

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS

SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

4 TAC §35.4

The Texas Animal Health Commission (Commission) in a duly noticed meeting on April 4, 2023, adopted amendments to §35.4, concerning Entry, Movement, and Change of Ownership. Section 35.4 is adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8386) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission adopts amendments to Chapter 35 to remove additional brucellosis entry requirements created by the Commission in 2013 for sexually intact cattle entering Texas from the Designated Surveillance Area (DSA) comprised of the states of Idaho, Montana, and Wyoming, established by the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS) Veterinary Services (VS).

The amendments are adopted pursuant to Agriculture Code Chapter 161 and 163. Section 161.041(a) and (b) authorizes the Commission to adopt any rules necessary to eradicate or control any disease or agent of transmission for any disease that affects livestock, which includes Brucellosis. Section 163.066 authorizes the Commission, as a control measure, to regulate the movement of cattle. The elimination of the entry requirements for cattle imported from the Idaho, Montana, or Wyoming DSA follows nine (9) years of testing without any detection of brucellosis-infected cattle, and in the absence of significant program deficits found during the USDA-APHIS-VS triennial review of the state brucellosis programs in the DSA states.

HOW THE RULES WILL FUNCTION

The amendments to §35.4, concerning Entry, Movement, and Change of Ownership, removes the DSA-specific entry requirements for cattle originating from Idaho, Montana, or Wyoming and eliminates §35.4(b)(3)-(5).

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended January 22, 2023.

During this period, the Commission received comments regarding the proposed rules from four commenters, including the Montana Stockgrowers Association, Montana Board of Livestock,

Wyoming Livestock Board, and one individual. A summary of comments relating to the rules and Commission's responses follows.

Comment: The Montana Stockgrowers Association, Montana Board of Livestock, Wyoming Livestock Board, and one individual are in support of the rule amendment.

Response: The Commission thanks the commenters for the feedback. No changes were made as a result of these comments.

STATUTORY AUTHORITY

The amendment is authorized by Texas Agriculture Code, Chapter 161.

Pursuant to §161.041, titled "Disease Control," the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the Commission determines require control or eradication. Pursuant to §161.041(b), the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," a commissioner or veterinarian or inspector employed by the Commission may enter public or private property for the exercise of an authority or performance of a duty under Chapter 161.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission may, by rule, regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the

ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals," the Commission, by rule, may provide the method for inspecting and testing animals before and after entry into the state of Texas. The Commission may create rules requiring health certificates and entry permits.

Pursuant to §163.002, titled "Cooperative Program," the Commission, in order to bring about effective control of bovine brucellosis, to allow Texas cattle to move in interstate and international commerce with the fewest possible restrictions, and to accomplish those purposes in the most effective, practical, and expeditious manner, the Commission may enforce this chapter and enter into cooperative agreements with the United States Department of Agriculture.

Pursuant to §163.066, titled "Regulation of Movement of Cattle; Exception," the Commission, by rule, may regulate the movement of cattle and may restrict intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 719-0718



CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

The Texas Animal Health Commission (Commission) in a duly noticed meeting on April 4, 2023, adopted amendments to §40.6, concerning CWD Movement Restriction Zones. Section 40.6 is adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8388) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission adopts amendments to §40.6 to establish new containment zone (CZ) 5, expand existing CZ 2 and CZ 3, create a new surveillance zone (SZ) 8, and modify existing SZ 5 to either implement or improve surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. The disease can be passed through contaminated environmental conditions, and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

Expansion and creation of these containment zones follows detection of CWD. Each amended zone aligns with zones developed in consultation with the Texas Parks and Wildlife Department. The purpose of the restriction zones is to both increase surveillance and reduce the risk of CWD being spread from areas where it may exist.

HOW THE RULES WILL FUNCTION

The amendment to §40.6(b)(1)(B) enlarges current containment zone (CZ) 2 in Hartley County.

The amendment to §40.6(b)(1)(C) enlarges current CZ 3 in Medina County in order to comport with existing parameters for containment zones and is necessary to provide for additional surveillance within the recalculated parameters.

The amendment to §40.6(b)(1)(E) creates new CZ 5 in Kimble County in response to the detection of CWD in another deer within the county.

The amendment creates §40.6(b)(1)(F) and moves current §40.6(b)(1)(E), which describes CZ 6, to this new subsection for continuity of numbering of the containment zones.

The amendment to §40.6(b)(2)(E) enlarges surveillance zone (SZ) 5 in Kimble County to include the city of Junction, which allows hunters to transport carcasses to processors and taxidermists in Junction without carcass movement restrictions.

The amendment to create §40.6(b)(2)(H) would create new SZ 8 in Duval County in response to the detection of CWD in a deer breeding facility at the end of 2021 and to allow hunters to transport carcasses to processors and taxidermists in Alice and Freer without carcass movement restrictions.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended January 22, 2023.

During this period, the Commission received no comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments to §40.6 within Chapter 40 of the Texas Administrative Code are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Texas Animal Health Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require, by order, the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more

stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000, effective September 1, 2021.

The proposed rules in this chapter for adoption do not affect other statutes, sections or codes.

The Commission certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the Commission's legal authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 45. REPORTABLE AND ACTIONABLE DISEASES

4 TAC §45.3

The Texas Animal Health Commission (Commission) in a duly noticed meeting on April 4, 2023, adopted amendments to §45.3, concerning Reportable and Actionable Disease List. Section 45.3 is adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8405) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission adopts amendments to Chapter 45 to establish and include "Malignant Catarrhal Fever caused by a ruminant gamma herpesvirus" as a disease that is reportable to the Commission in order to address the emerging threat to susceptible species in Texas. Many of the susceptible species are economically important in the state of Texas and include bison, bongo, blackbuck, 3 species of gazelle, roan and sable antelope, and white-tailed deer. Reporting diseases is critical to managing current, and preventing future, outbreaks, and a necessary first step towards understanding disease dynamics and transmission routes.

HOW THE RULES WILL FUNCTION

The amendment to §45.3, Reportable and Actionable Disease List, adds Malignant Catarrhal Fever caused by a ruminant gamma herpesvirus to the list of reportable and actionable diseases and agents of disease transmission among multiple species and reorders the list in alphabetical order.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended January 22, 2023.

During this period, the Commission received comments regarding the proposed rules from one individual. A summary of the comment relating to the rules and Commission's response follows.

Comment: An individual representing the Texas Bison Association commented in support of the rule amendments.

Response: The Commission thanks the commenter for the feedback. No changes were made as a result of this comment.

STATUTORY AUTHORITY

The amendments are authorized by Texas Agriculture Code, Chapter 161.

Pursuant to §161.041, titled "Disease Control," the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the Commission determines require control or eradication. Pursuant to §161.041(b) the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.043, titled "Regulation of Exhibitions," the Commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," a Commissioner or veterinarian or inspector employed by the Commission may enter public or private property for the exercise of an authority or performance of a duty under Chapter 161.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission may, by rule, regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals," the Commission, by rule, may provide the method for inspecting and testing animals before and after entry into the state of Texas. The Commission may create rules for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.2, §51.8

The Texas Animal Health Commission (Commission) in a duly noticed meeting on April 4, 2023, adopted amendments to §51.2, concerning General Requirements, and §51.8, concerning Cattle. Section 51.2 is adopted without changes and will not be republished. Section 51.8 is adopted with changes to proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8407) based on public comments received. The changes to §51.8 allows the entry of sexually intact dairy cattle less than six months of age without a negative tuberculosis test with an entry permit. The permitted cattle would then be required to test negative for tuberculosis between the age of two months to six months. Because the revisions to §51.8 would not impose more stringent requirements for compliance than the proposed version, this section will be republished.

JUSTIFICATION FOR RULE ACTION

The Commission adopts amendments to Chapter 51 to clarify the requirements of the certificate of veterinary inspection. Recording official identification on a certificate of veterinary inspection ensures animal(s) moved into Texas are examined by a veterinarian and found to be free of communicable or infectious diseases.

Further, the amendments to Chapter 51 change the tuberculosis test entry requirements for sexually intact dairy cattle from two months of age or older to six months of age or older. For dairy cattle less than six months of age that are permitted entry to a designated facility, the amendments require a negative tuberculosis test at age of two months to six months while they are held at the designated facility. This adequately mitigates the risk that tuberculosis, a contagious respiratory disease in cattle and other species, is not inadvertently moved into Texas. Changes in the adopted amendment respond to public comments.

HOW THE RULES WILL FUNCTION

The amendment to §51.2, General Requirements, clarifies that animals vaccinated or tested for any disease as required by the Commission be individually officially identified on a certificate of veterinary inspection, instead of just individually identified.

The amendment to §51.8, Cattle, increases the tuberculosis testing age for dairy cattle moving into Texas from two to six months of age. The amendment also requires tuberculosis testing between the age of two months to the age of six months for sex-

ually intact dairy cattle less than six months of age entering the state on an entry permit.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended January 23, 2023.

During this period, the Commission received comments regarding the proposed rules from six interested parties. A summary of comments relating to the rules and Commission's responses follows.

Comment: Two individuals submitted comments related to §51.2 requesting the Commission consider recognizing microchips as official identification for exotic bovids or for zoo animals since it is an approved form of official identification by the USDA.

Response: The Commission considers official identification any device approved for use to individually identify an animal approved by the Commission or USDA. As the commenters note, some microchips are recognized as a form of official identification by the USDA. Because USDA identification guidelines allow for the use of the USDA 840-ID microchip in some animals, the Commission considers it an official identification for those animals. The Commission thanks the commenters for the feedback. No changes were made as a result of this comment.

Comment: The Commission received comments from four individuals concerning §51.8. The comments expressed that the proposed language regarding sexually intact dairy cattle less than six months in age would detrimentally impact calf ranch operations. The comments suggested the amendment be changed to allow designated facilities holding sexually intact dairy cattle less than six months of age to test for tuberculosis between the age of two to six months rather than at the age of six months.

Response: The Commission agrees, and the adopted amendment reflects the suggested change.

STATUTORY AUTHORITY

The amendments are authorized by Texas Agriculture Code, Chapter 161.

Pursuant to §161.041, titled "Disease Control," the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the Commission determines require control or eradication. Pursuant to §161.041(b) the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.043, titled "Regulation of Exhibitions," the Commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," a commissioner or veterinarian or inspector employed by the Commission may enter public or private property for the exercise of an authority or performance of a duty under Chapter 161.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Products," the Commission may require testing, vacci-

nation, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission may, by rule, regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals," the Commission, by rule, may provide the method for inspecting and testing animals before and after entry into the state of Texas. The Commission may create rules for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

§51.8. Cattle.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement, and Change of Ownership). Cattle which are parturient, postparturient or 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers being shipped to a feedyard prior to slaughter, shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

(b) Tuberculosis requirements.

(1) All beef cattle, bison and sexually neutered dairy cattle originating from a federally recognized accredited tuberculosis free state, or zone, as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(2) All beef cattle, bison and sexually neutered dairy cattle originating from a state or zone with anything less than a tuberculosis free state status and having an identified wildlife reservoir for tuberculosis or that have never been declared free from tuberculosis shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, prior to entry with results of this test recorded on the certificate of veterinary inspection. All beef cattle, bison and sexually neutered dairy cattle originating from

any other states or zones with anything less than free from tuberculosis shall be accompanied by a certificate of veterinary inspection.

(3) All dairy breed animals, including steers and spayed heifers, shall be officially identified prior to entry into the state. All sexually intact dairy cattle, that are six months of age or older may enter provided that they are officially identified, and are accompanied by a certificate of veterinary inspection stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than six months of age must obtain an entry permit from the commission, as provided in §51.2(a) of this title (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of two months to six months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. Dairy cattle delivered to an approved feedlot for feeding for slaughter by the owner or consigned there and accompanied by certificate of veterinary inspection with an entry permit issued by the commission are exempt from testing unless from a restricted herd. In addition, all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or zones with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) All "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall obtain a permit, prior to entry into the state, in accordance with §51.2(a) of this title and be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within 12 months prior to entry into the state.

(5) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status, would enter by meeting the requirements for a state with similar status as stated in paragraphs (1), (2), and (3) of this subsection.

(6) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(A) To be held for purposes other than for immediate slaughter or feeding for slaughter in an approved feedyard or approved pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the commission or APHIS/VIS.

(B) When destined for feeding for slaughter in an approved feedyard, cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the approved feedyard only in sealed trucks; accompanied with a VS 1-27 permit issued by commission or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(7) Cattle originating from Mexico.

(A) All sexually intact cattle shall meet the requirements provided for in paragraph (6) of this subsection.

(B) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation of cattle from Mexico. In addition to the federal requirements, steers

and spayed heifers must be moved under permit to an approved pasture, approved feedlot, or approved pens.

(C) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in paragraph (6)(A) of this subsection and the applicable requirement listed in clauses (i) and (ii) of this subparagraph:

(i) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(ii) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(I) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian;

(II) be moved by permit to a premise of destination and remain under Hold Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense. The cattle may be allowed movement to and from events/activities in which commingling with other cattle will not occur and with specific permission by the TAHC until confirmation of the negative post entry retest for tuberculosis can be conducted; and

(III) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(D) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(E) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(F) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(G) Any certificate, form, record, report, or chart issued by an accredited veterinarian for cattle that originate from Mexico, have resided in Mexico or are "M" branded shall include the statement, "the cattle represented on this document are of Mexican origin."

(c) Trichomoniasis Requirements:

(1) A breeding bull that is 12 months of age or older may enter the state provided the bull is officially identified as provided by §38.1 of this title (relating to Definitions) and accompanied by a certificate of veterinary inspection stating the bull tested negative for Trichomoniasis with an official Real Time Polymerase Chain Reaction (RT-PCR) test as provided by §38.6 of this title (relating to Official Trichomoniasis Tests) within 60 days prior to the date of entry.

(2) A breeding bull that is 12 months of age or older is exempt from the testing requirement of paragraph (1) of this subsection if the bull meets one of the following requirements:

(A) The bull enters on and is moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this title, for the purpose of participating at a fair, show, exhibition or rodeo, remains in the state for less than 60 days from the date of entry, and is isolated from female cattle at all times. The certificate of veterinary inspection shall include the entry permit number. A bull that is in this

state on or after the 60th day from the date of entry shall test negative for Trichomoniasis with an official RT-PCR test.

(B) The bull enters on and is moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this title, directly to a feedyard that has executed a Trichomoniasis Certified Facility Agreement. The certificate of veterinary inspection shall include the entry permit number.

(C) The bull enters on and is moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this title, directly to a facility that tests the gain and feed conversion of cattle (bull test station) that isolates the bull from female cattle at all times. The certificate of veterinary inspection shall include the entry permit number. The bull shall return to the out-of-state premises destination directly from the bull test station or test negative for Trichomoniasis with an official RT-PCR test.

(D) A Texas bull that is enrolled in an out-of-state facility that tests the gain and feed conversion of cattle (bull test station) and isolates the bull from female cattle at all times may move directly to the Texas premises of origin. The certificate of veterinary inspection shall state the bull was enrolled in a bull test station and was isolated from female cattle.

(E) The bull is enrolled at an out-of-state semen collection facility, which complies with Certified Semen Services Minimum Requirements for Disease Control of Semen Produced for Artificial Insemination, that isolates the bull from female cattle at all times and the bull is moved directly from a semen collection facility into the state. The certificate of veterinary inspection shall state the bull was enrolled in a semen collection facility and was isolated from female cattle.

(F) The bull originates from a herd that is enrolled in a Certified Trichomoniasis Free Herd Program or other certification program that is substantially similar, as determined by the Executive Director, to the program requirements provided by §38.8 of this title (relating to Herd Certification Program--Breeding Bulls).

(G) The bull enters from a premises of origin (farm, ranch, or dairy where the bull has been raised or maintained for breeding purposes) and moves directly to a federally approved livestock market with an owner shipper statement and does not require an entry permit or CVI.

(H) The bull enters from other than a premises of origin and is moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this title, directly to a federally approved livestock market that isolates the bull from female cattle at all times and the bull is Trichomoniasis tested as required by §38.2 of this title (relating to General Requirements). The certificate of veterinary inspection shall include the entry permit number.

(3) Female cattle 12 months of age or older that originate from a known Trichomoniasis positive herd, or exposed to a known Trichomoniasis positive bull, may not enter the state unless the animal is officially identified and enters on and is moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this title, directly to an approved slaughtering establishment. The certificate of veterinary inspection shall include the entry permit number and a statement that the animal is Trichomoniasis exposed.

(4) All breeding bulls entering from a foreign country shall enter on and be moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this title, to a premises of destination in Texas and shall be placed under Hold Order and officially tested for Trichomoniasis with not less than three official culture tests conducted not less than seven days apart, or an official RT-PCR test, within 30 days after entry into the state. All bulls shall be isolated from

female cattle at all times until tested negative for Trichomoniasis. The Hold Order shall not be released until all other post entry disease testing requirements have been completed. All bulls tested for Trichomoniasis shall be officially identified at the time the initial test sample is collected. The identification shall be recorded on the test documents.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2023.

TRD-202301537

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Texas Animal Health Commission

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For further information, please call: (512) 719-0718



TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

The Texas Film Commission within the Economic Development and Tourism Office of the Office of the Governor (the "OOG") adopts the repeal of 13 TAC §121.16, concerning Texas-Based National Network Project. The repeal of 13 TAC §121.16 is adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8412) and will not be republished.

Amended 13 TAC §121.2, concerning Definitions, §121.6, concerning Grant Awards and §121.7 concerning Underutilized and Economically Distressed Areas are adopted with changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8412) and will be republished.

The OOG also adopts amendments 13 TAC §121.1, concerning Background and Purpose, §121.3, concerning Eligible Projects, §121.4, concerning Ineligible Projects, §121.5, concerning Eligible and Ineligible In-State Spending, §121.8, concerning Grant Application, §121.9, concerning Processing and Review of Applications, §121.10, concerning Disqualification of an Application, §121.11, concerning Confirmation and Verification of Texas Expenditures, §121.12, concerning Disbursement of Funds, §121.13, concerning Texas Heritage Project, §121.14, concerning Revocation and Recapture of Incentives. These amendments are adopted without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8412). These rules will not be republished.

REASONED JUSTIFICATION:

The adopted rules relate to Texas Moving Image Industry Incentive Program ("TMIIP"), which was implemented to increase employment opportunities for Texas industry professionals, encourage tourism to the state, and boost economic activity in Texas cities and the overall Texas economy.

The adopted amendments to §121.1 update outdated language and make non-substantive updates to style and grammar.

The adopted amendments to §121.2 update definitions to better align with the purpose of the program and based on changes in the industry, add a definition for the term "Man Hours," remove an unnecessary definition for the term "Qualifying Application," update outdated language, and make non-substantive updates to style and grammar.

The adopted amendments to §121.3 clarify and update how an Applicant may meet the statutory eligibility requirements, including new ways to satisfy the requirement that at least 60 percent of the moving image project must be filmed in Texas. The adopted amendments also make non-substantive updates to style and grammar.

The adopted amendments to §121.4 update the types of projects that are ineligible for grants under this program by removing the exception to award shows for broadcast on national network television to a national audience and adding interactive digital media experiences used in gambling devices. The adopted amendments also make non-substantive updates to style and grammar.

The adopted amendments to §121.5 clarify the lists of eligible and ineligible in-state expenditures under the program. The adopted amendments also make non-substantive updates to style and grammar.

The adopted amendments to §121.6 make non-substantive updates to style and grammar. In response to comments, as discussed later in this rulemaking, the adopted rulemaking will not make the changes proposed to §121.6(c) and (d) in the proposed rulemaking. In that proposal, the OOG considered revising the potential grant amounts for reality television projects and commercials to only allow for the receipt of a grant equal to five percent of eligible in-state spending when a production met a single in-state spending threshold. The OOG has determined the program will retain the current practice of allowing a grant equal to five percent or ten percent of eligible in-state spending. This adopted rule will be republished.

The adopted amendments to §121.7 add two new options to the existing option for Applicants to receive a single additional grant equal to two-and-a-half percent of total in-state spending. The additional options relate to: (1) demonstrating that five percent of the combined total of paid Crew and paid Cast, including extras, who are paid by the Applicant are Texas Resident "Veterans"; and (2) expending ten percent of the total eligible in-state spending on eligible expenditures during Postproduction, including labor, vendors, and music costs. The adopted amendments also establish that an Applicant may only qualify for one of the options and may not receive multiple additional two-and-a-half percent additional grants. The adopted amendments also make non-substantive updates to style and grammar. In response to comments, as discussed later in this rulemaking, the OOG added "Man Hours" as an eligible metric for the additional 2.5 percent grant based on labor undertaken in UEDAs. The OOG determined the adopted rules will not add two additional options for Applicants to receive a single additional grant equal to two-and-a-half percent of total in-state spending, as proposed. The two options that will not be added relate to training events and the creation of public service announcements. Finally, for the option related to hiring veterans, the OOG lowered the threshold to qualify under that option from ten percent of the combined paid Cast and Crew to five percent. This adopted rule will be republished.

The adopted amendments to §121.8 update the methods by which applicants may obtain application forms from the Texas

Film Commission to include telephone, Internet, or other means if additional special needs facilitation is required, instead of directing Applicants to a specific website. The adopted amendments extend the window to submit an application from up to 120 calendar days prior to a project's Principal Start Date to up to 180 calendar days prior to a project's Principal Start Date. For a delay to the start of a project, the consequence is changed from mandating re-application to allowing the Texas Film Commission to require re-application at its discretion. The adopted amendments also revise the actions the OOG will take if it receives a request for information submitted by an Applicant, as well as make non-substantive updates to style and grammar.

The adopted amendments to §121.9 clarify the factors the Texas Film Commission shall consider when determining, in its sole discretion, whether to approve a Qualifying Application. The adopted amendments specify that periodic tracking and review of a grant agreement can include requesting reports on a quarterly basis and remove instructions for completion of the Declaration of Texas Residency Forms so that those instructions may be provided on the form itself. The adopted amendments also make non-substantive updates to style and grammar.

The adopted amendments to §121.10 update the citation for inappropriate content as described in the Texas Penal Code and make non-substantive updates to style and grammar.

The adopted amendments to §121.11 add and clarify certain items that the Expended Budget must include in providing the final verifying documentation. The adopted amendments also make non-substantive updates to style and grammar.

The adopted amendments to §121.12 remove the provisions relating to assignment of a grant payment to a third party and make non-substantive updates to style and grammar.

The adopted amendments to §121.13 make non-substantive updates to style and grammar.

The adopted amendments to §121.14 make non-substantive updates to style and grammar.

The adopted repeal of §121.16 removes provisions that are not necessary because they relate to a designation no longer offered under TMIIP.

The remaining adopted amendments clarify or remove outdated or unnecessary language from the rules, including using the word "shall" or "must" when provisions require certain behaviors or actions.

SUMMARY OF COMMENTS AND AGENCY RESPONSES

The public comment period for these rules began on December 23, 2022, and closed on January 22, 2023. The OOG received two comments. The following provides summaries of the comments and the OOG's responses.

Comment 1: The first commenter, a trade organization, expressed its appreciation for the rule changes and provided five suggested changes. The OOG is grateful for the commenter's expression of appreciation and its participation in the rulemaking process.

Suggested Change 1: Retain the usage of Underutilized or Economically Distressed Areas (UEDA) as a stand-alone 2.5 percent additional rebate grant separate from and in addition to the new options for a 2.5 percent rebate grant that are proposed in the amendments to §121.7. The commenter asserts that other options to qualify for a 2.5 percent additional rebate grant are

potentially easier to fulfill, and by making the UEDA-based grant as one of several options, rather than an additional grant, it will result in fewer UEDAs being utilized.

OOG response: Section 485.025 of the Texas Government Code establishes that a production company is eligible for an additional 2.5 percent grant if it spends 25 percent or more of its filming days in a UEDA. The proposed amendments to §121.7 retain this option in compliance with the statute. The OOG has seen that the circumstances of certain productions, however, precluded the production from spending any filming days in a UEDA. For those productions, the proposed amendments to §121.7 offer alternative ways to benefit the state and qualify for a 2.5 percent additional rebate grant. While some productions may choose one of these new alternative methods over utilizing an available UEDA, more productions will have the opportunity to provide additional benefits to Texans and get rewarded for doing so. Accordingly, the OOG declines to make this suggested change.

Suggested Change 2: Lower the threshold in §121.7 to qualify for an additional 2.5 percent rebate grant based on paid cast and crew that are Texas resident veterans from ten percent to five percent. The commenter states that stakeholders have indicated the ten percent requirement will be hard to meet, and so will primarily utilize veterans as "extras," rather than providing veterans a pathway into media production as a profession. The commenter suggests that an initial threshold of five percent would encourage veterans entering the media production industry, so as the pool of Texas veterans grows, the threshold can be revisited and possibly increased in the future.

OOG response: The OOG appreciates the commenter providing feedback on behalf of its stakeholders. The OOG agrees with the comment. Accordingly, the OOG will lower the threshold to qualify for an additional 2.5 percent rebate grant based on total paid Cast and paid Crew that are Texas resident veterans from ten percent to five percent of total paid Cast and paid Crew.

Suggested Change 3: Retain the ten percent grant for reality and commercial projects that have an in-state spending total of more than \$1 million. The commenter states that no economic impact disparity exists between a reality television project and a film project that spends over \$1 million in-state on eligible expenses. The commenter further states that this proposed rule change provides an advantage to one segment of the media production industry over another based on content. The commenter believes this would be problematic precedent and would unfairly impact production companies making unscripted content and commercials.

OOG response: The proposed amendments to §121.6 were based on historical data of TMIIP participants, which have rarely included reality television or commercial projects with in-state spending totals of more than \$1 million. The limited funding for TMIIP requires tailoring the available grants to the expected number and scope of projects. Notwithstanding the foregoing, after further deliberation in response to the comment and an additional assessment of TMIIP grant funding, due to the limited number of reality television projects and commercials that exceed \$1 million eligible in-state spending, the OOG will remove this change and retain the ten percent grant for reality and commercial projects that have in-state spending total of more than \$1 million.

Suggested Change 4: Make incentives for Postproduction spending stand-alone opportunities-"even if principal photography is not conducted in Texas. The commenter states other

states have successful standalone Postproduction incentives that have resulted in a robust in-state postproduction industry, and suggests that Texas's investment in postproduction professional crews would be a critical component to the long-term growth within the media production industry.

OOG response: The OOG has determined that the current circumstances and available resources do not justify the creation of a stand-alone grant for postproduction at this time. Accordingly, the OOG declines this change.

Suggested Change 5: Remove training events and public service announcements as options to qualify for an additional 2.5 percent rebate grant. The commenter states that only media productions with an in-state spend above \$3.5 million will have the resources for these options. The commenter further states that the 2.5 percent rebate grant would, at a minimum, be equal to \$87,500, and training events and public service announcements can be produced for far less than that amount, so large media productions will likely choose this cost-effective option at the expense of other options. Instead, the commenter suggests making training events or public service announcements a requirement for large productions without providing any additional grant funds.

OOG response: The OOG agrees with the concern raised by this comment. Accordingly, the OOG will remove training events and public service announcements as options to qualify for additional 2.5 percent.

Comment 2: The second commenter, a videogame trade association, welcomed the rule amendments, but requested further changes to the rules based on differences in the way videogames are produced; encouraged thoughtful regulation to account for the videogame production industry's ability to continuously employ people, rather than utilize project-based employment, as in the film and television production spaces; and asked that remote working opportunities be taken into account. The OOG is grateful for the second commenter's support and thoughtful feedback.

Suggested Change 1: Remove "sole discretion" requirement from 13 T.A.C. §121.3(f)(2). The commenter states that videogame productions most commonly use "Man Hours" rather than "Filming Days" to measure time, which should justify removing the Commission's discretion to determine which measurement is used.

OOG Response: The OOG disagrees with this comment. The standard, statutorily-contemplated "Filming Days" measurement is appropriate for certain Digital Interactive Media Productions, and historical data reflect that videogame productions have satisfied the requirement using that metric. As the custodian of public funds appropriated to the OOG for the TMIIP grant program, the OOG must retain discretion over when to permit measuring "Man Hours" as an alternative to the "Filming Day" approach. Retaining this discretion ensures wise allocation of public funds by providing the OOG can permit use of "Man Hours" when appropriate based on the circumstances and facts of each project. The OOG declines to make changes in response to this suggestion.

Suggested Change 2: The definition of "Digital Interactive Media Production" should be changed to include segments of a videogame production. The commenter indicates that videogame productions are often decentralized and involve multiple vendors and offices working on different segments to create a final product.

OOG Response: The OOG disagrees with this comment. The existing definitions allow a segment of a "Digital Interactive Media Production" that meets the applicable requirements to participate in TMIIP. Accordingly, the OOG declines this change.

Suggested Change 3: The rules found in §121.7 should be modified to better fit videogame productions by incorporating "Man Hours" and production segments where appropriate, clarifying the minimum requirements for qualifying training events, and incorporating videogame music production costs into allowable Postproduction activities.

OOG Response: The OOG agrees in part with this comment, has rendered part of it moot as explained in the response to Comment 1 Suggested Change 5, and disagrees with the remaining portion. The option provided by §121.7(1) is available to all projects, notwithstanding the method for measuring the percentage of the project filmed in Texas. Accordingly, the OOG will incorporate "Man Hours" into §121.7(1). The portion of the comment related to training events is no longer applicable due to its removal as an option, as discussed above. The existing definition for Postproduction already includes music costs. Accordingly, the OOG declines to make additional changes in response to the comment.

13 TAC §§121.1 - 121.14

STATUTORY AUTHORITY

The amendments are adopted pursuant to Sections 485.022 and 485.024 of the Texas Government Code, which require the Texas Film Commission to develop procedures for the administration and calculation of grant awards under TMIIP.

CROSS REFERENCE TO STATUTE

The amendments implement chapter 121 of the Texas Government Code.

§121.2. Definitions.

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

(1) Applicant--

(A) For Feature Films, Television Programs, Visual Effects Projects for Feature Films or Television Programs, Reality Television Projects or Educational or Instructional Videos: either the Production Company producing the project or the owner of the copyright.

(B) For Commercials or Visual Effects Projects for Commercials: the Production Company, advertising agency, or client; provided, however, that if an advertising agency or client applies as the Applicant, but a Production Company expends the funds in the state in connection with a project, then either a chain of downstream payment from the Applicant to the Production Company or a production services agreement must be evidenced in connection with the submission of the Expended Budget.

(C) For Digital Interactive Media Productions: the Production Company, game or content developer, or game publisher.

(2) Business Day--A day other than Saturday, Sunday, or a Federal or State of Texas holiday.

(3) Cast--Actors paid by the Applicant to perform roles in Texas, including, but not limited to, featured actors, extras, stunt performers, voice-over talent, hosts, judges, announcers and roles or performers that appear on a recurring basis, but excluding talk show guests, game or contest show contestants, and litigants and witnesses in courtroom reality programs.

(4) Commercial--A live-action or animated-production advertisement, including, but not limited to, an individual advertisement, more than one advertisement created in a contiguous production period for the same client, a music video, or an infomercial that is made for the purpose of promoting a product, service, or idea and is produced for distribution via broadcast, cable, or any digital format, including, but not limited to, cable, satellite, Internet, or mobile electronic device.

(5) Crew--Independent contractors or employees paid by the Applicant to perform work in Texas that are directly contracted and credited for a specific position. An individual may work in more than one position on a production. Executive producers and/or permanent salaried employees of an Applicant who are listed on call sheets or production reports but not paid Wages on the project other than producing services, shall not be counted in Crew calculations for Texas Residency purposes. Vendors serving a traditional crew function and providing personal services, but who are paid as independent contractors rather than through payroll, shall be counted in Crew calculations for Texas Residency purposes and must provide a Declaration of Texas Residency Form.

(6) Declaration of Texas Residency Form--A document promulgated by the Texas Film Commission (Commission) to be utilized by Applicants to prove the residency status of each Texas Resident employee, contractor, Crew, or Cast member.

(7) Digital Interactive Media Production--Software that provides a user or users with a game to play or other interactive technology experience for the purpose of entertainment or education, including for military or medical simulation training, and which is created for a game console or platform, personal computer, handheld console, or mobile electronic device used by a business or consumer solely for bona fide amusement purposes as outlined in Section 47.01 of the Texas Penal Code.

(8) Educational or Instructional Video--An individual live-action or animated production, or a contiguous series of more than one live-action or animated production created for the same client, that is produced for exhibition in an educational or instructional setting.

(9) Episodic Television Series--A Television Program consisting of multiple episodes of a single season.

(10) Expended Budget--The final verifying documentation and worksheets submitted by an Applicant to the Commission at the completion of a project that shows the total eligible in-state spending, as defined in Section 485.021(1) of the Texas Government Code, and includes all documentation considered by the Commission to be necessary to show compliance with the requirements of the Texas Moving Image Industry Incentive Program.

(11) Feature Film--Any live-action or animated for-profit production, including narrative and documentary productions, that is produced for distribution in theaters or via any digital format, including, but not limited to, DVD, Internet, or mobile electronic device.

(12) Filming Day--A day of Production as defined in paragraph (18) of this section. When calculating 60% of Filming Days for purposes of §121.3 of this Chapter, but not for purposes of calculating 25% of Filming Days for purposes of §121.7 of this Chapter, a Filming Day may include a traditional day of Production in live-action or digital media, as well as a concurrent day of Production conducted by a second unit, so long as:

(A) such second unit, is not a splinter unit, but is utilized for a bona fide, production-related purpose and would be recognized by the Directors Guild of America as a second unit; and

(B) a call sheet, and production report, for such day is circulated and executed in connection with the activities of such second unit. Any bona fide, second unit day shall be added to both the numerator of Texas days and the denominator of total days for purposes of calculating 60% of Filming Days for purposes of §121.3 of this Chapter.

(13) Man Hours--A unit of one hour's work by one person.

(14) Physical Production--The period encompassing Pre-Production, Production, and Postproduction.

(15) Postproduction--The period that occurs after the end of Production, including but not limited to, animation, bug-fixing, codebase completion, compositing, editing, lighting, music, patch-creation, sound, testing, and visual effects.

(16) Pre-Production--The period that occurs before the start of Production, including, but not limited to, casting actors, estimating budgets, mechanics, scouting locations, and testing story.

(17) Principal Start Date--

(A) For a live-action Feature Film, Television Program, Reality Television Project, Educational or Instructional Video, or Commercial project: the first day of principal photography.

(B) For a Digital Interactive Media Production, Visual Effects Project or animated project: the first day of asset creation (i.e., character or environment modeling and/or rigging).

(18) Production--

(A) For a live-action Feature Film, Television Program, Reality Television Project, Educational or Instructional Video or Commercial project: the period starting the first day of principal photography through the last day of principal photography.

(B) For a Digital Interactive Media Production, Visual Effects Project or animated project: the period starting the first day of asset creation or commencement of layout (i.e., character or environment modeling and/or rigging) through the last day of animation, code freeze, and/or final layout.

(19) Production Company--A company that engages in any of the activities included in Physical Production for a Feature Film, Television Program, Reality Television Project, Educational or Instructional Video, Commercial project, or Digital Interactive Media Production.

(20) Reality Series--A Reality Television Project consisting of multiple episodes of a single season.

(21) Reality Television Project--A live-action, for-profit production based upon unscripted content, including, but not limited to, a Reality Series, a contest or game show (to include individual episodes), or a talk show (to include individual episodes), that is produced for distribution via broadcast, cable, or any digital format, including, but not limited to, satellite, Internet, or mobile electronic device.

(22) Television Program--An episodic live-action or animated for-profit production that is produced in a narrative or documentary style, including, but not limited to, a television series, miniseries, limited series, television movie, television pilot, television episode, or a musical performance that is produced for distribution via broadcast, cable, or any digital format, including, but not limited to, satellite, Internet, or mobile electronic device (including a short narrative or documentary episode or series of episodes distributed initially as streamed content).

(23) Texas Heritage Project--A Feature Film or Television Program (excluding a Reality Television Project), that promotes or documents Texas's diverse cultural, historical, natural or man-made resources, and that meets the requirements established in §121.13 of this Chapter (relating to Texas Heritage Project).

(24) Texas Resident--An individual who is a permanent resident of Texas for at least 120 days prior to the Principal Start Date of the project and who has completed a Declaration of Texas Residency Form.

(25) Underutilized and Economically Distressed Area--

(A) Underutilized Area--An area of the state that receives less than 15% of the total moving image industry production in the state during a fiscal year, as determined by the Commission. An area of the state wherein 15% or more of the total moving image industry production takes place during a fiscal year, as determined by the Commission, includes a thirty mile radius from city hall of that area's largest municipality.

(B) Economically Distressed Area--An area within the thirty mile radius described in Subparagraph (A) of this paragraph, where the median household income does not exceed 75% of the median household income as determined by the Texas Demographic Center or its successor.

(26) Visual Effects Project--A self-contained production whereby computer generated images are created or manipulated to integrate with live-action footage of a Feature Film, Television Program, Educational or Instructional Video, or Commercial.

(27) Wages--Compensation paid to an individual for work performed. Payment methods include, but are not limited to, direct payments, payments through an agent or agency, payments through a loan-out company or payments through a payroll service. Wages include, but are not limited to, gross wages, per diems (if signed for by the recipient), employer paid Social Security (Old Age, Survivors, and Disability Insurance (OASDI)) payments, employer paid Medicare (MEDI) payments, employer paid Federal Unemployment Insurance (FUI) payments, employer paid Texas State Unemployment Insurance (SUI) payments, employer paid pension, health and welfare payments, and employer paid vacation and holiday pay. Only the first \$1,000,000 in aggregate wages and/or compensation per person shall constitute eligible Wage expenditures.

§121.6. *Grant Awards.*

(a) Feature Films, Television Programs, and Visual Effects Projects for Feature Films or Television Programs with total eligible in-state spending of:

(1) At least \$250,000 but less than \$1 million shall be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million but less than \$3.5 million shall be eligible to receive a grant equal to 10% of eligible in-state spending.

(3) At least \$3.5 million shall be eligible to receive a grant equal to 20% of eligible in-state spending.

(b) Digital Interactive Media Productions with total eligible in-state spending of:

(1) At least \$100,000 but less than \$1 million shall be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million but less than \$3.5 million shall be eligible to receive a grant equal to 10% of eligible in-state spending.

(3) At least \$3.5 million shall be eligible to receive a grant equal to 20% of eligible in-state spending.

(c) Reality Television Projects with total eligible in-state spending of:

(1) At least \$250,000 but less than \$1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million will be eligible to receive a grant equal to 10% of total eligible in-state spending.

(d) Commercials, Educational or Instructional Videos, and Visual Effects Projects for Commercials or Educational or Instructional Videos with total eligible in-state spending of:

(1) At least \$100,000 but less than \$1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million will be eligible to receive a grant equal to 10% of total eligible in-state spending.

§121.7. *Additional Grant Award.*

An applicant shall be eligible for a single additional grant equal to 2.5% of total in-state spending by meeting one of the following:

(1) Completing at least 25% of their total Filming Days or Man Hours, as applicable, in Underutilized or Economically Distressed Areas (UEDAs).

(A) In the event that multiple locations are utilized within a single Filming Day, in order to calculate the 25% of total Filming Days in UEDAs necessary to receive this additional grant, the Texas Film Commission (Commission) shall pro-rate a given Filming Day by the number of shooting locations reflected on production reports furnished by an Applicant to the Commission. For example, if eight shooting locations are utilized in a Filming Day, and five are located in UEDAs, 5/8 of that Filming Day shall count in calculating the 25% of total Filming Days necessary for this additional grant.

(B) If one or more shooting locations is not located in a UEDA, but is serviced by a basecamp located in a UEDA, such shooting locations shall be deemed to be located in a UEDA when calculating the 25% of total Filming Days necessary for this additional grant. A Production Company must have paid financial consideration to the owner/leaseholder of the basecamp location pursuant to a location agreement to be considered a "basecamp" under this subparagraph. The basecamp location must be listed on the call sheets and/or other relevant production documentation.

(C) The Commission shall identify the areas that qualify for designation as UEDAs.

(2) Demonstrating that 5% of the combined total of paid Crew and paid Cast, including extras, who are paid by the Applicant are Texas Resident "Veterans."

(A) For purposes of this Section, a "Veteran" is a person who served in and has been honorably discharged from the United States Army, Navy, Marine Corps, Air Force, or Coast Guard; the National or Air National Guard of the United States; the Texas Army National Guard; the Texas Air National Guard; a Reserve component of any of the aforementioned military organizations; or any other military service that the Commission determines to be allowable.

(B) The Applicant shall submit sufficient information confirming the Veteran's status, including military-issued discharge documentation and other information requested by the Commission to support a determination that the person qualifies as a Veteran.

(3) Expending 10% of the total eligible in-state spending on eligible expenditures during Postproduction, including labor, vendors, and music costs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Stephanie Whallon

Director

Texas Film Commission

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Proposal publication date: December 23, 2022

For further information, please call: (512) 463-2000



13 TAC §121.16

STATUTORY AUTHORITY

This repeal is adopted under sections 485.022 and 485.024 of the Texas Government Code, which require the Texas Film Commission to develop procedures for the administration and calculation of grant awards under TMIIP.

CROSS REFERENCE TO STATUTE

Chapter 121 of Texas Government Code. No other statutes, articles, or codes are affected by the adopted amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Stephanie Whallon

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER C. STANDARDS OF CONDUCT

19 TAC §§1.80 - 1.87

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 1, Subchapter C, Standards of Conduct, §§1.80 - 1.87, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 277). The rules will not be republished.

The adopted repeal of existing Subchapter C and, via separate rulemaking, the re-adoption make minor substantive amendments to the rule to set out the parameters of the agency and Board's relationship with its official non-profit partner, the Texas Higher Education Foundation. Additional minor conforming edits further explain the processes for the acceptance of gifts and

donations to the agency that align with Texas law, and re-adopt the ethical boundaries by which the Board and employees govern themselves.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 61.068, which provides the Coordinating Board with the authority to accept gifts and donations. The repeal is further adopted pursuant to the authority of Texas Government Code chapters 575 and 2255.001.

The adopted repeal affects Texas Education Code, Sections 61.089, 61.5361, 61.5391, 61.609, 61.658, 61.707, 61.793, 61.867, 61.885, 61.907, 61.957, 61.9608, 61.9625, 61.9657, 61.9704, 61.9728, 61.9755, 61.9776, 61.9795, 61.9805, 61.9818, 61.9827, 61.9837, 61.9858, and 61.9965.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6297



SUBCHAPTER C. ACCEPTANCE OF GIFTS AND DONATIONS BY BOARD AND EMPLOYEES

19 TAC §§1.80 - 1.87

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 1, Subchapter C, Acceptance of Gifts and Donations by Board and Employees, §§1.80 - 1.87, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 278). The rules will not be republished.

The adopted new rules update the Board's ethics policies to reflect current agency practice, demonstrate compliance with current state law, and implement state governance best practices.

Rule 1.80 sets out the scope and purpose of the rules, which is to comply with applicable provisions of state law, ensure compliance with ethics best practices, and properly govern the relationship between the Board and its official non-profit partner organization, the Texas Higher Education Foundation, which has supported the Board's mission and initiatives since 2001.

Rule 1.81 sets out the definitions used in the rules, including updating the name of the Texas Higher Education Foundation.

Rule 1.82 governs the relationship of the Texas Higher Education Foundation (Foundation) with the board and designates it as the official nonprofit partner of the Board. This rule implements ethical best practices and specifies the control that each the Foundation and Board may have with one another.

Rule 1.83 specifies how the Board may spend gifts and donations consistent with state law.

Rule 1.84 provides for the donation of gifts to the Board from private donors. Subsection (b) also specifies that the relationship between the Board and Foundation shall be established in a Memorandum of Understanding, consistent with the current relationship.

Rule 1.85 sets out what support the Foundation may offer the Board and the support the Board may use to further the purposes of the Foundation. These limitations are specified in rule to avoid conflicts of interest, create transparency, and ensure that the relationship with the Board's official non-profit support organization remains consistent with state law. The means of support and relationship are set out in the Memorandum of Understanding, as described in the rule.

Rules 1.86 and 1.87 establish the methods by which the Board members will avoid prohibit conflicts of interest consistent with Government Code 575 and best practices.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Section 61.068, which provides the Coordinating Board with the authority to accept gifts and donations. The rule is further adopted pursuant to the authority of Texas Government Code chapters 575 and 2255.001.

The adopted new sections affect Texas Education Code, Sections 61.089, 61.5361, 61.5391, 61.609, 61.658, 61.707, 61.793, 61.867, 61.885, 61.907, 61.957, 61.9608, 61.9625, 61.9657, 61.9704, 61.9728, 61.9755, 61.9776, 61.9795, 61.9805, 61.9818, 61.9827, 61.9837, 61.9858, and 61.9965.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Nichole Bunker-Henderson

General Counsel

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For further information, please call: (512) 427-6297



SUBCHAPTER O. LEARNING TECHNOLOGY ADVISORY COMMITTEE

19 TAC §1.188, §1.190

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 1, Subchapter O, Learning Technology Advisory Committee, §1.188 and §1.190 without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 280). The rules will not be republished.

Texas Education Code, §61.026 authorizes the Coordinating Board to appoint advisory committees as considered necessary. The amendment extends the abolishment date of the current Learning Technology Advisory Committee and updates tasks

assigned to the Committee to align with other proposed amendments to the Texas Administrative Code relating to distance education.

Rule 1.188, Duration, contains the abolishment date of the Learning Technology Advisory Committee, which will be extended to April 27, 2028.

Rule 1.190, Tasks Assigned to the Committee, lists the responsibilities of the Learning Technology Advisory Committee. The amendments clarify how those responsibilities will shift to align with proposed changes to distance education program approval processes in Chapter 2, Subchapter J: §1.190(1) removes the responsibility of the Committee to analyze duplication of distance education programs in the state; §1.190(2) amends the Committee's scope for development of policy recommendations to the Board by including the development of affordable learning materials such as open educational resources (§1.190(2)(B)), and the review and update of the Principles of Good Practice for Distance Education (§1.190(2)(C)); and §1.190(3) adds the review and provision of recommendations on Institutional Plans for Distance Education to the responsibilities of the Committee, while removing the task of reviewing and providing recommendations on distance education doctoral programs.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education.

The adopted amendment affects Texas Education Code Section 61.0512(g).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §2.3

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter A, General Provisions, §2.3, with changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8198). The rule will be republished. Changes correct a point of grammar and include section references. The rule will be republished.

The adopted amendment inserts definitions necessary for establishing a revised approval process for associate degrees. These

definitions recognize two categories of associate degrees: *academic* associate degrees, which are associate degrees intended to prepare graduates to study for a bachelor's degree, and *applied* associate degrees, which prepare students for direct entry into the workforce. The amendment to the Texas Administrative Code has continuity with existing definitions in current rules and widespread industry usages of these terms.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, §61.0512, which states that a public institution of higher education may not offer a new degree or certificate program without Coordinating Board approval, and Texas Education Code, §130.001, which provides the Coordinating Board with the authority to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges.

The adopted amendment affects Texas Education Code, §61.003(12), which contains a definition of "certificate program" that also encompasses associate degrees.

§2.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Academic Associate Degree--A type of degree program generally intended to transfer to an upper-level baccalaureate program that will satisfy the lower-division requirements for a baccalaureate degree in a specific discipline. The Academic Associate Degree includes, but is not limited to, the Associate of Arts (A.A.), Associate of Science (A.S.) or Associate of Arts in Teaching (A.A.T.) degrees.

(2) Academic Course Guide Manual (ACGM)--The manual that provides the official list of approved courses for general academic transfer to public universities offered for funding by public community, state, and technical colleges in Texas.

(3) Academic Program or Programs--A type of credential primarily consisting of course content intended to prepare students for study at the bachelor's degree or higher.

(4) Administrative Unit--A department, college, school, or other unit at an institution of higher education, which has administrative authority over degree or certificate programs.

(5) Applied Associate Degree--A type of degree program designed to lead the individual directly to employment in a specific career. The Applied Associate Degree Program includes, but is not limited to, the Associate of Applied Arts (A.A.A.) or Associate of Applied Science (A.A.S.).

(6) Applied Baccalaureate Degree Program--Builds on an Associate of Applied Science (A.A.S.) degree, combined with enough additional core curriculum courses and upper-level college courses to meet the minimum semester credit hour requirements for a bachelor's degree. The degree program is designed to grow professional management skills of the learner and meet the demand for leadership of highly technical professionals in the workplace. May be called a Bachelor of Applied Arts and Science (B.A.A.S.), Bachelor of Applied Technology (B.A.T.) or Bachelor of Applied Science (B.A.S.).

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

(8) Board Staff--Staff of the Texas Higher Education Coordinating Board who perform the Texas Higher Education Coordinating Board's administrative functions and services.

(9) Career Technical/Workforce Program--An applied associate degree program or a certificate program for which semester credit hours, quarter credit hours, or continuing education units are awarded, and which is intended to prepare students for immediate employment or a job upgrade in a specific occupation.

(10) Certificate program--Unless otherwise specified in these rules for the purpose of this chapter, certificate means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle the student to a certificate or documentary evidence, other than a degree, of completion of a course of study at the postsecondary level. Under this chapter, certificate includes a post-baccalaureate certificate, and excludes an associate degree unless otherwise provided.

(11) CIP Codes--See "Texas Classification of Instructional Programs (CIP) Coding System."

(12) Commissioner--The Commissioner of Higher Education.

(13) Contact hour--A time unit of instruction used by community, technical, and state colleges consisting of 60 minutes, of which 50 minutes must be direct instruction.

(14) Continuing Education Unit (CEU)--Basic unit for continuing education courses. One continuing education unit (CEU) is 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

(15) Credential--A grouping of subject matter courses or demonstrated mastery of specified content which entitles a student to documentary evidence of completion. This term encompasses certificate programs, degree programs, and other kinds of formal recognitions such as short-term workforce credentials or a combination thereof.

(16) Degree Program--Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle that student to an associate's, bachelor's, master's, doctoral, or professional degree.

(17) Degree Title--Name of the degree and discipline under which one or more degree programs may be offered. A degree title usually consists of the degree designation (e.g., Bachelor of Science, Master of Arts) and the discipline specialty (e.g., History, Psychology).

(18) Doctoral Degree--An academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field.

(19) Embedded Credential--A course of study enabling a student to earn a credential that is wholly embedded within a degree program.

(20) Field of Study Curriculum--A set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution, as defined in chapter 4, subchapter B, §4.23(7) of this title (relating to Definitions).

(21) Master's Degree Program--The first graduate level degree, intermediate between a Baccalaureate degree program and Doctoral degree program.

(22) New Content--As determined by the institution, content that the institution does not currently offer at the same instructional level as the proposed program. A program with sufficient new content to constitute a 'significant departure' from existing offerings under 34 CFR §602.22(a)(1)(ii)(C) meets the 50% new content threshold.

(23) Pilot Institution--Public junior colleges initially authorized to offer baccalaureate degrees through the pilot initiative established by SB 286 (78R - 2003). Specifically, the four pilot institutions are Midland College, South Texas College, Brazosport College, and Tyler Junior College.

(24) Planning Notification--Formal notification that an institution intends to develop a plan and submit a degree program proposal or otherwise notify the Board of intent to offer a new degree program.

(25) Professional Degree--Certain degree programs that prepare students for a career as a practitioner in a particular profession, including certain credential types that are required for professional licensure. For the purpose of this chapter, the term refers specifically to the following degrees: Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Dental Surgery (D.D.S.), Doctor of Podiatric Medicine (D.P.M.), Doctor of Veterinary Medicine (D.V.M.) and Juris Doctor (J.D.).

(26) Program Inventory--The official list of all degree and certificate programs offered by a public community college, university, or health-related institution, as maintained by Board Staff.

(27) Public Health-Related Institution--Public health-related institutions that are supported by state funds.

(28) Public Junior College--A public institution of higher education as defined in Tex. Educ. Code §61.003(2).

(29) Public Two-year College--Any public junior college, public community college, public technical institute, or public state college as defined in Tex. Educ. Code §61.003(16).

(30) Public University--A general academic teaching institution as defined by Tex. Educ. Code §61.003(3).

(31) Semester Credit Hour, or Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

(32) Texas Classification of Instructional Programs (CIP) Coding System--The Texas adaptation of the federal Classification of Instructional Programs taxonomy developed by the National Center for Education Statistics and used nationally to classify instructional programs and report educational data. The 8-digit CIP codes define the authorized teaching field of the specified program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(33) Texas Core Curriculum--Curriculum required at each institution of higher education students are required to complete as required by 19 TAC §4.23(3).

(34) Texas Success Initiative (TSI)--A comprehensive program of assessment, advising, developmental education, and other strategies to ensure college readiness. The TSI Assessment shall be the sole assessment instrument as specified in 19 TAC §4.56 of this title (relating to Assessment Instrument). The passing standards for the authorized TSI Assessment are established in 19 TAC §4.57 of this title (relating to College Ready Standards).

(35) Tracks of Study--Specialized areas of study within a single degree program.

(36) Transcriptable Minor--A transcriptable minor is a group of courses around a specific subject matter marked on the student's transcript. The student must declare a minor for the minor to be included on the student's transcript. The student cannot declare a minor without also being enrolled in a major course of study as part of a baccalaureate degree program.

(37) Workforce Education Course Guide Manual (WECM)--An online database composed of the Board's official statewide inventory of career technical/workforce education courses available for two-year public colleges to use in certificate and associate degree programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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19 TAC §2.9

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter A, General Provisions, §2.9, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 281). The rules will not be republished.

Texas Education Code §61.0512(g) authorizes the Coordinating Board to approve courses offered through distance education. Board staff has developed a revised approval process that provides for conferring distance education approval at the institutional level, maintaining the requirement that institutions notify Board staff of intent to implement a new distance education program. The rules conform to this new process, and issue further clarification that this process does not apply to changes to a program's physical location or site. These amendments do not change current processes, as institutions must currently notify the Coordinating Board of changes to distance education programs.

Rule 2.9, Revisions and Modifications to an Approved Program, contains the procedures institutions must follow to request a revision or modification to a certificate or degree program that already has Coordinating Board approval. The amendments clarify how the Coordinating Board will process changes to a program's modality of delivery: subsection 2.9(a)(1) more clearly states that Assistant Commissioner approval applies to the entire relocation of a program; subsection (c)(3) notes that only requests for off-campus face-to-face programs fall within the non-substantive revisions and modifications category; and section 2.9(e) explains the change categories that qualify for Notification Only approval, including program delivery through distance education. This level of approval aligns Chapter 2, Subsection A, with proposed new changes to distance education program approval processes in Chapter 2, Subsection J.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education.

The adopted amendment affects Texas Education Code §61.0512(g).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. APPROVAL OF DISTANCE EDUCATION FOR PUBLIC INSTITUTIONS

19 TAC §§2.200 - 2.207

The Texas Higher Education Coordinating Board adopts new rules in, Title 19, Part 1, Chapter 2, Subchapter J, Approval of Distance Education for Public Institutions, §§2.200 - 2.207, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 283). The rules will not be republished.

Texas Education Code (TEC), Section 61.0512(g), provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education. Specifically, this new section amends definitions of distance education courses and programs and revises the approval process for public institutions seeking to offer distance education. At a later date, the Coordinating Board intends to repeal existing Distance Education Rules located in TAC Chapter 4, Subchapter P, which will be superseded by these rules.

Rule 2.200, Purpose, states the intention of the subchapter to establish rules for all public institutions of higher education in Texas regarding the delivery of distance education.

Rule 2.201, Authority, established the statutory authority for the subchapter in TEC Section 61.0512(g).

Rule 2.202, Definitions, provides the meanings of terms used in the subchapter, including new definitions for 100-Percent Online Course, Hybrid Course, 100-Percent Online Program, and Hybrid Program. These definitions bring Coordinating Board rules in closer alignment with standard practices in the industry.

Rule 2.203, Applicability of Subchapter, specifies that the subchapter applies to institutions seeking to offer one or more Credit Courses and does not govern course eligibility for funding. While non-credit courses and programs offered through distance education may not be subject to the approval or notification requirements of the chapter, they will still be eligible for formula reimbursement through the proposed TAC Chapter 13, Subchapter O.

Rule 2.204, Distance Education Standards and Criteria; the Principles of Good Practice for Distance Education, explains the Principles of Good Practice for Distance Education and their relevance to distance education delivery, details the contents of the Principles of Good Practice for Distance Education, and describes the process for Board approval of the Principles of Good

Practice for Distance Education. This process ensures that the Coordinating Board will use a standard, Board-approved rubric for evaluating institutions' ability to deliver quality distance education.

Rule 2.205, Institutional Plan for Distance Education, explains the purpose of the Institutional Plan for Distance Education and its relation to Board approval for an institution to offer distance education courses. This rule also details the process to review and approve Institutional Plans for Distance Education, which includes Coordinating Board staff and Learning Technology Advisory Committee review and recommendations prior to final approval. This process ensures that each public institution of higher education will have its distance education processes and administration evaluated against the standard Principles of Good Practice for Distance Education, as adopted by the Board, on a regular basis; institutions facing a potential denial from the Commissioner have the opportunity to appeal to the Board. Institutions with an Institutional Plan for Distance Education in good standing or on provisional status with the Coordinating Board have authorization to offer distance education instruction under TEC Section 61.0512(g).

Rule 2.206, Distance Education Degree or Certificate Program Notification, describes the process for institutional notification to Board staff prior to offering an existing program via distance modality or offering a new distance education program. New programs must also follow program approval request rules as detailed in the appropriate subchapter. This provision ensures that the Coordinating Board's existing Distance Education Program Inventory will remain up-to-date, accurately reflecting the distance education program offerings across the state.

Rule 2.207, Effective Date of Rules, establishes the effective date of the subchapter as December 1, 2023, and provides for a pause in the review of distance education doctoral programs by the Learning Technology Advisory Committee.

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

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve distance learning courses at institutions of higher education.

The adopted new sections affect Texas Education Code, Section 61.0512(g).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 3. RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING ELECTRONIC REPORTING OPTION FOR CERTAIN OFFENSES; AMNESTY
SUBCHAPTER A. REQUIREMENTS FOR CERTAIN INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING AT CERTAIN PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION; AUTHORIZING ADMINISTRATIVE PENALTIES

19 TAC §3.19

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 3, Subchapter A, Requirements for Certain Incidents of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at Certain Public and Private Institutions of Higher Education; Authorizing Administrative Penalties, §3.19, without changes to the proposed text as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 453). The rule will not be republished.

The prior rule only specified the statutory maximum for an administrative penalty. Adding a matrix provides clarity and guidance to Coordinating Board staff and affected institutions. Texas Education Code (TEC), Chapter 51, Sections 51.259 and 51.295 allow the Coordinating Board to adopt rules as necessary to implement and enforce TEC Chapter 51, Subchapters E-2 and E-3. The Coordinating Board used negotiated rulemaking procedures in developing the revisions.

Rule 3.19(a), Compliance, adds the specific due date for each postsecondary educational institution to annually certify in writing to the Coordinating Board that it is in substantial compliance with Texas Education Code, Chapter 51, Subchapter E-2. This revision adds clarity to the reporting requirement. The previous statutory requirement only specified annual certification. The rules initially specified a month. To ensure all postsecondary educational institutions have the same understanding of the due date, a specific date was added. This date was chosen in order for the Coordinating Board to fulfill its obligation to report on substantial compliance of postsecondary educational institutions during the preceding calendar year.

Rule 3.19(b), Compliance, is a new section stating that the Coordinating Board shall conduct a risk-based compliance monitoring of Texas Education Code, Chapter 51, Subchapters E-2 and E-3. The new section provides details on the risk factors

under which the review will be undertaken and the report template which will be provided to institutions. As the Coordinating Board was charged with reporting on substantial compliance by postsecondary educational institutions, this section was added to provide guidance on the risk factors that the Coordinating Board staff would utilize in its review for substantial compliance.

Rule 3.19(c), Compliance, is a renumbered section. The section clarifies the statutory requirements effective dates, and that the statutory penalty amount may be assessed annually. The section addresses the effect of substantial compliance and the Coordinating Board's independent evaluation of evidence on the penalty assessment. The effective dates for each statutory subchapter are listed in the statute and clarified in the rule. Specifically stating that the statutory penalty could be assessed annually was the result of the negotiated rulemaking committee's acknowledgement that ongoing or separate non-compliance should not be included in a one-time penalty that could never be assessed again. The negotiated rulemaking committee also agreed that, per the statute, if a postsecondary educational institution was found in substantial compliance, no penalty assessment would be made.

Rule 3.19(d), Compliance, is a new section detailing how the Coordinating Board will determine an institution's or system's good faith effort to remain in substantial compliance. Factors for evaluation are provided in this section. As the Coordinating Board was charged with reporting on substantial compliance by postsecondary educational institutions, this section was added to provide guidance on the factors that the Coordinating Board staff would utilize in its review to determine an institution's or system's good faith efforts to be in substantial compliance.

Rule 3.19(e), Compliance, is a renumbered section that replaces the current language with new language. The section states that failure to file the annual certification by October 31 of each year will result in a \$2000 penalty per day of violation. The section allows a one month cure period whereby the penalty will not be assessed. The penalty also allows an institution to file a good faith correction to a previously filed certification within a reasonable time. As each postsecondary educational institution is statutorily-required to file an annual certification and the due date has been clarified, this section was added to provide for a specific penalty amount within the statutory amount which would result if the annual certification was not timely filed and how the late filing could be cured, resulting in no late filing penalty.

Rule 3.19(f), Compliance, is a new section, providing a penalty matrix for the annual penalty assessment if an institution fails to maintain substantial compliance with Texas Education Code, Chapter 51, Subchapters E-2 or E-3. The section provides details on what the Coordinating Board will consider when assessing penalties, including the number of students at an institution, mitigating factors, aggravating factors, and other factors justice may require. The penalty matrix breaks down penalty amounts by sections of Subchapters E-2 and E-3. The statute allows for an administrative penalty in an amount not to exceed \$2 million in both Subchapters E-2 and E-3 but does not give additional guidance on how to make the penalty amount determination. Through the negotiated rulemaking process, this section was added to give postsecondary educational institutions a framework for the possible amounts to be administratively assessed and factors which might increase or decrease the total amount assessed.

Rule 3.19(g), Compliance, is a renumbered section that replaces the current language with new language. The section requires

the Coordinating Board to provide a written notice to an institution for its reason for assessing an administrative penalty. This requirement was moved from the existing section (c) of the rule to this section and clarifies that it refers to another section within the rule and follows the statutory requirement to provide written notice.

Rule 3.19(h), Compliance, is a renumbered section that replaces the current language with new language. The section provides for institutional appeal of an assessed administrative penalty and allows the Coordinating Board to enter a final decision and order after a contested case proceeding. The section clarifies the statutory right to appeal a penalty assessment and affirmatively states that the Coordinating Board will enter a final decision after a contested case proceeding.

Rule 3.19(i), Compliance, states that an institution may not pay an administrative penalty assessed under this rule using state-appropriated or federal money. This language was moved from another rule section and the rule prohibition follows the statutory prohibition against state or federal money.

Rule 3.19(j), Compliance, requires the Coordinating Board to deposit an assessed administrative penalty to the credit of the sexual assault program fund established under Section 420.008, Texas Government Code. This language was moved from another rule section and the requirement to deposit administrative penalty funds follows the statutory requirement to deposition to the credit of an established sexual assault program fund.

Rule 3.19(k), Compliance, provides for an annual report to the governor, lieutenant governor, the speaker of the house of representatives, and the standing legislature committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions. The report is to include a summary of institutions found not to be in substantial compliance and any penalties assessed during the preceding calendar year. This language was moved from another rule section and the annual report submission follows the statutory requirement to report substantial compliance of postsecondary educational institutions to the governor, lieutenant governor, the speaker of the house of representatives, and the standing legislature committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Sections 51.259 and 51.295 which provide the Coordinating Board with the authority to adopt rules as necessary to implement and enforce TEC, Chapter 51, Subchapters E-2 and E-3.

The adopted amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 3, §3.19.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**CHAPTER 4. RULES APPLYING TO
ALL PUBLIC INSTITUTIONS OF HIGHER
EDUCATION IN TEXAS
SUBCHAPTER Q. APPROVAL OF
OFF-CAMPUS AND SELF-SUPPORTING
COURSES AND PROGRAMS FOR PUBLIC
INSTITUTIONS**

19 TAC §4.279

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter Q, Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions, §4.279(b), without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 286). The rule will not be republished.

The amendment to Texas Administrative Code (TAC) §4.279(b) is adopted to provide an exception for courses taught as part of a Texas public community college program offered at a regional airport located no more than five miles across a state line, provided the regional airport is located in the same Metropolitan Area as the Texas college offering the program, serves Texas residents, and supports the Texas region's economy.

The following comment was received regarding adoption of the amendment:

Comment: An institution requested that the requirement for institutions to charge fees that are "equal to or greater than Texas resident tuition and fees" be stricken from Section §4.279(f) to allow an institution that is able to cover the total cost of instruction and fees for less than the applicable resident tuition and fee rates may do so in order to compete in the national online marketplace.

Response: This comment pertains to charges for certain courses not submitted for formula funding, such as self-supporting programs. The rules pertaining to self-supporting programs will be addressed in a future revision of the program approval rules.

The amendment is adopted under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve courses for credit and distance education programs, including off-campus programs. The amendment is also adopted under Texas Education Code, Section 130.003 which provides contact hour funding for community colleges.

The adopted amendment affects Texas Education Code § 130.003 and 19 Texas Administrative Code, Chapter 9, Subchapter F.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.101 - 13.104, 13.109

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 13, Subchapter F, Formula Funding and Tuition Charges for Repeated and Excess Hours of Undergraduate Students, §§13.101 - 13.104 and 13.109, without changes to the proposed text as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 456). The rules will not be republished.

SB 1531 (87th Regular Session) amended Education Code related to excess hours limits for formula funding and the amended rule is adopted to update administrative law into compliance with statute.

Rule 13.101, Authority, is amended to make the list of authorities under which the subsequent rules are implemented to be more accurate.

Rule 13.102, Definitions, the definitions of "student" and "academic" are made more specific and clearer in response to stakeholder engagement. The definition of excess hours now refers to §13.103 rather than fully describing what excess hours are.

Rule 13.103, Limitation on Formula Funding for Excess Hours, is amended to explicitly define the excess hours limit for each cohort considering previous amendments to Education Code concerning the excess hours limit.

Rule 13.104, Exemptions for Excess Hours, is amended to establish that hours abandoned by the Fresh Start program do not count against the excess hours limit. This clarifies the requirement in rule to align with statute.

Rule 13.109, Additional Responsibilities of Institutions, contained a provision that required institutions of higher education to "assist" students approaching the excess hours limit. This was vague and unenforceable. The revised rule replaces this with a requirement that institutions provide at least one notice to students approaching the excess hours limit.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Section 61.0595, which provides the Coordinating Board with the authority to establish rules that limit certain undergraduate hours that may be reported for formula funding.

The adopted amendments affect rules on the limitations for the reporting of hours to the Coordinating for formula funding.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER N. TEXAS RESKILLING AND UPSKILLING THROUGH EDUCATION (TRUE) GRANT PROGRAM

19 TAC §§13.400 - 13.408

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 13, Subchapter N, Texas Reskilling and Upskilling Through Education (TRUE) Grant Program, §§13.400 - 13.408, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 287). The rules will not be republished.

The new rules establish the TRUE Grant Program to strengthen the Texas workforce and build a stronger Texas economy. The TRUE Grant Program provides grants to eligible entities for creating, redesigning, or expanding workforce training programs and delivering education and workforce training. There are also provisions for the process of data collection and reporting undertaken by TRUE grantees and THECB, which will gauge the impact of the TRUE Grant Program on student success.

Rule 13.400, Purpose, identifies the section of the Texas Education Code that grants the Board authority over the TRUE Grant Program.

Rule 13.401, Authority, sets out the purpose of the chapter as a whole, to establish processes for the TRUE Grant Program's organization and implementation.

Rule 13.402, Definitions, lists definitions broadly applicable to all sections of Subchapter N. The definitions establish a common understanding of the meaning of key terms used in the rules.

Rule 13.403, Eligibility, identifies eligible entities that may apply for the TRUE grant as specified by statute. The TRUE Grant Program has three categories of eligible entities: (1) lower-division institution of higher education; (2) consortium of lower-division institutions of higher education; or (3) local chamber of commerce, trade association, or economic development corporation that partners with a lower-division institution of higher education or a consortium of lower-division institutions of higher education.

Rule 13.404, Application Procedures, identifies TRUE grant application procedures so that grant applicants understand high level requirements and refer to the TRUE Grant Program RFA for specifics. Grant application procedures described include the number of applications eligible entities may submit, the process

of submitting applications to the THECB, the importance of adhering to grant program requirements, and the requirement for proper authorization and timely submission of applications.

Rule 13.405, Awards, identifies the size and provision of TRUE grant awards. TRUE Grant Program available funding is dependent on the legislative appropriation for the program for each biennial state budget. Consequently, award levels and estimated number of awards will be specified in the program's RFA. This section also provides reference on the establishment of processes for application approval and award sizes.

Rule 13.406, Review Criteria, provides TRUE grant application review procedures. This section describes how the THECB will utilize specific requirements and award criteria described in a TRUE Grant Program RFA to review applications. Award criteria will include, but may not be limited to, consideration of key factors and preferred application attributes described in the RFA.

Rule 13.407, Reporting Criteria, describes TRUE grant reporting requirements. THECB will request data on TRUE Grant Program funded credential programs as well as data on students enrolled in those programs. Student level data will enable THECB to track student enrollment, credential completion, and employment data through state education and workforce databases.

Rule 13.408, General Information, indicates general information concerning the cancellation or suspension of TRUE grant solicitations and the use of the Notice of Grant Award (NOGA).

The following comments were received regarding the adoption of the new rule.

Comment: One comment received from an institution asked for clarification of Review Criteria (a)(4) concerning representation of institutions from multiple regions of the state.

Response: The Coordinating Board provides criteria (a)(4) as one of the considerations that the Coordinating Board will take into account in reviewing and making grant awards. The rule states that the board will take into consideration projects from eligible entities located in each region of the state to the extent practicable. This means that THECB will take into account the geographic spread of projects across the state when determining grant awards. It does not mean that THECB is requiring applicants to take geography into consideration or that THECB will select an applicant in each region.

Comment: One set of comments received from an institution asked for clarifications and details regarding student aid eligibility, the end date of the funding cycle, actions institutions might take if students receiving funding do not spend down those funds and deadlines for return of funds to THECB.

Response: This level of specificity regarding program guidelines is incorporated in Requests for Proposals (RFAs). Most of these topics are standard content in an RFA. The Coordinating Board will take into account these specific details in the composition of future RFAs, based on the timing and size of future rounds of the TRUE Grant Program.

The new rules are adopted under the Texas Education Code, Chapter 61, Subchapter T-2, §61.882(b), which provides the Coordinating Board with the authority to adopt rules requiring eligible entities awarded a TRUE grant to report necessary information to the THECB.

The adopted new rules affect Texas Education Code, Chapter 61, Subchapter T-2, §§61.881-61.886.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. FORMULA FUNDING FOR DISTANCE EDUCATION

19 TAC §§13.450 - 13.454

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 13, Subchapter O, Formula Funding for Distance Education, §§13.450 - 13.454, as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 290). Sections 13.450 - 13.452 and §13.454 are adopted without changes to the proposed text and will not be republished. Section 13.453 is adopted with changes to the proposed text and will be republished. The change to the proposed text removes §13.453(7) as it was duplicative of §13.453(6).

The adopted new subchapter moves existing rules related to distance education formula funding from Texas Administrative Code (TAC) Chapter 4 to Chapter 13 without any substantive changes. The rules are reorganized and recodified without substantive revisions modifying any existing funding policy. This change is part of a larger reorganization and revision of the Coordinating Board's rules related to distance education. The agency is working on moving all funding rules into Chapter 13, Financial Planning, as this chapter of the TAC contains the agency's rules related to formula funding. This change will improve the agency's rule readability and help institutions navigate Title 19, Part 1, of the TAC. The authority for this rule is provided by TEC §61.059, which gives the board the authority to develop policy related to formula funding.

Rule 13.450 sets out the purpose of the subchapter, which is to establish formula funding rules for distance education instruction.

Rule 13.451 contains the statutory authority for this subchapter, which comes from TEC §61.0512(g) establishing Coordinating Board authority to approve distance education courses and §61.059 establishing the Board's role in developing formula funding policies.

Rule 13.452 directs the reader to find the appropriate definitions in Chapter 2, Subchapter J, of this title. The proposed Chapter 13, Subchapter O, uses the same definitions as the proposed subchapter that will govern agency approval of distance education more generally.

Rule 13.453 contains the substantive provisions related to formula funding. These provisions are identical to the formula funding provisions for distance education currently contained in TAC Chapter 4, Subchapter P. These provisions establish in rule several statutory restrictions on formula funding relevant for distance

education - for example, requirements to collect sufficient tuition for non-formula-supported programs under TEC §54.545 and special provisions solely applicable to Texas A&M University-Texarkana under §§54.231 and 61.059(n).

Rule 13.454 contains the effective date of the proposed rules, scheduled for December 1, 2023.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Section 61.059, which provides the Coordinating Board with the authority to devise, establish, and periodically review and revise formula funding for public institutions of higher education, and Section 61.0512(g), which provides the Coordinating Board with the authority to approve institutions' distance education offerings.

The adopted new sections affect Texas Education Code §§54.231, 54.545, and 61.059.

§13.453. *Formula Funding for Distance Education - General Provisions.*

The following provisions apply to distance education courses and programs offered with authorization under Chapter 2, Subchapter J, of this title (relating to Approval of Distance Education for Public Institutions).

(1) Institutions shall report distance education courses submitted for formula funding in accordance with the Board's uniform reporting system and the provisions of this subchapter.

(2) Institutions may submit for formula funding academic credit courses delivered by distance education to any student located in Texas or to Texas residents located out-of-state or out-of-country.

(3) Institutions, with the exception of those outlined in paragraph (5) of this section, shall not submit for formula funding 100-percent online courses taken by non-resident students who are located out-of-state or out-of-country, courses in out-of-state or out-of-country programs taken by any student, or self-supporting courses.

(4) For courses not submitted for formula funding, institutions shall charge fees that are equal to or greater than Texas resident tuition and applicable fees and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs. Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

(5) Pursuant to Texas Education Code §54.231(a) and (f) and §61.059(n), Texas A&M University-Texarkana may submit distance education courses for formula funding that are taken by students enrolled in the university that reside in a county contiguous to the county in which Texas A&M University-Texarkana is located and who, under Texas Education Code §54.060(a), are eligible to pay resident tuition.

(6) If a non-Texas resident student enrolls in regular, on-campus courses for at least one-half of the normal full-time course load as determined by the institution, the institution may report that student's fully distance education or hybrid/blended courses for formula funding enrollments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §22.1

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter A, General Provisions, §22.1, with changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 291). The rule will be republished. The changes to the proposed text will better align the definition of "expected family contribution" with similar language in Chapter 22.

The Coordinating Board is authorized to adopt rules to effectuate the provisions of Texas Education Code, Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs. The phrase "expected family contribution" is referenced in multiple chapters relating to financial aid programs in both the Texas Education Code and Texas Administrative Code. The Coordinating adopts amendments to Texas Administrative Code §22.1 so that the administration of state financial aid programs is not adversely impacted by changes in the federal government's terminology regarding the federal methodology for financial aid.

The following comments were received regarding the adoption of the amendments.

Comment: The three comments received represented eleven institutions who all suggested the following language for the definition of EFC to better align the language with similar language in Chapter 22: "A measure utilized to calculate a student's financial need as regulated and defined by the methodology used for Federal student financial aid."

Response: The Coordinating Board agrees that the suggested language achieves the same goal as the proposed language, while doing so in a manner that is more easily understood. The suggested language is incorporated into the adopted rule.

The amendment is adopted under Texas Education Code (TEC), §61.027, which authorizes the Coordinating Board to adopt rules to effectuate the provisions of TEC Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs.

The adopted amendment affects Texas Administrative Code, Chapter 22.

§22.1. *Definitions.*

The following words and terms, when used in Chapter 22, shall have the following meanings, unless otherwise defined in a particular subchapter:

(1) Academic Year--The combination of semesters defined by a public or private institution of higher education to fulfill the federal "academic year" requirement as defined by 34 CFR 668.3.

(2) Attempted Semester Credit Hours--Every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. For transfer students, transfer hours and hours for optional internship and cooperative education courses are included if they are accepted by the receiving institution towards the student's current program of study.

(3) Awarded--Offered to a student.

(4) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

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

(6) Categorical Aid--Gift aid that the institution does not award to the student, but that the student brings to the school from a non-governmental third party.

(7) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(8) Cost of Attendance/Total Cost of Attendance--An institution's estimate of the expenses incurred by a typical financial aid recipient in attending a particular institution of higher education. It includes direct educational costs (tuition and fees) as well as indirect costs (room and board, books and supplies, transportation, personal expenses, and other allowable costs for financial aid purposes).

(9) Degree or certificate program of four years or less--A baccalaureate degree or certificate program other than a program determined by the Board to require four years or less to complete.

(10) Degree or certificate program of more than four years--A baccalaureate degree or certificate program determined by the Board to require more than four years to complete.

(11) Encumber--Program funds that have been officially requested by an institution through procedures developed by the Coordinating Board.

(12) Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(13) Expected Family Contribution (EFC)-- A measure utilized to calculate a student's financial need as regulated and defined by the methodology used for federal student financial aid.

(14) Financial Need--The Cost of Attendance at a particular public or private institution of higher education less the Expected Family Contribution. The Cost of Attendance and Expected Family Contribution are to be determined in accordance with Board guidelines.

(15) Full-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of twelve or more semester credit hours per semester. For graduate students, enrollment or expected enrollment for the normal full-time course load of the student's program of study as defined by the institution.

(16) Gift Aid--Grants, scholarships, exemptions, waivers, and other financial aid provided to a student without a requirement to repay the funding or earn the funding through work.

(17) Graduate student--A student who has been awarded a baccalaureate degree and is enrolled in coursework leading to a graduate or professional degree.

(18) Half-Time--For undergraduates, enrollment or expected enrollment for the equivalent of at least six but fewer than nine semester credit hours per regular semester. For graduate students, enrollment or expected enrollment for the equivalent of 50 percent of the normal full-time course load of the student's program of study as defined by the institution.

(19) Period of enrollment--The semester or semesters within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all eligibility requirements for an award through this program.

(20) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including the determination of student eligibility, selection of recipients, maintenance of all records, and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the institution's chief executive officer, the director of student financial aid shall serve as Program Officer.

(21) Residency Core Questions--A set of questions developed by the Coordinating Board to be used to determine a student's eligibility for classification as a resident of Texas, available for downloading from the Coordinating Board's website, and incorporated into the ApplyTexas application for admission.

(22) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(23) Semester--A payment period, as defined by 34 CFR 668.4(a) or 34 CFR 668.4(b)(1).

(24) Three-Quarter-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of at least nine but fewer than 12 semester credit hours per semester. For graduate students, enrollment or expected enrollment for the equivalent of 75 percent of the normal full-time course load of the student's program of study as defined by the institution.

(25) Timely Distribution of Funds--Activities completed by institutions of higher education related to the receipt and distribution of state financial aid funding from the Board and subsequent distribution to recipients or return to the Board.

(26) Undergraduate student--An individual who has not yet received a baccalaureate degree.

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SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.22 - 22.24, 22.28, 22.29

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter B, Tuition Equalization Grant Program, §§22.22 - 22.24, 22.28, and 22.29, as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 293). Sections 22.22, 22.23, 22.28, and 22.29 are adopted without changes to the proposed text and will not be republished. Section 22.24 is adopted with changes to the proposed text and will be republished.

Specifically, the amendments provide private and independent institutions with greater flexibility in supporting economically disadvantaged students through funds from the Tuition and Equalization Grant (TEG) program. The amendments also provide clarity for the allocation process and remove unnecessary language.

In §22.22, two redundant definitions are repealed since the items are explained elsewhere in the subchapter. In §22.23, the timing of data submissions is clarified to ensure that allocation activities can occur in a timely manner. In §22.24(b), eligibility criteria are provided for exceptional TEG need. In §22.28, a clarifying reference to §22.4 is added. In §22.29, outdated language is removed, with appropriate clarifying language. Section 22.29(c) is also removed, since the language is being proposed separately as a new §22.30.

Based on feedback from the financial aid community, the Coordinating Board initiated a review of how exceptional TEG need is defined. Since exceptional TEG need has a direct impact on the allocation methodology for the TEG program, the Coordinating Board convened negotiated rulemaking activities, as required by Texas Education Code, §61.0331, in matters relating to the allocation of funds, including financial aid. The adopted amendments were reached by consensus during negotiated rulemaking activities occurring on November 7, 2022.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 61.229 and 61.0331, which provides the Coordinating Board with the authority to make reasonable regulations, consistent with the purposes and policies of Texas Education Code, Chapter 61, Subchapter F, relating to the Tuition Equalization Grant Program, and which requires the Coordinating Board to use negotiated rulemaking in matters relating to the allocation of funds, including financial aid.

The adopted amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B.

§22.24. *Eligible Students.*

(a) To receive an award through the TEG Program, a student must:

- (1) be enrolled on at least a three-fourths of full-time enrollment;
- (2) show financial need;
- (3) maintain satisfactory academic progress in his or her program of study as determined by the institution at which the person is enrolled and as required by §22.25 of this title (relating to Satisfactory Academic Progress);

(4) be a resident of Texas as determined based on data collected using the Residency Core Questions and in keeping with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status);

(5) be enrolled in an approved institution in an individual degree plan leading to a first associate degree, first baccalaureate degree, first master's degree, first professional degree, or first doctoral degree, but not in a degree plan that is intended to lead to religious ministry;

(6) be required to pay more tuition than is required at a comparable public college or university and be charged no less than the tuition required of all similarly situated students at the institution; and

(7) not be a recipient of any form of athletic scholarship during the semester or semesters he or she receives a TEG.

(b) To demonstrate eligibility for exceptional TEG need, a student must:

(1) be an undergraduate student; and

(2) have an expected family contribution less than or equal to fifty percent of the Federal Pell Grant eligibility cap for the year reported in the institution's Financial Aid Database submission.

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19 TAC §22.30

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 22, Subchapter B, Provisions for the Tuition Equalization Grant Program, §22.30, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 296). The rule will not be republished.

Specifically, this new section establishes language currently in §22.29 as a separate rule for greater clarity. Based on feedback from the financial aid community, the Coordinating Board initiated a review of how exceptional TEG need was defined. Since exceptional TEG need has a direct impact on the allocation methodology for the TEG program, the Coordinating Board convened negotiated rulemaking activities, as required by Texas Education Code, §61.0331, in matters relating to the allocation of funds, including financial aid. The adopted new rule was reached by consensus during negotiated rulemaking activities occurring on November 7, 2022.

No comments were received regarding the adoption of the new rule.

The new section is adopted under Texas Education Code, Sections 61.229 and 61.0331, which provides the Coordinating

Board with the authority to make reasonable regulations, consistent with the purposes and policies of Texas Education Code, Chapter 61, Subchapter F, relating to the Tuition Equalization Grant Program, and which requires the Coordinating Board to use negotiated rulemaking in matters relating to the allocation of funds, including financial aid.

The adopted new section affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B.

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SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §22.49

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter C, Hinson-Hazlewood College Student Loan Program, §22.49, with changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 297). The rule will be republished. The rule has been revised to indicate when the new calculation of loan limits will take effect.

The amendments to Texas Administrative Code (TAC) §22.49 are adopted to provide a clearer indication of the alignment between the rule regarding the amount of a loan and the limitations on the loan amount as outlined in Texas Education Code (TEC) §52.33. The adopted language in §22.49(a) aligns the statutory intent regarding what a student may reasonably be expected to pay with the Board's Long-Range Master Plan for Higher Education and the manageable debt guidelines therein. The adopted language in 22.49(b) captures the agency's interpretation of how federal student loan eligibility is considered when calculating the financial resources indicated in TEC §52.33.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 52.33, which provides the Coordinating Board with the authority to adopt rules regarding the amount of loan a student may borrow, and Section 52.54, which provides the Coordinating Board with the authority to adopt rules regarding the Hinson-Hazlewood College Student Loan Program.

The adopted amendment affects the College Access Loan program, as administered by the Coordinating Board under the Hinson-Hazlewood College Student Loan Program and authorized by Texas Education Code, Chapter 52.

§22.49. *Amount of Loan.*

(a) Amount of Loan. For loan applications received by the agency prior to September 1, 2023, the amount of loan shall not exceed

the amount that the student needs in order to meet reasonable expenses as a student.

(b) Annual and Aggregate Loan Limit. For loan applications received by the agency prior to September 1, 2023, the maximum annual and aggregate loan amounts for any eligible student shall be determined from time to time by the Commissioner. In no case shall the maximum annual loan amount be greater than the annual cost of attendance for the student at the eligible institution.

(c) Aggregate Loan Limit. For loan applications received by the agency on or after September 1, 2023:

(1) The maximum aggregate loan amount for an eligible undergraduate student shall be limited to an amount of debt defined as "manageable debt" under the Board's Long-Range Master Plan for Higher Education. The maximum amount of student loan debt is based on a reasonable monthly student loan payment, taking into consideration the borrower's area of study, as outlined in Figure 1. The agency may not loan a borrower an amount of College Access Loans that would cause the borrower's aggregate educational loan debt, as reported on the borrower's credit report, to exceed the maximum amount outlined in Figure 1.

(2) The maximum aggregate loan amount for an eligible graduate or professional student is the sum of the student's annual limits.

(d) Annual Loan Limit. For loan applications received by the agency on or after September 1, 2023, in no case shall the maximum annual loan amount exceed the difference between the cost of attendance and the financial resources available to the applicant, including the applicant's scholarships, gifts, grants, and other financial aid. The student's maximum eligibility for Federal Direct Loans, except for Federal Plus loans, must be considered by the institution as other financial aid, whether or not the student actually receives such assistance. Figure: 19 TAC §22.49(d)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Higher Education Coordinating Board

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING COUNSELING PUBLIC SCHOOL STUDENTS

19 TAC §61.1073

The Texas Education Agency (TEA) adopts new §61.1073, concerning counseling public school students. The new section is adopted with changes to the proposed text as published in the November 4, 2022, issue of the *Texas Register* (47 TexReg

7387) and will be republished. The adopted new section implements the statutory requirement for school districts to annually assess compliance with the district policy requiring a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program as required by Senate Bill (SB) 179, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: Texas Education Code (TEC), §33.006(d), as added by SB 179, 87th Texas Legislature, Regular Session, 2021, requires school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005. TEC, §33.006(h), requires each school district to annually assess the district's compliance with the policy regarding school counselors' work time, and, on request by the commissioner, provide a written copy of the assessment to TEA on or before a date specified by the commissioner.

Adopted new §61.1073 implements TEC, §33.006(h). The new rule requires each district school counselor to track and document, using a district-standardized tracking tool, the time spent on work duties performed by the school counselor throughout a school year. The new rule also identifies the elements that district assessments must include and the documentation to be included in annual requests by TEA for district assessments.

The following changes were made to the rule since published as proposed.

In response to public comment, §61.1073(b) was amended to clarify that the standardized tracking tool would be selected by each school district. In addition, §61.1073(b)(1)(B) was amended to require that the tracking tool include reporting of the total time spent on all duties that are components of a counseling program as opposed to time spent on each component.

In response to public comment, §61.1073(b)(1)(C) was clarified by adding "including time spent in administering assessment instruments or providing other assistance in connection with assessment instruments (except time spent in interpreting data from assessment instruments)" to the requirement for tracking of the total time spent on duties that are not components of a counseling program.

In response to public comment, §61.1073(b)(1)(D) that would have required a calculation of the percentage of work time spent on each component of a counseling program was stricken in acknowledgment that this calculation is unnecessary.

In response to public comment, §61.1073(c) was amended to require the assessment of compliance with the number rather than the percentage of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d), to better reflect the level of compliance with state law.

In response to public comment, proposed §61.1073(e)(2) and (4) were stricken. The provisions would have required randomly selected school districts to submit all completed district-standardized tracking tools from the previous school year and the number of school counselors whose work is determined by the district to be in compliance with the district policy adopted under TEC, §33.006(d). New subsection (e)(2) was added to require the randomly selected school districts to submit a copy of the district annual assessment required by subsection (c) to streamline the reporting requirement.

The assessment of data and reporting impact has been updated since the rule was published as proposed. The new rule will have a data and reporting impact for school districts randomly selected to submit information to TEA annually. In response to public comment, the information required to be reported by randomly selected districts would no longer include all completed district-standardized tracking tools from the previous school year or the number of school counselors whose work is determined by the district to be in compliance with the district policy adopted under TEC, §33.006(d). Under the adopted rule, selected school districts will still be required to provide a copy of the school district policy adopted under TEC, §33.006(d); a copy of the district annual assessment; the number of school counselors in the school district from the previous school year; the number of school counselors in the school district whose work is determined by the district to be out of compliance with the school district policy adopted under TEC, §33.006(d); and any other findings, conclusions, or analysis included in the annual assessment, including proposed strategies to address any lack of compliance with the district policy adopted under TEC, §33.006(d).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 4, 2022, and ended December 5, 2022. Following is a summary of public comments received and agency responses.

Comment: Sixty school counselors expressed support for the proposed rule, noting that the rule would allow them to support students and counsel according to TEC, §33.005, while limiting non-counseling duties.

Response: The agency agrees that the rule will permit school counselors to support students while limiting non-counseling duties.

Comment: Thirty-six school counselors expressed support for the proposed rule, noting that the rule would hold districts more accountable for allowing counselors to spend at least 80% of their time on duties established in TEC, §33.005. The commenters noted that some districts require counselors to test students despite testing being listed as a non-counseling duty in TEC, §33.006.

Response: The agency agrees that the rule supports compliance with TEC, §33.005 and §33.006.

Comment: Nineteen school counselors expressed support for the rule, stating that a mental health crisis has followed the pandemic, leading to emotional and behavioral concerns that require school counselors to spend at least 80% of their time on counseling duties.

Response: The agency agrees that counselors spending 80% of their time on counseling duties supports students with emotional and behavioral concerns.

Comment: Twenty-four school counselors expressed support for the rule but indicated a preference to track time and effort in larger time frames such as weekly or monthly instead of daily. They recommended only reporting time on non-counseling duties and requested that education service centers (ESCs) provide a time tracker for districts that do not develop their own.

Response: The agency disagrees that only non-counseling duties should be tracked. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. Regarding time trackers, the agency provides the following clarification. TEC,

§33.006, requires an annual assessment of compliance; however, districts have the flexibility to develop or adopt appropriate time trackers and/or work time analysis procedures. The *Texas Model for Comprehensive School Counseling Programs* and the *ASCA National Model: Implementation Guide* provide various templates for work time analysis. The comment regarding ESC development of tools is outside the scope of the proposed rulemaking.

Comment: Ten school counselors expressed support for the rule but raised concerns about current counselor-to-student ratios.

Response: Counselor-to-student ratios are outside the scope of the proposed rulemaking.

Comment: Seven school counselors and one administrator expressed support for the rule but recommended clearer definitions of counseling duties and clearer guidance for districts to follow regarding counseling as compared to non-counseling duties.

Response: The agency disagrees that the duties should be defined in administrative rule. TEC, §33.006, defines counseling duties and does not give the commissioner of education authority to provide further guidance.

Comment: Two teachers and one retired teacher expressed support for the rule, noting that counselors are too often assigned non-counseling duties and that the rule will allow counselors more time to serve students.

Response: The agency agrees that the rule supports counselors in serving students as described in TEC, §33.005 and §33.006.

Comment: One student expressed support for the rule, specifically noting that the student's local school board adopted a policy aligned to the language in SB 179 with no modifications but did not alter the time counselors spend on non-counseling duties like testing. The student requested that counselors be more available to students.

Response: The agency agrees that the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: Six community members, including two parents, expressed support for the rule to allow counselors more time on counseling duties and better support students by limiting non-counseling duties.

Response: The agency agrees that the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: One community member expressed a belief that tracking hours is an undue burden and not necessary to help students.

Response: The agency disagrees. Tracking time and effort is a practice used in many fields and can be done efficiently. The rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: One school administrator expressed support for the rule but recommended that only districts out of compliance with counselors spending 80% of their time on counseling duties report their time.

Response: The agency disagrees that only districts whose counselors are not spending 80% of their time on counseling duties should report their time. In order for a district to ensure it is in compliance with the law, time must be reported for all counselors.

Comment: One school administrator expressed agreement with the rule and stated that without it, no district would comply with TEC, §33.006.

Response: The agency provides the following clarification. School districts are required to comply with statute regardless of agency administrative rules. However, the rule is intended to provide support and accountability for districts for their compliance.

Comment: One school administrator proposed reporting time spent on counseling duties and time spent on non-counseling duties as opposed to time spent within each category of comprehensive school counseling.

Response: The agency disagrees that only counseling and non-counseling duties should be tracked as opposed to time spent within each category. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services.

Comment: Four school administrators expressed support for the rule but expressed concern that the tracking of time will be an additional burden. The commenters also asked for lower counselor-to-student ratios.

Response: The agency disagrees that the tracking of time will be an additional burden and provides the following clarification. Districts have the flexibility to develop or adopt appropriate time trackers and/or work time analysis procedures. The *Texas Model for Comprehensive School Counseling Programs* and the *ASCA National Model: Implementation Guide* provide various templates for work time analysis. The data gathered provides districts with valuable information to support counselors in meeting the needs of their students. The comment regarding counselor-to-student ratios is outside the scope of the proposed rulemaking.

Comment: Two school administrators expressed support for the rule as a way to meet the needs of students.

Response: The agency agrees that the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: Four school administrators disagreed with the determination that the rule does not have a fiscal impact.

Response: The agency offers the following clarification: There are no additional costs resulting from the proposed rule. TEC, §33.005, requires the implementation of a comprehensive counseling program. System support, a component of the comprehensive counseling program, establishes work time analysis as an appropriate counseling duty. State law also requires school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program and annually assess the district's compliance with the policy.

Comment: One school administrator asked if a draft could be sent out, if a standardized tracker could be provided, how districts will be measured, and how the random districts would be chosen.

Response: The agency provides the following clarification. Both the *Texas Model for Comprehensive School Counseling Programs* and the *ASCA National Model: Implementation Guide* provide various templates for work time analysis, including stan-

standardized time trackers. The rule will require school districts to annually assess the work time tracking documentation for each school counselor in the district; the number of school counselors whose work was in compliance with a district policy adopted under TEC, §33.006(d); and the number of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d). Finally, districts will be randomly selected to provide documentation to TEA each year.

Comment: Eighteen school administrators disagreed with the rule and expressed concern that counselors are too busy to add another clerical task to their plate.

Response: The agency disagrees that work time analysis is a clerical task and offers the following clarification. Tracking time and effort is a practice used in many fields and can be done efficiently. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis (time tracking) falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Nederland Independent School District (ISD) disagreed with the rule and stated it will only add another layer of bureaucracy between teaching and learning.

Response: The agency disagrees that the rule adds a layer of bureaucracy and offers the following clarification. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis (time tracking) falls. Work time analysis is a necessary and appropriate counseling duty. Work time analysis will ensure that districts demonstrate compliance with the statutory requirement that 80% of school counselors' total work time is spent on duties described in TEC, §33.005 and §33.006. In this way, the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: Kaufman ISD expressed disagreement with the proposed rule and stated that the rule would increase the paperwork burden while ostensibly acting to decrease it. The district further commented that counselors in the district are not in favor of the rule and that the commissioner's distrust of public-school personnel is made evident in rules of this nature.

Response: The agency disagrees that work time analysis will increase paperwork. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis (time tracking) falls. Work time analysis is a necessary and appropriate counseling duty. The agency provides the following clarification. State law requires the commissioner to adopt a rule to implement the requirement that each school district annually assess the district's compliance with the policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program and on request by the commissioner, provide a written copy of the assessment to the agency on or before the date specified by the commissioner.

Comment: Lumberton ISD expressed disagreement with the rule and stated that the district's counselors are already swamped with counseling students experiencing mental health situations. The district further stated that adding time and effort log requirements will do nothing to assist students.

Response: The agency disagrees that the rule does nothing to assist students and offers the following clarification. Counselors

should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Cisco ISD stated that the proposal has a cost to districts--and, more importantly, counselors--who will have to spend valuable man-hours on completing these reports. The district expressed understanding that there are counselors who feel they are not able to provide counseling because they are required to manage assessments or perform other non-counseling duties but that punishing every counselor in the state to complete a time and effort sheet is counterintuitive. The district stated that, if TEC, §33.006(h), must be monitored, it would be much easier to simply have the counselors sign a statement that is submitted annually stating that 80% of their work time is spent on duties that are components of a counseling program developed under TEC, §33.005.

Response: The agency disagrees that signing a statement is sufficient evidence of compliance with TEC, §33.006. The agency disagrees that the rule punishes counselors and adds additional cost because counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Big Sandy ISD expressed agreement with the 80% rule but stated a concern that the additional paperwork and time tracking will be overwhelming and demeaning.

Response: The agency disagrees that the tracking of time will be demeaning and overwhelming. Tracking time and effort is a practice used in many fields and can be done efficiently. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: The Texas Counseling Association (TCA), Texas School Counselor Association (TSCA), two professors, and two school administrators expressed support for the rule but requested that the agency consider amending §61.1073(a)(1) to specifically cite the *Texas Model for Comprehensive School Counseling Programs* and to expand the reference in this subsection to include all of TEC, §33.005, rather than just one subsection to provide a clearer reference for school districts.

Response: The agency disagrees that specifically citing the *Texas Model for Comprehensive School Counseling Programs* or expanding the statutory reference will provide additional clarity.

Comment: TCA, TSCA, two professors, and two school administrators expressed support for the rule but requested that the agency consider amending §61.1073(b) to allow each school district to adopt its own tracking tool; change the reporting requirements to focus on time spent on the entire school counseling program, rather than each of the four components; and add language to explicitly state that testing duties are not components of a counseling program.

Response: The agency disagrees that reporting on the counseling program as a whole will be sufficient. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services.

Comment: TCA, TSCA, two professors, and two school administrators expressed support for the rule but requested that the agency consider amending §61.1073(c) for consistency in reporting numbers rather than percentages of school counselors whose work complies or does not comply with the district's policy.

Response: The agency agrees and has adjusted §61.1073(c)(3) at adoption to read, "the number of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d)."

Comment: TCA, TSCA, two professors, and two school administrators expressed support for the rule but requested that the agency consider amending §61.1073(e) to reduce reporting requirements by allowing districts to simply submit their annual assessments upon request since the data requested in this subsection is required to be included in each district's annual assessment.

Response: The agency agrees and has deleted §61.1073(e)(2) and (4), as proposed, and added new paragraph (2) to read, "a copy of the district annual assessment as required by subsection (c) of this section" at adoption. The agency has also amended renumbered §61.1073(e)(4) to read, "the number of school counselors in the district whose work is determined by the district to be out of compliance with the district policy adopted under TEC, §33.006(d)."

Comment: Texas State Teachers Association (TSTA) commented that the rule as drafted increases counselors' workloads in ways unrelated to a comprehensive counseling program. TSTA proposed revisions to §61.1073(b).

Response: The agency disagrees that reporting on each component of the school counseling program will increase workloads in ways unrelated to a comprehensive counseling program. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services. In response to other comments, the agency revised §61.1073(b)(1)(B), (c), and (e) at adoption.

Comment: Texas Classroom Teachers Association (TCTA) commented that the proposal to track specific amounts of time spent on components of TEC, §33.005, is unnecessarily burdensome and proposed striking "each of" from §61.1073(b)(1)(B).

Response: The agency agrees that requiring the reporting of each component is unnecessary and deleted "each of" from §61.1073(b)(1)(B) at adoption.

Comment: TCTA proposed amending §61.1073(b)(1)(B)(iv) to read, "system support to support the efforts of teachers, staff, parents, and other members of the community in promoting the educational, career, personal, and social development of students."

Response: The agency disagrees that the additional language is necessary.

Comment: TCTA proposed amending §61.1073(b)(1)(C) to read, "the total time spent on duties that are not components of a counseling program developed under TEC, §33.005, including time spent in administering assessment instruments or providing other assistance in connection with assessment instruments (except time spent in interpreting data from assessment instruments)."

Response: The agency agrees and amended §61.1073(b)(1)(C) at adoption to reflect the commenter's suggested language.

Comment: TCTA proposed striking §61.1073(b)(1)(D).

Response: The agency agrees and deleted proposed §61.1073(b)(1)(D) at adoption.

Comment: TCTA proposed that the rule address potential attempts at coercion by adding specific language to prohibit coercion and adding new subsection (f) to require districts to submit their annual reports if there are allegations of coercion.

Response: The agency disagrees that the rule should address coercion. The agency has determined that the statute does not provide authority to address coercion in the rule.

Comment: Texas American Federation of Teachers (AFT) commented that tracking time is overburdensome and that districts should track only the 20% of time not spent on counseling duties. Texas AFT also commented that a clearer definition of which schools will be randomly selected is necessary.

Response: The agency disagrees that reporting only on the 20% of time not spent on school counseling duties is sufficient and that tracking each component of a school counseling program will be overburdensome. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services. The agency also disagrees that there should be a clearer definition of which schools will be randomly selected. If the agency provided information regarding which districts were going to be selected, the process would no longer be random.

Comment: One school administrator asked if the rule applies to charter schools.

Response: The agency offers the following clarification. The rule does not apply to charter schools.

Comment: The Association of Texas Professional Educators expressed support for TEC, §33.006, and limiting time spent on testing and other non-counseling duties, but they advocated for changes to §61.1073(b) and (c) and proposed adding the option for a principal or designee to affirm the school has posted and is following the policy. The commenter expressed the belief that the current rule is over burdensome.

Response: The agency agrees that changes to §61.1073(b) and (c) are warranted. Section 61.1073(b) was amended at adoption to clarify that the standardized tracking tool would be selected by each school district. Section 61.1073(b)(1)(B) was amended at adoption to require that the tracking tool include reporting of the total time spent on all duties that are components of a counseling program as opposed to time spent on each component. In addition, §61.1073(c) was amended at adoption to require the assessment of compliance with the number rather than the percentage of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d). The agency disagrees that affirmation of

compliance is sufficient. The agency also disagrees that the rule is overburdensome. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: One school counselor recommended that counselors only have duties that are in the rubric of the School Counselor Appraisal Instrument and that counselors should get paid more for what they do.

Response: The agency provides the following clarification. Appropriate school counseling duties are described in TEC, §33.005 and §33.006. The comment about higher pay is outside the scope of the proposed rulemaking.

Comment: Four school counselors commented that they are against tracking time because the added documentation takes away from students' mental health, but they support additional investment in more counselors.

Response: The agency disagrees that the documentation will take away from student services. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Sixty-eight school counselors expressed opposition to the rule because they believe it is overburdensome and will require additional time that counselors do not have in addition to all of their current duties. The commenters further stated that other educational personnel, including administrators, teachers, and TEA employees do not track their time.

Response: The agency disagrees that tracking time is overburdensome. Time and effort is a practice used in many fields and can be done efficiently. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Two school counselors commented that data collection is very important but that the rule should be optional.

Response: The agency disagrees that the rule should be optional. The school counseling component of system support under TEC, §33.005, which requires work time analysis, is a necessary, required, and appropriate counseling duty.

Comment: Four school counselors commented that tracking time is unrealistic, a punishment, and a lack of professional trust. The commenters stated that currently, small/rural campus administrators and counselors wear many hats to support students and this rule adds to the duties and takes time away from students and that additional funding would be needed for new positions.

Response: The agency disagrees that tracking time is unrealistic, a punishment, or a lack of professional trust. Tracking time and effort is a practice used in many fields and can be done efficiently. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005,

includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty. Additional funding for positions is outside the scope of the proposed rulemaking.

Comment: Three school counselors stated that tracking time takes time away from supporting students and that the data could be used by administrators against counselors.

Response: The agency disagrees that the documentation will take time away from supporting students. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: One school counselor commented that rules cannot just be changed and that new laws create deficiencies. The commenter also stated that children are no longer the priority; compliance is.

Response: The agency disagrees that the new rule does not prioritize children. New §61.1073 supports counselors in serving students as described in TEC, §33.005 and §33.006.

Comment: One school counselor commented that rural schools have no one to do the non-counseling duties and recommended a noncompetitive grant of \$75,000 for small districts to hire someone to do the non-counseling duties.

Response: This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §33.005, which provides that a school counselor shall plan, implement, and evaluate a comprehensive school counseling program that meets the requirements of the section; TEC, §33.006(d), as added by Senate Bill (SB) 179, 87th Texas Legislature, Regular Session, 2021, which requires, except as provided by subsection (e) of the section, school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005; TEC, §33.006(e), as added by SB 179, 87th Texas Legislature, Regular Session, 2021, which requires school district boards of trustees that determine that staffing needs require school counselors to spend less than 80% of their work time on duties that are components of counseling programs developed under TEC, §33.005, to change the policy adopted under subsection (d) of the section to reflect the reasons why counselors need to spend less than 80% of their work time on components of the counseling program, list those non-component duties, and set the required percentage of work time to be spent on components of the counseling program; and TEC, §33.006(h), as added by SB 179, 87th Texas Legislature, Regular Session, 2021, which requires each school district to annually assess the district's compliance with the policy adopted under TEC, §33.006(d), and, on request by the commissioner, provide a written copy of the assessment to Texas Education Agency on or before a date specified by the commissioner. This section requires the commissioner to adopt rules to implement these requirements.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §33.005 and §33.006, as amended by Senate Bill 179, 87th Texas Legislature, Regular Session, 2021.

§61.1073. *Annual Assessment of School District Compliance.*

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

(1) Comprehensive school counseling program--provision of a guidance curriculum, responsive services, individual planning, and system support as described in Texas Education Code (TEC), §33.005(b).

(2) Duties that are components of a counseling program--work activities related to the development, implementation, and evaluation of a comprehensive school counseling program as described in TEC, §33.005(b).

(3) School counselor--the position described by TEC, §21.003, and Chapter 239, Subchapter A, of this title (relating to School Counselor Certificate).

(4) School counselor's total work time--the amount of time, reported in hours, that a school counselor is contracted to work as a school counselor for a school district during a school year.

(b) School districts shall require each district school counselor to track and document, using a standardized tracking tool, as established by each district, the time spent on work duties performed by the school counselor throughout a school year. This tracking tool shall:

(1) include the following components:

(A) the total work time worked by the school counselor for the year;

(B) the total time spent on the following duties that are components of a counseling program developed under TEC, §33.005:

- (i) provision of a guidance curriculum;
- (ii) responsive services for students;
- (iii) individual planning for students; and
- (iv) system support; and

(C) the total time spent on duties that are not components of a counseling program developed under TEC, §33.005, including time spent in administering assessment instruments or providing other assistance in connection with assessment instruments (except time spent in interpreting data from assessment instruments); and

(2) be maintained by the district in a format that can be made available to Texas Education Agency (TEA) upon request.

(c) School districts shall annually assess the district's compliance with the policy adopted under TEC, §33.006(d). The assessment shall include:

(1) work time tracking documentation as described in subsection (b) of this section for each school counselor in the district;

(2) the number of school counselors whose work was in compliance with the district policy adopted under TEC, §33.006(d); and

(3) the number of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d).

(d) The assessment described in subsection (c) of this section shall be maintained by the school district in a format that can be made available to TEA upon request.

(e) Not later than October 15 of each year, TEA will request the following information from a randomly selected sample of school

districts, with district responses required to be submitted to TEA not later than November 15 of each year in the format requested by TEA:

(1) a copy of the district policy adopted under TEC, §33.006(d);

(2) a copy of the district annual assessment as required by subsection (c) of this section;

(3) the number of school counselors in the district from the previous school year;

(4) the number of school counselors in the district whose work is determined by the district to be out of compliance with the district policy adopted under TEC, §33.006(d); and

(5) any other findings, conclusions, or analysis included in the annual assessment required by subsection (c) of this section, including proposed strategies to address any lack of compliance with the district policy adopted under TEC, §33.006(d).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER B. PAYMENT PROCESSING--ELECTRONIC FUNDS TRANSFERS

34 TAC §5.12, §5.15

The Comptroller of Public Accounts adopts amendments to §5.12 concerning processing payments through electronic funds transfers and §5.15 concerning electronic funds transfers - paycards, without changes to the proposed text as published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1426). The rules will not be republished.

The amendments to §5.12 delete the definition of "comptroller approved EFTS form" in subsection (b)(4) because this term is no longer used in this subchapter and renumber the subsequent definitions accordingly; add the term "travel reimbursement" in subsection (b)(19) to acknowledge that pay cards issued to state employees may also provide access to travel reimbursement payments; change "funds" to "payments" in subsection (b)(19) to ensure the consistent use of the term in this subchapter; change "paycard" to "pay card" in subsections (b)(19) and (c)(2)(B) to correct the spelling of this term; change "and" to "or" in subsection (b)(26)(C) to correct a typographical error; update the room

number to which any questions, comments, or complaints may be addressed in subsection (g)(1); and change "are" to "is" in subsection (h) to correct a grammatical error.

The amendments to §5.15 change "funds" to "payments" in subsection (a)(2) to ensure the consistent use of the term in this subchapter; add the term "travel reimbursement" throughout subsection (a) to acknowledge that pay cards issued to state employees may also provide access to travel reimbursement payments; delete subsection (c) to allow greater flexibility regarding the use of pay cards to the extent allowed by Regulation E, 12 C.F.R. Part 1005; and change "paycard" to "pay card" and "paycards" to "pay cards" throughout §5.15 to correct the spelling of this term.

The comptroller did not receive any comments regarding adoption of the amendments.

The amendments are adopted under Government Code, §403.016(j), which requires the comptroller to adopt rules to administer Government Code, §403.016 regarding electronic funds transfer.

The amendments implement Government Code, §403.016.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Victoria North

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Comptroller of Public Accounts

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §§145.3, 145.12, 145.15, 145.18

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 145, Subchapter A, §§145.3, 145.12, 145.15, and 145.18 concerning parole process. Board rule §145.12 is adopted with a change to correct the style of a word for uniformity and consistency throughout the rules. Board rules §§145.3, 145.15, and 145.18 are adopted without changes to the proposed text as published in the February 3, 2023 issue of the *Texas Register* (48 TexReg 493). Board rule §145.12 will be republished, while Board rules §§145.3, 145.15, and 145.18 will not be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules; to correct grammatical errors; to reflect current rehabilitation programs; and to accurately re-

fect the statutory requirements for the reconsideration for release of offenders sentenced to certain offenses.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted 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.

§145.12. *Action upon Review.*

A case reviewed by a parole panel for parole consideration may be:

- (1) deferred for request and receipt of further information;
- (2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review date (Month/Year) for an offender serving a sentence listed in Section 508.149(a), Government Code, or serving a sentence for second or third degree felony under Section 22.04, Penal Code may be set at any date after the first anniversary of the date of denial and end before the fifth anniversary of the date of denial, unless the inmate is serving a sentence for an offense under Section 22.021, Penal Code, or a life sentence for a capital felony, in which event the designated month must begin after the first anniversary of the date of the denial and end before the 10th anniversary of the date of the denial. The next review date for an offender serving a sentence not listed in Section 508.149(a), Government Code shall be as soon as practicable after the first anniversary of the denial;
- (3) denied parole and ordered serve-all, but in no event shall this be utilized if the offender's projected release date is greater than five (5) years for offenders serving sentences listed in Section 508.149(a), Government Code, or serving a sentence for second or third degree felony under Section 22.04, Penal Code; or greater than one (1) year for offenders not serving sentences listed in Section 508.149(a), Government Code. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review;
- (4) determined the totality of the circumstances favor the offender's release on parole, further investigation (FI) is ordered with the following available voting options; and, impose all conditions of parole or release to mandatory supervision that the parole panel is required or authorized by law to impose as a condition of parole or release to mandatory supervision;
 - (A) FI-1--Release the offender when eligible;
 - (B) FI-2 (Month/Year)--Release on a specified future date;
 - (C) FI-3 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than three (3) months from specified date. Such TDCJ program may include either CHANGES, Voyager, Pre-Release Center (PRC), or any other approved program;
 - (D) FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and

not earlier than four (4) months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);

(E) FI-5--Transfer to TDCJ In-Prison Therapeutic Community Program (IPTC). Release to aftercare component only after completion of IPTC;

(F) FI-6--Transfer to a TDCJ DWI Program. Release to continuum of care program as required by paragraph (5) of this section;

(G) FI-6 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than six (6) months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC), Pre-Release Substance Abuse Program (PRSAP), or In-Prison Therapeutic Community Program, or any other approved program;

(H) FI-7 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than seven (7) months from the specified date. Such TDCJ program shall be the Serious and Violent Offender Reentry Initiative (SVORI);

(I) FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine (9) months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9);

(J) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than 18 months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-18);

(5) any person released to parole after completing a TDCJ rehabilitation program as a prerequisite for parole, must participate in and complete any required post-release program. A parole panel shall require as a condition of release on parole or release to mandatory supervision that an offender who immediately before release is a participant in the program established under Section 501.0931, Government Code, participate as a releasee in a drug or alcohol abuse continuum of care treatment program; or

(6) any offender receiving an FI vote, as listed in paragraph (4)(A) - (J) of this section, shall be placed in a program consistent with the vote. If treatment program managers recommend a different program for an offender, a transmittal shall be forwarded to the parole panel requesting approval to place the offender in a different program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bettie Wells

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Texas Board of Pardons and Paroles

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SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.27

The Texas Board of Pardons and Paroles (Board) adopts the repeal Title 37, Chapter 145, Subchapter B, §145.27 without changes to the proposed text as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 497). The rule will not be republished. The proposed repeal is the result of a review of the subchapter pursuant to the four-year rule review prescribed by §2001.039 Government Code.

The repeal of §145.27 is warranted because the pilot program, which is the subject of §521.1421 Transportation Code, has become a permanent program administered by the Texas Department of Criminal Justice.

No public comments were received regarding adoption of this repeal.

The repeal is adopted under §508.036(b)(1) Government Code, which provides authority for the Board adopt rules relating to the decision-making processes used by the Board and parole panels.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

SUBCHAPTER C. MISCELLANEOUS

37 TAC §385.9981

The Texas Juvenile Justice Department (TJJD) adopts amendments to Texas Administrative Code Chapter 385, Subchapter C, §385.9981 with changes to the proposed text as published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7255). The amended section will be republished.

SUMMARY OF CHANGES

The amendments to §385.9981, concerning Sick Leave Pool and Family Leave Pool Administration, include adding that a donating employee may donate one or more days of the employee's accrued sick leave to the sick leave pool or accrued sick or vacation leave to the family leave pool, adding the reasons an employee is eligible to withdraw hours from the family leave pool, and revising the title of the rule.

The new amendment to §385.9981 corrects a typo to read *family* leave pool (instead of *sick* leave pool).

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rule-making action.

STATUTORY AUTHORITY

The amended section is adopted under §661.002 and §661.022, Government Code, which require TJJD to adopt rules and prescribe procedures relating to the operation of the agency's sick leave pool and the agency's family leave pool.

§385.9981. *Sick Leave Pool and Family Leave Pool Administration.*

(a) Purpose. The purpose of this rule is to establish a sick leave pool and a family leave pool for Texas Juvenile Justice Department (TJJD) employees as mandated by Sections 661.002 and 661.022, Government Code.

(b) General Provisions.

(1) The director of human resources is the pool administrator.

(2) All contributions to the TJJD leave pools are voluntary.

(3) The donating employee may not designate a specific employee to receive the donated hours.

(4) The following provisions apply to employees who withdraw leave pool time that is beyond what they contributed.

(A) The pool administrator determines the number of hours that an employee may withdraw from the pool; however, the amount withdrawn may never exceed the lesser of:

(i) one-third of the total time in the pool; or

(ii) 90 days.

(B) An employee absent on time withdrawn from a leave pool may use the time as sick leave earned by the employee, and the employee is treated for all purposes as if the employee were absent on earned sick leave.

(C) The estate of a deceased employee is not entitled to payment for unused time withdrawn by the employee from a leave pool.

(c) Sick Leave Pool Provisions.

(1) The donating employee may donate one or more days of the employee's accrued sick leave to the sick leave pool.

(2) An employee is eligible to use time contributed to the sick leave pool if the employee's sick leave has been exhausted because of:

(A) a catastrophic illness or injury; or

(B) a previous donation of time to the pool.

(3) An employee may withdraw time from the sick leave pool that the employee did not contribute only if the employee or an immediate family member suffers a catastrophic illness or injury.

(d) Family Leave Pool Provisions.

(1) The donating employee may donate one or more days of the employee's accrued sick or vacation leave to the family leave pool.

(2) An employee is eligible to withdraw time from the family leave pool because of:

(A) the birth of a child;

(B) the placement of a foster child or adoption of a child under 18 years of age;

(C) the placement of any person 18 years of age or older requiring guardianship;

(D) a serious illness to an immediate family member or the employee, including a pandemic-related illness;

(E) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or

(F) a previous donation of time to the pool.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2023.

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