) RWPGs shall identify and evaluate potentially feasible WMSs and the WMSPs required to implement those strategies [water management strategies] for all WUGs and WWPs with identified Water Needs [water needs].

(b) RWPGs shall identify potentially feasible WMSs [water management strategies] to meet water supply needs identified in §357.33 of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands) in accordance with the process in §357.12(b) of this title (relating to General Regional Water Planning Group Responsibilities and Procedures). Strategies shall be developed for WUGs and WWP. The strategies shall meet new water supply obligations necessary to implement recommended WMSs [water management strategies] of WWP and WUGs. RWPGs shall plan for water supply during Drought of Record conditions. In developing RWP, RWPGs shall provide WMSs to be used during a Drought of Record [drought of record].

(c) Potentially feasible WMSs [water management strategies] may include, but are not limited to:

(1) Expanded use of existing supplies including system optimization and conjunctive use of water resources, reallocation of reservoir storage to new uses, voluntary redistribution of water resources including contracts, water marketing, regional water banks, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, and improvement of water quality including control of naturally occurring chlorides.

(2) New supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, seawater desalination, brackish groundwater desalination, water supply that could be made available by cancellation of water rights based on data provided by the Commission, rainwater harvesting, and aquifer storage and recovery.

(3) Conservation and Drought Management Measures [drought management measures] including demand management.

(4) Reuse of wastewater.

(5) Interbasin Transfers of Surface Water. [transfers of surface water.]

(6) Emergency transfers of surface water including a determination of the part of each water right for non-municipal use in the RWPA that may be transferred without causing unreasonable damage to the property of the non-municipal water rights holder in accordance with Texas Water Code §11.139 (relating to Emergency Authorizations).

(d) All recommended WMSs and WMSPs that are entered into the State Water Planning Database and prioritized by RWPGs shall be designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWP in at least one planning decade such that additional water is available during Drought of Record conditions. Any other RWPG recommendations regarding permit modifications, operational changes, and/or other infrastructure that are not designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWP in at least one Planning Decade such that additional water is available during Drought of Record conditions shall be indicated as such and presented separately in the RWP and shall not be eligible for funding from the State Water Implementation Fund for Texas.

(e) [(d)] Evaluations of potentially feasible WMSs and associated WMSPs [water management strategies] shall include the following analyses:

(1) For the purpose of evaluating potentially feasible WMSs [water management strategies], the Commission's most current

Water Availability Model with assumptions of no return flows and full utilization of senior water rights, is to be used. Alternative assumptions may be used with written approval from the EA who shall [will] consider a written request from an [a] RWPG to use assumptions other than no return flows and full utilization of senior water rights.

(2) An equitable comparison between and consistent evaluation and application of all WMSs [water management strategies] the RWPGs determine to be potentially feasible for each water supply need.

(3) A quantitative reporting of:

(A) The net quantity, reliability, and cost of water delivered and treated for the end user's requirements during Drought of Record [drought of record] conditions, taking into account and reporting anticipated strategy water losses, incorporating factors used calculating infrastructure debt payments and may include present costs and discounted present value costs. Costs do not include distribution of water within a WUG after treatment.

(B) Environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico. Evaluations of effects on environmental flows shall [will] include consideration of the Commission's adopted environmental flow standards under 30 Texas Administrative Code Chapter 298 (relating to Environmental Flow Standards for Surface Water). If environmental flow standards have not been established, then environmental information from existing site-specific studies, or in the absence of such information, state environmental planning criteria adopted by the Board for inclusion in the State Water Plan [state water plan] after coordinating with staff of the Commission and the Texas Parks and Wildlife Department to ensure that WMSs [water management strategies] are adjusted to provide for environmental water needs including instream flows and bays and estuaries inflows.

(C) Impacts to agricultural resources.

(4) Discussion of the plan's impact on other water resources of the state including other WMSs [water management strategies] and groundwater and surface water interrelationships.

(5) A discussion of each threat to agricultural or natural resources identified pursuant to §357.30(7) of this title (relating to Description of the Regional Water Planning Area) including how that threat will be addressed or affected by the WMSs [water management strategies] evaluated.

(6) If applicable, consideration and discussion of the provisions in Texas Water Code §11.085(k)(1) for Interbasin Transfers of Surface Water [interbasin transfers of surface water]. At minimum, this consideration shall [will] include a summation of Water Needs [water needs] in the basin of origin and in the receiving basin.

(7) Consideration of third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas.

(8) A description of the major impacts of recommended WMSs [water management strategies] on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing conditions with the recommended WMSs [water management strategies] to current conditions using best available data.

(9) Consideration of water pipelines and other facilities that are currently used for water conveyance as described in §357.22(a)(3) of this title (relating to General Considerations for Development of Regional Water Plans).

(10) Other factors as deemed relevant by the RWPG including recreational impacts.

(f) [(e)] RWPGs shall evaluate and present potentially feasible WMSs and WMSPs [Water Management Strategies] with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RWP.

(g) [(f)] Conservation, Drought Management Measures, and Drought Contingency Plans shall be considered by RWPGs when developing the regional plans, particularly during the process of identifying, evaluating, and recommending WMSs [water management strategies]. RWP's shall incorporate water conservation planning and drought contingency planning in the RWPA [regional water planning area].

(1) Drought Management Measures [management measures] including water demand management. RWPGs shall consider Drought Management Measures [drought management measures] for each need identified in §357.33 of this title and shall include such measures for each user group to which Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders) applies. Impacts of the Drought Management Measures [drought management measures] on Water Needs [water needs] must be consistent with guidance provided by the Commission in its administrative rules implementing Texas Water Code §11.1272. If an [a] RWPG does not adopt a drought management strategy for a need it must document the reason in the RWP. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods.

(2) Water conservation practices. RWPGs must consider water conservation practices, including potentially applicable best management practices, for each identified Water Need [water need].

(A) RWPGs shall include water conservation practices for each user group to which Texas Water Code §11.1271 and §13.146 (relating to Water Conservation Plans) apply. The impact of these water conservation practices on Water Needs [water needs] must be consistent with requirements in appropriate Commission administrative rules related to Texas Water Code §11.1271 and §13.146.

(B) RWPGs shall consider water conservation practices for each WUG beyond the minimum requirements of subparagraph (A) of this paragraph, whether or not the WUG is subject to Texas Water Code §11.1271 and §13.146. If RWPGs do not adopt a Water Conservation Strategy [water conservation strategy] to meet an identified need, they shall document the reason in the RWP.

(C) For each WUG or WWP that is to obtain water from a proposed interbasin transfer to which Texas Water Code §11.085 (relating to Interbasin Transfers) applies, RWPGs shall [will] include a Water Conservation Strategy [water conservation strategy], pursuant to Texas Water Code §11.085(1), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs shall [will] determine and report projected water use savings in gallons per capita per day based on its determination of the highest practicable level of water conservation and efficiency achievable. RWPGs shall [will] develop conservation strategies based on this determination. In preparing this evaluation, RWPGs shall [will] seek the input of WUGs and WWPs as to what is the highest practicable level of conservation and efficiency achievable, in their opinion, and take that input into consideration. RWPGs shall [will] develop water conservation strategies consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code §11.085. When developing water conservation strategies, the RWPGs must consider potentially applicable best management practices. Strategy evaluation in accordance with this section shall [will] include a

quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable.

(D) RWPGs shall consider strategies to address any issues identified in the information compiled by the Board from the water loss audits performed by Retail Public Utilities [retail public utilities] pursuant to §358.6 of this title (relating to Water Loss Audits).

(h) [(g)] RWP's shall include a subchapter consolidating the RWPG's recommendations regarding water conservation. RWPGs shall include in the RWP's model water conservation plans pursuant to Texas Water Code §11.1271.

§357.35. *Recommended and Alternative Water Management Strategies and Water Management Strategy Projects.*

(a) RWPGs shall recommend WMSs and the WMSPs required to implement those WMSs [water management strategies] to be used during a Drought of Record [drought of record] based on the potentially feasible WMSs [Water Management Strategies] evaluated under §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects).

(b) RWPGs shall recommend specific WMSs and WMSPs [water management strategies] based upon the identification, analysis, and comparison of WMSs [water management strategies] by the RWPG that the RWPG determines are potentially feasible so that the cost effective WMSs [water management strategies] that are environmentally sensitive are considered and adopted unless an [a] RWPG demonstrates that adoption of such WMSs [strategies] is inappropriate. To determine cost-effectiveness and environmental sensitivity, RWPGs shall [will] follow processes described in §357.34 of this title. The RWP may include Alternative WMSs [alternative water management strategies] evaluated by the processes described in §357.34 of this title.

(c) Strategies shall [will] be selected by the RWPGs so that cost effective WMSs [water management strategies], which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are adopted.

(d) RWPGs shall identify and recommend WMSs [water management strategies] for all WUGs and WWPs with identified Water Needs [water needs] and that meet all Water Needs [water needs] during the Drought of Record [drought of record] except in cases where:

(1) no WMS [water management strategy] is feasible. In such cases, RWPGs must explain why no WMSs [management strategies] are feasible; or

(2) a Political Subdivision [political subdivision] that provides water supply other than water supply corporations, counties, or river authorities explicitly does not participate in the regional water planning process for needs located within its boundaries or extraterritorial jurisdiction.

(e) Specific recommendations of WMSs [water management strategies] to meet an identified need shall [will] not be shown as meeting a need for a Political Subdivision [political subdivision] if the Political Subdivision [political subdivision] in question objects to inclusion of the strategy for the Political Subdivision [political subdivision] and specifies its reasons for such objection. This does not prevent the inclusion of the strategy to meet other needs.

(f) Recommended strategies shall protect existing water rights, water contracts, and option agreements, but may consider potential amendments of water rights, contracts and agreements, which would require the eventual consent of the owner.

(g) RWPGs shall report the following:

(1) Recommended WMSs, recommended WMSPs, [water management strategies] and the associated results of all the potentially feasible WMS [water management strategy] evaluations by WUG and MWP [WWP]. If a WUG [or WWP] lies in one or more counties or RWPAs or river basins, data shall [will] be reported for each river basin, RWP, and county.

(2) Calculated planning management supply factors for each WUG and MWP [WWP] included in the RWP assuming all recommended WMSs [water management strategies] are implemented. This calculation shall be based on the sum of: the total existing water supplies, plus all water supplies from recommended WMSs [water management strategies] for each entity; divided by that entity's total projected Water Demand [water demand], within the Planning Decade [planning decade]. The resulting calculated management supply [safety] factor shall be presented in the plan by entity and decade for every WUG and MWP. Calculating planning management supply factors is for reporting purposes only. [WWP.]

(3) Fully evaluated Alternative WMSs and associated WMSPs [Water Management Strategies] included in the adopted RWP shall be presented together in one place in the RWP.

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. IMPACTS, DROUGHT RESPONSE, POLICY RECOMMENDATIONS, AND IMPLEMENTATION

31 TAC §§357.40, 357.42 - 357.46

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.40. Impacts of Regional Water Plan.

(a) RWPs shall include a quantitative description of the socioeconomic impacts of not meeting the identified Water Needs [water needs] pursuant to §357.33(c) of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands).

(b) RWPs shall include a description of the impacts of the RWP regarding:

(1) Agricultural resources pursuant to §357.34(e)(3)(C) [§357.34(d)(3)(C)] of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies);

(2) Other water resources of the state including other WMSs [water management strategies] and groundwater and surface

water interrelationships pursuant to §357.34(e)(4) [§357.34(d)(4)] of this title;

(3) Threats to agricultural and natural resources identified pursuant to §357.34(e)(5) [§357.34(d)(5)] of this title;

(4) Third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas pursuant to §357.34(e)(7) [§357.34(d)(7)] of this title;

(5) Major impacts of recommended WMSs [water management strategies] on key parameters of water quality pursuant to §357.34(e)(8) [§357.34(d)(8)] of this title; and

(6) Effects on navigation.

(c) RWPs shall include a summary of the identified Water Needs [water needs] that remain unmet by the RWP.

§357.42. Drought Response Information, Activities, and Recommendations.

(a) RWPs shall consolidate and present information on current and planned preparations for, and responses to, drought conditions in the region including, but not limited to, Drought of Record [drought of record] conditions based on the following subsections.

(b) RWPGs shall conduct an overall assessment of current preparations for drought within the RWP including a description of how water suppliers in the RWP identify and respond to the onset of drought. This may include information from local Drought Contingency Plans [drought contingency plans].

(c) RWPGs shall develop drought response recommendations regarding the management of existing groundwater and surface water sources in the RWP designated in accordance with §357.32 of this title (relating to Water Supply Analysis), including:

(1) Factors specific to each source of water supply to be considered in determining whether to initiate a drought response for each water source including specific recommended drought response triggers;

(2) Actions to be taken as part of the drought response by the manager of each water source and the entities relying on each source, including the number of drought stages; and

(3) Triggers and actions developed in paragraphs (1) and (2) of this subsection may consider existing triggers and actions associated with existing Drought Contingency Plans [drought contingency plans].

(d) RWPGs shall [will] collect information on existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water. In accordance with Texas Water Code §16.053(r), this information is CONFIDENTIAL INFORMATION and cannot be disseminated to the public. The associated information is to be collected by a subgroup of RWPG members in a closed meeting and submitted separately to the EA in accordance with guidance to be provided by EA.

(e) RWPGs shall [will] provide general descriptions of local Drought Contingency Plans [drought contingency plans] that involve making emergency connections between water systems or WWP systems that do not include locations or descriptions of facilities that are disallowed under subsection (d) of this section.

(f) RWPGs may designate recommended and alternative Drought Management Water Management Strategies [drought management water management strategies] and other recommended drought measures in the RWP including:

(1) List and description of the recommended Drought Management Water Management Strategies [~~drought management water management strategies~~] and associated WUGs and WVPs, if any, that are recommended by the RWPG. Information to include associated triggers to initiate each of the recommended Drought Management WMSs [~~drought management water management strategies~~];

(2) List and description of alternative Drought Management WMSs [~~drought management water management strategies~~] and associated WUGs and WVPs, if any, that are included in the plan. Information to include associated triggers to initiate each of the alternative Drought Management WMSs [~~drought management water management strategies~~];

(3) List of all potentially feasible Drought Management WMSs [~~drought management water management strategies~~] that were considered or evaluated by the RWPG but not recommended; and

(4) List and summary of any other recommended Drought Management Measures [~~drought management measures~~], if any, that are included in the RWP, including associated triggers if applicable.

(g) The RWPGs shall evaluate potential emergency responses to local drought conditions or loss of existing water supplies; the evaluation shall include identification of potential alternative water sources that may be considered for temporary emergency use by WUGs and WVPs in the event that the Existing Water Supply [~~existing water supply~~] sources become temporarily unavailable to the WUGs and WVPs due to unforeseeable hydrologic conditions such as emergency water right curtailment, unanticipated loss of reservoir conservation storage, or other localized drought impacts. RWPGs shall evaluate, at a minimum, municipal WUGs that:

(1) have existing populations less than 7,500;

(2) rely on a sole source for its water supply regardless of whether the water is provided by a WVP; and

(3) all County-Other [~~county-other~~] WUGs.

(h) RWPGs shall consider any relevant recommendations from the Drought Preparedness Council.

(i) RWPGs shall make drought preparation and response recommendations regarding:

(1) Development of, content contained within, and implementation of local Drought Contingency Plans [~~drought contingency plans~~] required by the Commission;

(2) Current drought management preparations in the RWPA including:

(A) drought response triggers; and

(B) responses to drought conditions;

(3) The Drought Preparedness Council and the State Drought Preparedness Plan; and

(4) Any other general recommendations regarding drought management in the region or state.

(j) The RWPGs shall develop region-specific model Drought Contingency Plans [~~drought contingency plans~~].

§357.43. Regulatory, Administrative, or Legislative Recommendations.

(a) The RWPs shall contain any regulatory, administrative, or legislative recommendations developed by the RWPGs.

(b) Ecologically Unique River and Stream Segments. RWPGs may include in adopted RWPs recommendations for all or parts of

river and stream segments of unique ecological value located within the RWPA by preparing a recommendation package consisting of a physical description giving the location of the stream segment, maps, and photographs of the stream segment and a site characterization of the stream segment documented by supporting literature and data. The recommendation package shall address each of the criteria for designation of river and stream segments of ecological value found in this subsection. The RWPG shall forward the recommendation package to the Texas Parks and Wildlife Department and allow the Texas Parks and Wildlife Department 30 days for its written evaluation of the recommendation. The adopted RWP shall include, if available, Texas Parks and Wildlife Department's written evaluation of each river and stream segment recommended as a river or stream segment of unique ecological value.

(1) An [A] RWPG may recommend a river or stream segment as being of unique ecological value based upon the criteria set forth in §358.2 of this title (relating to Definitions).

(2) For every river and stream segment that has been designated as a unique river or stream segment by the legislature, during a session that ends not less than one year before the required date of submittal of an adopted RWP to the Board, or recommended as a unique river or stream segment in the RWP, the RWPG shall assess the impact of the RWP on these segments. The assessment shall be a quantitative analysis of the impact of the plan on the flows important to the river or stream segment, as determined by the RWPG, comparing current conditions to conditions with implementation of all recommended WMSs [~~water management strategies~~]. The assessment shall also describe the impact of the plan on the unique features cited in the region's recommendation of that segment.

(c) Unique Sites for Reservoir Construction. An [A] RWPG may recommend sites of unique value for construction of reservoirs by including descriptions of the sites, reasons for the unique designation and expected beneficiaries of the water supply to be developed at the site. The criteria at §358.2 of this title shall be used to determine if a site is unique for reservoir construction.

(d) Any other recommendations that the RWPG believes are needed and desirable to achieve the stated goals of state and regional water planning including to facilitate the orderly development, management, and conservation of water resources and prepare for and respond to drought conditions.

(e) RWPGs may develop information as to the potential impacts of any proposed changes in law prior to or after changes are enacted.

(f) RWPGs should consider making legislative recommendations to facilitate more voluntary water transfers in the region.

§357.44. Infrastructure Financing Analysis.

RWPGs shall assess and quantitatively report on how individual local governments, regional authorities, and other Political Subdivisions [~~political subdivisions~~] in their RWPA propose to finance recommended WMSs and associated WMSPs [~~water management strategies~~].

§357.45. Implementation and Comparison to Previous Regional Water Plan.

(a) RWPGs shall describe the level of implementation of previously recommended WMSs [~~water management strategies~~]. Information on the progress of implementation of all WMSs [~~water management strategies~~] that were recommended in the previous RWP, including conservation and Drought Management WMSs [~~drought management water management strategies~~]; and the implementation

of WMSPs [projects] that have affected progress in meeting the state's future water needs.

(b) RWPGs shall provide a brief summary of how the RWP differs from the previously adopted RWP with regards to:

- (1) Water Demand [~~demand~~] projections;
- (2) Drought of Record [~~record~~] and hydrologic and modeling assumptions used in planning for the region;
- (3) Groundwater and surface water Availability, Existing Water Supplies [~~availability, existing water supplies~~], and identified Water Needs [~~water needs~~] for WUGs and WWP; and
- (4) Recommended and Alternative WMSs [~~alternative water management strategies~~].

§357.46. Prioritization of Projects by Regional Water Planning Groups.

Each RWPG shall prioritize recommended WMSPs in its respective RWP and submit the prioritization separately with its adopted RWP. The RWPG must prioritize the WMSPs in accordance with the uniform standards, developed by the stakeholders committee established under Texas Water Code, §15.436(c), in effect at the time it adopts its RWP.

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

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SUBCHAPTER E. ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL WATER PLANS

31 TAC §357.50, §357.51

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.50. Adoption, Submittal, and Approval of Regional Water Plans.

(a) The RWPGs shall submit their adopted RWPs to the Board every five years on a date to be disseminated by the EA, as modified by subsection (g)(2) [(e)(2)] of this section, for approval and inclusion in the State Water Plan [~~state water plan~~].

(b) Prior to the adoption of the RWP, the RWPGs shall submit concurrently to the EA and the public an IPP. The IPP submitted to the EA must be in the electronic and paper format specified by the EA. Each RWPG must certify that the IPP is complete and adopted by the RWPG. In the instance of a recommended WMS [~~water management strategy~~] proposed to be supplied from a different RWPA [~~regional water planning area~~], the RWPG recommending such strategy shall submit, concurrently with the submission of the IPP to the EA, a copy of

the IPP, or a letter identifying the WMS [~~water management strategy~~] in the other region along with an internet link to the IPP, to the RWPG associated with the location of such strategy.

(c) The RWPGs shall distribute the IPP in accordance with §357.21(d)(4) [~~§357.21(d)(5)~~] of this title (relating to Notice and Public Participation).

(d) Within 60 days of the submission of IPPs to the EA, the RWPGs shall submit to the EA, and the other affected RWPG, in writing, the identification of potential Interregional Conflicts [~~interregional conflicts~~] by:

- (1) identifying the specific recommended WMS [~~water management strategy~~] from another RWPG's IPP;
- (2) providing a statement of why the RWPG considers there to be an Interregional Conflict [~~interregional conflict~~]; and
- (3) providing any other information available to the RWPG that is relevant to the Board's [~~board's~~] decision.

(e) The RWPGs shall seek to resolve conflicts with other RWPGs and shall promptly and actively participate in any Board sponsored efforts to resolve Interregional Conflicts [~~interregional conflicts~~].

(f) The RWPGs shall solicit, and consider the following comments when adopting an [a] RWP:

- (1) the EA's written comments, which shall be provided to the RWPG within 120 days of receipt of the IPP;
- (2) written comments received from any federal agency or Texas state agency, which the RWPGs shall accept after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 90 days after the public hearing is held pursuant to §357.21(d) of this title; and
- (3) any written or oral comments received from the public after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 60 days after the public hearing is held pursuant to §357.21(d) of this title.

(4) The RWPGs shall revise their IPPs to incorporate negotiated resolutions or Board resolutions of any Interregional Conflicts [~~interregional conflicts~~] into their final adopted RWPs.

(5) In the event that the Board has not resolved an Interregional Conflict [~~interregional conflict~~] sufficiently early to allow an involved RWPG to modify and adopt its final RWP by the statutory deadline, all RWPGs involved in the conflict shall proceed with adoption of their RWP by excluding the relevant recommended WMS [~~water management strategy~~] and all language relevant to the conflict and include language in the RWP explaining the unresolved Interregional Conflict [~~interregional conflict~~] and acknowledging that the RWPG may be required to revise or amend its RWP in accordance with a negotiated or Board resolution of an Interregional Conflict [~~interregional conflict~~].

(g) Submittal of RWPs. RWPGs shall submit the IPP and the adopted RWPs and amendments to approved RWPs to the EA in conformance with this section.

- (1) RWPs shall include:
 - (A) The technical report and data prepared in accordance with this chapter and the EA's specifications;
 - (B) An executive summary that documents key RWP findings and recommendations; and
 - (C) Summaries of all written and oral comments received pursuant to subsection (f) of this section, with a response by the

RWPG explaining how the plan was revised or why changes were not warranted in response to written comments received under subsection (f) of this section.

(2) RWPGs shall submit RWPs [regional plans] to the EA according to the following schedule:

(A) IPPs [Initially prepared plans] are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the IPP, the RWPGs shall upload the data, metadata and all other relevant digital information supporting the plan to the Board's State Water Planning Database [planning database system]. All changes and corrections to this information must be entered into the Board's State Water Planning Database [database] prior to submittal of a final adopted plan.

(C) The RWPG shall [will] transfer copies of all data, models, and reports generated by the planning process and used in developing the RWP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RWPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.

(D) Adopted RWPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted consistent with the timelines in Texas Water Code §16.053(i).

(E) Once approved by the Board, RWPs shall [will] be made available on the Board website.

(h) Upon receipt of an [a] RWP adopted by the RWPG, the Board shall [will] consider approval of such plan based on the following criteria:

(1) verified adoption of the RWP by the RWPG; and

(2) verified incorporation of any negotiated resolution or Board resolution of any Interregional Conflicts [interregional conflicts], or in the event that an Interregional Conflict [interregional conflict] is not yet resolved, verified exclusion of the relevant recommended WMS [water management strategy] and all language relevant to the conflict.

(i) Approval of RWPs by the Board. The Board may approve an [a] RWP only after it has determined that the RWP complies with statute and rules.

(j) The Board shall consider approval of an RWP that includes unmet municipal Water Needs provided that the RWPG includes adequate justification, including that the RWP:

(1) documents that the RWPG considered all potentially feasible WMSs, including Drought Management WMSs and contains an explanation why additional conservation and/or Drought Management WMSs were not recommended to address the need;

(2) describes how, in the event of a repeat of the Drought of Record, the municipal WUGs associated with the unmet need shall ensure the public health, safety, and welfare in each Planning Decade that has an unmet need; and

(3) explains whether there may be occasion, prior to development of the next IPP, to amend the RWP to address all or a portion of the unmet need.

(k) [§] Board Adoption of State Water Plan. RWPs approved by the Board pursuant to this chapter shall be incorporated into the State Water Plan [state water plan] as outlined in §358.4 of this title (relating to Guidelines).

§357.51. *Amendments to Regional Water Plans.*

(a) Local Water Planning Amendment Requests. A Political Subdivision [political subdivision] in the RWPA may request an [a] RWPG to consider specific changes to an adopted RWP based on changed conditions or new information. An [A] RWPG must formally consider such request within 180 days after its receipt and shall amend its adopted RWP if it determines an amendment is warranted. If the Political Subdivision [political subdivision] is not satisfied with the RWPG's decision on the issue, it may file a petition with the EA to request Board review the decision and consider changing the approved RWP. The Political Subdivision [political subdivision] shall send a copy of the petition to the chair of the affected RWPG.

(1) The petition must state:

(A) the changed condition or new information that affects the approved RWP;

(B) the specific sections and provisions of the approved RWP that are affected by the changed condition or new information;

(C) the efforts made by the Political Subdivision [political subdivision] to work with the RWPG to obtain an amendment; and

(D) the proposed amendment to the approved RWP.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RWP, the EA shall request the RWPG to consider making the appropriate change and provide the reason in writing. The Political Subdivision [political subdivision] that submitted the petition shall [will] receive notice of any action requested of the RWPG by the EA. If the RWPG does not amend its plan consistent with the request within 90 days, it shall provide a written explanation to the EA, after which the EA shall [will] present the issue to the Board for consideration at a public meeting. Before presenting the issue to the Board, the EA shall [will] provide the RWPG, the Political Subdivision [political subdivision] submitting the petition, and any Political Subdivision [political subdivision] determined by the EA to be affected by the issue 30 days notice. At the public meeting, the Board may direct the RWPG to amend its RWP based on the local Political Subdivision's request.

(b) Major Amendments to RWPs and State Water Plan. An [A] RWPG may amend an adopted RWP at any meeting, after giving notice for a major amendment and holding a hearing according to §357.21(d) of this title (relating to Notice and Public Participation). An amendment is major if it does not meet the criteria of subsection (c), (d) or (e) of this section. An [A] RWPG may propose amendments to an approved RWP by submitting proposed amendments to the Board for its consideration and possible approval under the standards and procedures of this section.

(1) Initiation of a Major Amendment. An entity may request an [a] RWPG amend its adopted RWP. An [A] RWPG's consideration for action to initiate an amendment may occur at a regularly scheduled meeting.

(2) RWPG Public Hearing. The RWPG shall hold a public hearing on the amendment as defined in §357.21(d) of this title. The amendment shall be available for agency and public comment at least 30 days prior to the public hearing and 30 days following the public hearing as defined in §357.21(d) of this title.

(3) The proposed major amendment:

(A) Shall not result in an over-allocation of an existing or planned source of water; and

~~(B) Shall not produce unmet needs new to the adopted RWP; and~~

(B) ~~(C)~~ Shall conform with rules applicable to RWP development as defined in Subchapters C and D of this chapter.

(4) RWPG Major Amendment Adoption. The RWPG may adopt the amendment at a regularly scheduled RWPG meeting held in accordance with §357.21(b) of this title following the 30-day public comment period held in accordance with §357.21(d) of this title. The amendment shall include response to comments received.

(5) Board Approval of Major Amendment. After adoption of the major amendment, the RWPG shall submit the amendment to the Board which shall consider approval of the amendment at its next regularly scheduled meeting following EA review of the amendment.

(c) Minor Amendments to RWPs and State Water Plan.

(1) An [Minor Amendment to RWP. A] RWPG may amend its RWP by first providing a copy of the proposed amendment to the EA for a determination as to whether the amendment would be minor.

(2) EA Pre-Adoption Review. The EA shall evaluate the proposed minor amendment prior to the RWPG's vote to adopt the amendment. An amendment is minor if it meets the following criteria:

(A) does not result in over-allocation of an existing or planned source of water;

(B) does not relate to a new reservoir;

(C) does not increase unmet needs or produce new unmet needs in the adopted RWP;

~~(D) [(C)]~~ does not have a significant effect on instream flows, environmental flows or freshwater flows to bays and estuaries;

~~(E) [(D)]~~ does not have a significant substantive impact on water planning or previously adopted management strategies; and

~~(F) [(E)]~~ does not delete or change any legal requirements of the plan.

(3) Determination by EA. If the EA determines that the proposed amendment is minor, EA shall notify, in writing, the RWPG as soon as practicable.

(4) RWPG Public Meeting. After receipt of the written determination from the EA, the RWPG shall conduct a public meeting in accordance with §357.21(c) of this title. The public shall have an opportunity to comment and the RWPG shall amend the proposed minor amendment based on public comments, as appropriate, and to comply with existing statutes and rules related to regional water planning responses.

(5) Board Approval of Minor Amendment. After adoption of the minor amendment, the RWPG shall submit the amendment to the Board which shall approve the amendment at its next regularly scheduled meeting unless the amendment contradicts or is in substantial conflict with statutes and rules relating to regional water planning.

(d) Amendment for Water Planning for a Clean Coal Project. An amendment to an [a] RWP or the State Water Plan [state water plan] to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Texas Water Code §5.001, relating to the Texas Commission on Environmental Quality, shall be adopted by the process described in this section. However, an [a] RWPG may amend

the RWP to accommodate planning for a clean coal project without a public meeting or hearing if the EA determines that:

(1) the amendment does not significantly change the RWP; or

(2) the amendment does not adversely affect other WMSs [water management strategies] in the RWP.

(e) Substitution of Alternative WMSs [Water Management Strategies]. After notice is provided in accordance with §357.21(c) of this title, RWPGs may substitute one or more evaluated Alternative Water Management Strategies [alternative water management strategies] for a recommended strategy if the strategy originally recommended is no longer recommended and the substitution of the Alternative WMS [alternative water management strategy] is capable of meeting the same Water Need without over-allocating any source [water need]. Proposed substitutions must receive written approval from the EA prior to substitution by the RWPG.

(f) In the instance of a substitution of an Alternative WMS [alternative water management strategy] or a proposed amendment with a recommended WMS [water management strategy] to be supplied from a different RWPA [regional water planning area], the RWPG recommending such strategy shall submit, concurrently with the submission of the substitution or proposed amendment to the EA, a copy of the substitution or proposed amendment to the RWPG for the location of such strategy. The provisions of sections 357.50(d), (e), (f), and (h), and 357.62, related to Interregional Conflicts, shall apply to substitution or amendment to the RWP in the same manner as those subdivisions apply to an IPP.

(g) Amending the State Water Plan. Following amendments of RWPs, including substitutions of Alternative WMSs [alternative water management strategies], the Board shall make any necessary amendments to the State Water Plan [state water plan] as outlined in §358.4 of this title (relating to Guidelines).

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) 463-7686



SUBCHAPTER F. CONSISTENCY AND CONFLICTS IN REGIONAL WATER PLANS

31 TAC §§357.60, 357.62, 357.64

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.60. *Consistency of Regional Water Plans.*

(a) RWPGs shall submit to the development Board an [a] RWP that is consistent with the guidance principles and guidelines outlined in §357.20 of this title (relating to Guidance Principles for State and

Regional Water Planning). Information provided shall be based on data provided or approved by the Board in a format consistent with the guidelines of Subchapters C and D of this chapter and guidance by the EA.

(b) For the purposes of the Texas Water Code §16.053(j) (relating to Board Financial Assistance) projects proposed to the Board for funding shall ~~with~~ be considered to meet any need identified in an approved RWP in a manner consistent with the RWP if the project:

(1) Is an enhancement of an Existing Water Supply or water source ~~[a current water supply]~~ identified in the analysis developed under §357.32 of this title (relating to Water Supply Analysis) as meeting a demand, even though the project is not specifically recommended in the RWP;

(2) Involves a minor modification to an existing surface water right that is not in conflict with the RWP; ~~or [and]~~

(3) Is meeting a need in a manner consistent with the plan developed under Subchapters C and D of this chapter.

(4) For the purposes of the Texas Water Code §16.053(j), projects proposed to the Board for funding to meet any need identified in an approved RWP for which there is not a recommended WMS ~~[water management strategy]~~ in such plan shall ~~with~~ be considered by the Board not to be consistent with the approved RWP.

(5) For the purposes of the Texas Water Code §16.053(k) (relating to Board Waivers), the Board may consider, among other factors, changed conditions if a Political Subdivision ~~[political subdivision]~~ requests a waiver of the Texas Water Code §16.053(j) for a project proposed to the Board for funding to meet a need in a manner that is not consistent with the manner the need is addressed in an approved RWP. The Board shall request the members of any affected RWPG to provide input on the request for waiver of the Texas Water Code §16.053(j).

(c) Relation to state and local plans. RWPs shall be consistent with Chapter 358 of this title (relating to State Water Planning Guidelines) and this chapter. RWPGs shall consider and use as a guide the State Water Plan ~~[state water plan]~~ and local water plans provided for in the Texas Water Code §16.054 (relating to Local Water Planning).

§357.62. *Interregional Conflicts.*

(a) In the event ~~an~~ ~~[a]~~ RWPG has asserted an interregional conflict and the Board has determined that there is a potential for a substantial adverse effect on that region, or the Board finds that an interregional conflict exists between IPPs, the EA may use the following process:

(1) notify the affected RWPGs of the nature of the interregional conflict;

(2) request affected RWPGs appoint a representative or representatives authorized to negotiate on behalf of the RWPG and notify the EA in writing of the appointment;

(3) request affected RWPGs' assistance in resolving the conflict; and

(4) negotiate resolutions of conflicts with RWPGs as determined by the EA.

(b) In the event the negotiation is unsuccessful, the EA may:

(1) determine a proposed recommendation for resolution of the conflict;

(2) provide notice of its intent to hold a public hearing on proposed recommendations for resolution of the conflict by publishing notice of the proposed change in the Texas Register and in a newspaper of general circulation in each county located in whole or in part in the RWPA involved in the dispute 30 days before the public hearing and

by mailing notice of the public hearing 30 days before public hearing to those persons or entities listed in §357.21(d) of this title (relating to Notice and Public Participation) in the RWPA proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPA proposed to be impacted and to each affected RWPG;

(3) hold a public hearing on the proposed recommendation for resolution of the conflict at a time and place determined by the EA. At the hearing, the EA shall take comments from the RWPGs, Political Subdivisions ~~[political subdivisions]~~, and members of the public on the issues identified by the Board as unresolved problems; and

(4) make a recommendation to the Board for resolution of the conflict.

(c) The Board shall consider the EA's recommendation and any written statements by a representative for each affected RWPG and determine the resolution of the conflict. The Board's decision is final and not appealable.

(d) The EA shall notify affected RWPGs of Board's decision and shall direct changes to the affected RWPGs.

§357.64. *Conflicts Between Regional Water Plans and Groundwater Management Plans.*

(a) A groundwater conservation district may file a written petition with the EA stating that a potential conflict exists between the district's approved management plan developed under Texas Water Code §36.1071 (relating to Management Plans) and the approved State Water Plan ~~[state water plan]~~. A copy of the petition shall be provided to the affected RWPG. The petition must state:

(1) the specific nature of the conflict;

(2) the specific sections and provisions of the approved management plan and approved State Water Plan ~~[state water plan]~~ that are in conflict; and

(3) the proposed resolution to the conflict.

(b) If the EA determines a conflict exists, the EA will provide technical assistance to and coordinate with the groundwater conservation district and the affected RWPG to resolve the conflict. Coordination may include any of the following processes:

(1) requiring the RWPG to respond to the petition in writing;

(2) meeting with representatives from the groundwater conservation district and the RWPG to informally mediate the conflict; and/or

(3) coordinating a formal mediation session between representatives of the groundwater conservation district and the RWPG.

(c) If the parties do not reach resolution, the EA will recommend a resolution to the conflict to the Board within 60 days of the date the mediation is completed. Notice shall be provided at least 15 days prior to the date of the Board meeting to discuss the proposed resolution. The Board may:

(1) revise an approved RWP; and

(2) revise a district's approved management plan.

(d) If the Board requires a revision to the groundwater conservation district's approved management plan, the Board shall provide information to the groundwater conservation district on what revisions are required and why. The groundwater conservation district shall prepare any revisions to its plan based on the information provided by the Board and hold, after notice, at least one public hearing. The groundwater conservation district shall consider all public and Board com-

ments, prepare, revise, and adopt its plan, and submit the revised plan to the Board pursuant to Chapter 356 of this title (relating to Groundwater Management). If the groundwater conservation district disagrees with the decision of the Board, the district may appeal the decision to a district court in Travis County, Texas.

(e) If the Board requires a revision to the approved RWP, the Board shall provide information to the RWPG on what revisions are required and why. The RWPG shall prepare the revisions as a major amendment to their approved RWP pursuant to §357.51(b) of this title.

(f) At the Board's discretion, the Board shall include in the State Water Plan [state water plan] a discussion of the conflict and its resolution.

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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Texas Water Development Board

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.12

The Texas Department of Public Safety (the department) proposes amendments to §4.12, concerning Exemptions and Exceptions. The proposed amendments are necessary to ensure this section is consistent with interstate hours of service rules promulgated under federal statute in 49 CFR Part 395.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be some economic effect on small businesses or micro-businesses required to comply with the section as proposed. The department is unable to estimate the number of small businesses and micro-businesses that will be subject to this amended rule because the Texas Department of Motor Vehicles registers carriers but is unable to provide the department with the number of carriers meeting the definition of "small business" or "micro business".

The economic effect on a small business or micro-business will depend on the type of electronic logging device (ELD) that carri-

ers or drivers use, the condition of the ELD, and the driver training needed upon effect. ELDs cost between \$240 and \$5800 dollars per year per unit depending on where the device is purchased/leased and from whom. The businesses also have various purchase, rental, support, and enhancement options which impact the overall cost of the device. Further, this federal mandate (as identified in United States Department of Transportation/Federal Motor Carrier Safety Administration memorandum MC-ECE-2016-0001) has a two year window of compliance (12-18-17) unless the carrier is already using an Automated Onboard Recording Device, in which case the carrier has a four year window of compliance (12-16-19). This deployment expense is mitigated by reduced fines for log book violations, improvement of safety management system scores at the federal level, and reduced liability by keeping log book violations at a minimum and keeping fatigued drivers off of the road. Additionally, intrastate carriers will continue to be able to utilize the record of duty status exemption outlined in this section.

The department, taking into consideration the health, safety, and the environmental and economic welfare of the state, has analyzed whether using an alternative regulatory method would accomplish the same objectives of the proposed rule but minimize the adverse impact on small businesses or micro businesses. The department considered exempting intrastate carriers and intrastate businesses meeting the definition of "small business" and "micro business" from this rule as it relates to ELDs as a method of reducing the adverse impact of the rule. However, these alternatives are not possible because exempting small businesses and/or micro businesses from this rule would allow for the continued use of handwritten records of duty status (log books). This rule serves to reduce log book errors, reduces fatigued driving, and reduces falsified log book records. These reductions in turn create safer highways.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The Texas Department of Public Safety, in accordance with the Administrative Procedure Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, August, 15, 2016, at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.11 regarding Transportation of Hazardous Materials, proposed for adoption under the authority of

Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.12. Exemptions and Exceptions.

(a) Exemptions. Exemptions to the adoptions in §4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, §§644.052 - 644.054, and are adopted as follows:

(1) Such regulations shall not apply to the following vehicles when operated intrastate:

(A) a vehicle used in oil or water well servicing or drilling which is constructed as a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights;

(C) a vehicle transporting seed cotton; or

(D) concrete pumps.

(2) Drivers in intrastate commerce will be permitted to drive 12 hours following 8 consecutive hours off duty. Drivers in intrastate commerce may not drive after having been on duty 15 hours, following 8 consecutive hours off duty. Drivers in intrastate commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for 8 consecutive hours. Drivers of vehicles operating in intrastate commerce shall be permitted to accumulate the equivalent of 8 consecutive hours off duty by taking a combination of at least 8 consecutive hours off duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(A) neither rest period in the sleeper berth is shorter than 2 hours duration;

(B) the driving time in the period immediately before and after each rest period in the sleeper berth, when added together, does not exceed 12 hours;

(C) the on duty time in the period immediately before and after each rest period in the sleeper berth, when added together, does not include any driving time after the 15th hour; and

(D) the driver may not return to driving subject to the normal hours of service requirements in this subsection without taking at least 8 consecutive hours off duty, at least 8 consecutive hours in the sleeper berth, or a combination of at least 8 consecutive hours off duty and sleeper berth time.

(3) Drivers in intrastate commerce who are not transporting placardable hazardous materials and were regularly employed in Texas as commercial vehicle drivers prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday on or after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph shall not be deemed as an exemption from drug and alcohol testing requirements contained in Title 49, Code of Federal Regulations, Parts 40 and 382.

(4) The maintenance of a driver's record of duty status is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 12 consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 12 hours on duty; and

(C) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include the following information:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day;

(iv) the total time on duty for the preceding seven days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently; and

(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

(5) The maintenance of a driver's record of duty status is not required for the driver of a ready-mix concrete delivery vehicle if the vehicle is operated intrastate within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 14 consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 14 hours on duty;

(C) the driver does not exceed 12 hours maximum driving time following 8 consecutive hours off duty; and

(D) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day;

(iv) the total time on duty for the preceding 7 days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently; and

(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

(6) An electronic logging device (ELD) and an automatic on-board recording device have the meaning as defined in Title 49, Code of Federal Regulations, §395.2.

(7) Unless otherwise exempted, until December 16, 2019, a motor carrier operating commercial motor vehicles intrastate shall require each of its drivers to record the driver's record of duty status:

(A) Using an ELD that meets the requirements of subpart B of Title 49, Code of Federal Regulations, Part 395;

(B) Using an automatic on-board recording device that meets the requirements of Title 49, Code of Federal Regulations, §395.15; or

(C) Manually, recorded as specified in Title 49, Code of Federal Regulations, §395.8. The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required.

(8) Unless otherwise exempted, a motor carrier operating commercial motor vehicles intrastate must install and require each of its drivers to use an ELD to record the driver's duty status in accordance with Title 49, Code of Federal Regulations, Part 395 no later than December 16, 2019.

(9) [~~(5)~~] The provisions of Title 49, Code of Federal Regulations, Part 395 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons.

(10) [~~(6)~~] Unless otherwise specified, a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(11) [~~(7)~~] Unless otherwise specified, a contract carrier is subject only to Title 49, Code of Federal Regulations, Part 391, except §391.11(b)(4) and Subpart E, Parts 393, 395, and 396, except §396.17.

(b) Exceptions. Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are as follows:

(1) Title 49, Code of Federal Regulations, §393.86, requiring rear-end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991 and is used solely in intrastate commerce.

(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period. A driver may restart a consecutive seven-day period after taking 34 or more consecutive hours off-duty. Drivers in intrastate

transportation violating the 70 hour limit provided in this paragraph will be placed out-of-service until no longer in violation.

(3) For drivers of commercial motor vehicles operating in intrastate transportation and used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(4) For drivers of a commercial motor vehicle operating in intrastate transportation and used primarily in the transportation of construction materials and equipment, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. "Transportation of construction materials and equipment" has the meaning assigned by Title 49, Code of Federal Regulations, §395.2.

(5) Drivers of vehicles operating in intrastate transportation claiming the 150 air mile radius exemption in subsection (a)(4) of this section must return to the work reporting location; be released from work within 12 consecutive hours; and have at least 8 consecutive hours off-duty separating each 12 hours on-duty.

(6) Title 49, Code of Federal Regulations, §391.11(b)(1), is not adopted for intrastate drivers. The minimum age for an intrastate driver shall be 18 years of age. Intrastate drivers in violation of this paragraph shall be placed out-of-service until no longer in violation.

(7) Title 49, Code of Federal Regulations, §391.11(b)(2), is not adopted for intrastate drivers. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(8) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (Title 49, Code of Federal Regulations §571.121) applicable to the vehicle at the time it was manufactured.

(9) Title 49, Code of Federal Regulations, §390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the following exceptions:

(A) Title 49, Code of Federal Regulations, §390.23(a)(2) is not applicable to intrastate motor carriers making emergency residential deliveries of heating fuels or responding to a pipeline emergency, provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months. An emergency under this paragraph is one that if left unattended would result in immediate serious bodily harm, death or substantial property damage but does not include routine requests to re-fill empty propane gas tanks.

(B) The requirements of Title 49, Code of Federal Regulations, §390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has had at least 34 consecutive hours off duty when the driver has been on duty for more than 70 hours in seven consecutive days.

(10) Title 49, Code of Federal Regulations, Part 380 (Subparts A - D), is not adopted for intrastate motor carriers and drivers. Title 49, Code of Federal Regulations, Part 380 (Subpart E) is adopted for intrastate motor carriers and drivers. Intrastate motor carriers and drivers must complete the requirements of Title 49, Code of Federal Regulations, §380.500 on or before July 31, 2005.

(11) In accordance with §4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) (Pub. L. 109-59), the hours of service regulations in this subchapter are not applicable to utility service vehicles that operate in either interstate or intrastate commerce. Utility service vehicles are those vehicles operated by public utilities, as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, the Texas Water Code, Title 49, Code of Federal Regulations, §395.2, or other applicable regulations, and charged with the responsibility for maintaining essential services to the public to protect health and safety.

(12) The United States Department of Transportation number requirements in Texas Transportation Code, Chapter 643 do not apply to vehicles/motor carriers operating exclusively in intrastate commerce and that are exempted from the requirements by Texas Transportation Code, §643.002.

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.18

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC Chapter 145, §145.18, concerning action upon review; extraordinary vote (HB 1914). The amendment is proposed to add 36 months to subsection (a)(3)(A).

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment to this section will be to ensure consistency between this rule and Board Policy. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under Texas Government Code §§508.036, 508.0441, 508.045, 508.141, and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

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

§145.18. *Action upon Review; Extraordinary Vote (HB 1914).*

(a) This section applies to any offender convicted of a capital offense, who is eligible for parole, and an offense under Texas Penal Code, Section 22.021. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

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

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 36, 60, 84 or 120 months following the panel decision date; or

(B) (No change.)

(b) - (e) (No change.)

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

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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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