

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER A. VOTER REGISTRATION

1 TAC §§81.13, 81.15, 81.23, 81.25

The Office of the Secretary of State (Office) adopts amendments to 1 TAC §§81.13, 81.15, 81.23, and 81.25 concerning disbursement of funds under Chapter 19 of the Texas Election Code. These rules designate which goods and services are reimbursable with Chapter 19 funds and outline the procedures that county voter registrars must follow to obtain such reimbursement.

The Office adopts the amendments to §§81.13, 81.15, 81.23, and 81.25 without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6665). These rules will not be republished.

No comments were received regarding the proposed amendments.

The amended rules are authorized by Texas Election Code §§19.002(b), 19.004, and 31.003. Texas Election Code §19.002(b) authorizes the Office to prescribe procedures relating to the disbursement of Chapter 19 funds. Texas Election Code §19.004 authorizes the Office to implement provisions related to disbursing state funds to defray expenses of the voter registrar's office in connection with voter registration. Texas Election Code §31.003 directs the Office to obtain and maintain uniformity in the application, operation, and interpretation of the Texas Election Code and other election laws, including through the preparation of detailed and comprehensive written directives and instructions relating to and based on such laws.

The amended rules implement Chapter 19 of the Texas Election Code. No other statute, code, or article is affected by the amended rules.

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 December 28, 2023.

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Adam Bitter

General Counsel

Office of the Secretary of State

Effective date: January 17, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 463-5650



SUBCHAPTER F. PRIMARY ELECTIONS

1 TAC §§81.101, 81.107, 81.116, 81.120

The Office of the Secretary of State (Office) adopts amendments to 1 TAC §§81.101, 81.107, 81.116, and 81.120. The amendments concern the financing of primary elections with state funds, including the determination of necessary and appropriate expenses relating to the proper conduct of primary elections by party officials and procedures for requesting reimbursement by the parties for such expenses.

The Office adopts the amendments to §§81.101, 81.107, 81.116, and 81.120 without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6667). These rules will not be republished.

No comments were received regarding the proposed amendments.

The amended rules are authorized by Texas Election Code §§31.003 and 173.006. Texas Election Code §31.003 directs the Office to obtain and maintain uniformity in the application, operation, and interpretation of the Texas Election Code and other election laws, including through the preparation of detailed and comprehensive written directives and instructions relating to and based on such laws. Texas Election Code §173.006 authorizes the Office to adopt rules to reduce the cost of primary elections or facilitate the holding of primary elections within the amount appropriated by the legislature for that purpose. Texas Election Code §§172.117, 172.122, and 172.128 of the Texas Election Code also provide the Office with rulemaking authority relating to the conduct of primary elections.

The amended rules implement Chapters 172 and 173 of the Texas Election Code. No other statute, code, or article is affected by the amended rules.

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

**SUBCHAPTER KK. COMMISSIONER'S
RULES CONCERNING COMPLIANCE
INVESTIGATIONS IN CONNECTION WITH
STATE-FUNDED EDUCATION PROGRAM
GRANTS**

19 TAC §102.1401

The Texas Education Agency (TEA) adopts an amendment to §102.1401, concerning compliance investigations in connection with state-funded education program grants. The amendment is adopted without changes to the proposed text as published in the October 13, 2023 issue of the *Texas Register* (48 TexReg 5935) and will not be republished. The adopted amendment updates the term "special accreditation investigation" to "special investigation" to align with statute.

REASONED JUSTIFICATION: Section 102.1401 outlines the framework for compliance investigations, corrective actions, and sanctions TEA may initiate for recipients of state education program grant funds to ensure taxpayer dollars are being spent appropriately and prevent fraud, waste, and abuse. The rule requires cooperation by state grant recipients, including the submission of required documentation and information, with ongoing compliance investigations. It also indirectly requires, via compliance investigations, that school districts and charter schools maintain documentation of compliance with existing state grant requirements as prescribed by TEA through requests for application for state grants.

The adopted amendment to §102.1401(a)(1) changes the term "special accreditation investigation" to "special investigation" to align with terminology used in Texas Education Code, §39.003 and §39.004.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 13, 2023, and ended November 13, 2023. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.028(a)(2), which authorizes Texas Education Agency to monitor compliance with state grant requirements; and TEC, §39.056(a), which authorizes the commissioner to direct the agency to conduct monitoring reviews and random on-site visits of a school district or charter school as authorized by TEC, §7.028.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.028 and §39.056.

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 December 28, 2023.

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

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TITLE 34. PUBLIC FINANCE

**PART 1. COMPTROLLER OF PUBLIC
ACCOUNTS**

CHAPTER 9. PROPERTY TAX ADMINISTRATION

**SUBCHAPTER O. TEXAS JOBS, ENERGY,
TECHNOLOGY AND INNOVATION PROGRAM**

34 TAC §§9.5000 - 9.5012

The Comptroller of Public Accounts adopts new §9.5000, concerning definitions, §9.5001, concerning applicant eligibility requirements, §9.5002, concerning application requirements, §9.5003, concerning economic benefit statement criteria, §9.5004, concerning application process, §9.5005, concerning agreement for limitation on taxable value of eligible property, §9.5006, concerning agreement process, §9.5007, concerning amendment process, §9.5008, concerning job and wage requirements; penalty for failure to comply with job or wage requirement, §9.5009, concerning biennial compliance report, §9.5010, concerning biennial report to legislature, §9.5011, concerning conflicts and §9.5012, concerning electronic submissions; notices, with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5639). The rules will be republished.

These new sections implement the Texas Jobs, Energy, Technology and Innovation Act to comply with Government Code, Subchapter T, Chapter 403, which was enacted by House Bill 5, 88th Legislature, R.S., 2023. The new sections will be located in Chapter 9 (Property Tax Administration), new Subchapter O (Texas Jobs, Energy, Technology and Innovation Program).

Section 9.5000 provides definitions.

Section 9.5001 describes applicant eligibility requirements.

Section 9.5002 establishes the application requirements.

Section 9.5003 establishes the economic benefit statement criteria and methodology.

Section 9.5004 describes the application process including the comptroller review and recommendation.

Section 9.5005 describes the requirements for an agreement for limitation on taxable value of eligible property.

Section 9.5006 describes the agreement process.

Section 9.5007 describes the amendment process.

Section 9.5008 establishes the job and wage requirements as well as the penalty for failing to comply with the job or wage requirement.

Section 9.5009 describes the biennial compliance report submitted by a business entity subject to an agreement under Government Code, Chapter 403.

Section 9.5010 describes the biennial report to the legislature.

Section 9.5011 addresses compliance with conflict-of-interest laws.

Section 9.5012 provides that the comptroller may require electronic submission of documents under the Texas Jobs, Energy, Technology and Innovation Act.

The comptroller received 70 comments from the following organizations/interest groups, law firms and individuals: Trinity United Methodist Church, The Metropolitan Organization, Lone Star Chapter of Sierra Club, St. Francis of Assisi Catholic Church, Texas IAF organization, Doug Greco, greater:SATX, St. Christopher's Episcopal Church, All Saints Catholic Church in the Heights, Houston, Texas, Congregation Beth Israel (Houston), The Metropolitan Organization of Houston, Daniel Casey of MoakCasey, Dick Lavine of Every Texan, Holy Trinity Catholic Church, Dallas Area Interfaith, Opportunity Austin, Texas Taxpayers & Research Association ("TTARA"), McAllen Economic Development Corporation, Texas Oil and Gas Association ("TXOGA"), Texas Association of Business, Fort Worth Chamber of Commerce, Dallas Regional Chamber ("DRC") and its 700-plus member companies, Central Texas Interfaith, Greater Austin Chamber of Commerce, Drax Group, NovoHydrogen, Texas Association Of Manufacturers ("TAM"), Texas Chemical Council ("TCC"), First Congregational Church of Houston ("FCC"), Beverly Deutsch, Bruce Barber, EPISO/Border Interfaith, Kaufman Economic Development Corporation, David Solis, Christian Chapel Temple of Faith ("CCTOF"), New Hope Baptist Church, PCUSA Social Justice Committee, St Peter's Lutheran Church, Buda UMC, the Borderplex Alliance, Myron O. Knudson, King of Glory Lutheran Church, Living Word Lutheran Church, Wildflower Unitarian Universalist Church, Corpus Christi Regional Economic Development Corporation, Reliable Energy Alliance, Laura Arbilla, Greater Houston Partnership, Our Lady of Guadalupe Church, All Saints' Episcopal Church, Austin and EDP Best Practices, LLC. With the exception of Reliable Energy Alliance, all commenters requested clarifications or amendments to the proposed rules.

Many commenters raised concerns about the definition sections, particularly §9.5000(1)-(5) and (8)-(11). TTARA recommended a revision to §9.5000(1) agreement holder definition, substituting "person" for "business entity," aligning with the statutory definition used for applicants. The comptroller's office concurs and has incorporated this modification into the definition.

TTARA and EDP Best Practices, LLC provided feedback on the construction job definition in §9.5000(2). TTARA suggested replacing "takes place" with "perform." As the term "perform" is already used in the definition, the comptroller's office opted to replace "takes place" with "occurs" for clarity.

Several commenters including TTARA, TAM, TCC, TXOGA, Texas IAF, TMO, Trinity United Methodist, St Francis of Assisi, All Saints Catholic Church, Congregation Beth Israel (Houston),

Central Texas IAF, EDP Best Practices, LLC, NovoHydrogen, Borderplex Alliance, Kaufman Economic Development Corporation, Lone Star Chapter of Sierra Club, St. Christopher's Episcopal Church, Doug Greco, Holy Trinity Catholic Church, Dallas IAF, retired public school educator, First Congregational Church of Houston, Congregational Church of Austin, Beverly Deutsch, Bruce Barber, Eloise and Dolores De Avila of St. John Paul II Catholic Church in El Paso, members of EPISO/Border Interfaith, an IAF Organization, David Solis, CCTOF, and Every Texan expressed dissatisfaction with the definition of eligible project in §9.5000(3). The primary concern was the perceived broadness of critical infrastructure, with some suggesting to add "including a new or expansion project dedicated power infrastructure" and "facility or facilities" following the use of the term "building." However, the comptroller's office finds that these additions are unnecessary and don't add value to the definition, as critical infrastructure is adequately defined through specific NAICS references.

TTARA provided feedback on the eligible property definition, seeking clarification on the term "building" and proposing a definition encompassing all improvements to real property within eligible property. However, since the term "building" is used in the statute, there's no need for a separate definition in the rules.

EDP Best Practices, LLC submitted multiple comments using a nontraditional format, primarily utilizing track changes to make non-substantive revisions to the rules' text. As these revisions do not aim to modify the interpretation, the comptroller's office chooses not to include these changes.

Numerous comments from TXOGA, TTARA, TAM and TCC were received on §9.5000(5), with a primary focus on clarifying the requirement for the number of hours required annually in connection with the eligible project applies to the position, not the employee. The comptroller's office agrees with this interpretation. Consequently, a new hire that worked on December 31 for a full-time position requiring 1600 hours per year would satisfy the annual hourly requirement.

EDP Best Practices, LLC posed inquiries regarding the definition of investment in §9.5000(6). The definition aligns with the statute and the comptroller's office finds no need for further clarification.

TTARA proposed a revision to §9.5000(8) definition of a performance bond, suggesting it should state "a surety bond or, in the event a surety bond is commercially unavailable, other security in a form acceptable to the governor." The current definition, encompassing "a surety bond," already addresses this suggested revision. Furthermore, introducing alternate language for when a surety bond is unavailable exceeds the scope defined by the statute. For these reasons, the comptroller's office declines to incorporate this revision.

Several commenters, including TTARA, TAM, TCC, TXOGA, Austin Chamber of Commerce, Corpus Christi Regional Economic Development Corporation, Dallas Regional Chamber, and others, expressed discontent with the definition of required job in §9.5000(9) and suggested removing the phrase "performed at the site of the project." They contend that the statute doesn't stipulate the necessity for the job to be performed at the jobsite but underscores the Texas Jobs, Energy, Technology, And Innovation Act's focus on the job's creation within the state of Texas. They also articulate that eliminating the phrase opens up possibilities for remote work. TTARA asserts that the legislature intentionally omitted "at the site of the project" but specifically used this term for independent contractor's

employees. TAM, TCC and TXOGA proposed revising the definition to "must be a direct job in this state with primary job duties related to the project, and that would not exist in the absence of the project." EDP Best Practices, LLC and other commenters suggested stylistic changes to §9.5000(9). Despite differing opinions from the commenters, the comptroller's office maintains its position. Government Code, §403.604(c)(2) becomes meaningless if jobs can be situated anywhere in the state. If required jobs are permissible throughout the state, statutory references to job transfers in this state lose significance. Furthermore, Government Code, §403.604(b) adjusts the number of required jobs based on the county's population where the project site is located, reinforcing the notion that the required jobs are based on project location and cannot be located anywhere in the state of Texas. The inclusion of "at the site of the project" for independent contractor's employees helps distinguish them from numerous service providers operating from various locations, both within and outside the state, without explicitly stating their engagement in project related work for the applicant. While acknowledging concerns about hybrid work schedules, the comptroller's office maintains that the definition specifies the primary job location but doesn't preclude a hybrid work arrangement. The comptroller's office has revised the definition to align with this interpretation.

The comptroller's office received feedback from EDP Best Practices, LLC on the trainee definition in §9.5000(10), proposing stylistic adjustments. The current definition aligns with the Texas Work Program law and the comptroller's office declines to make any revisions.

The comptroller's office received extensive feedback on the wage requirement definition in §9.5000(11), raising concerns about implementing a statewide wage target, asserting its impracticability across various industries. TTARA, Drax Group, Texas Economic Development Council, Dallas Regional Chamber, Corpus Christi Regional Economic Development Corporation, McAllen Economic Development Corporation, Opportunity Austin and others highlight concerns about the wages being too high when based on the statewide average annual wage, surpassing the program benefits. Additionally, there are requests for clarification on the applicable NAICS for the industry, with some proposing use of county or regional average annual wages and others requesting the addition of "during the most recent four quarters for which data is available". In response to these comments, the comptroller's office has amended the definition to designate statewide average annual wage as the default when county or regional average annual wage information for particular NAICS is unavailable during the most recent four quarters.

EDP Best Practices, LLC offered feedback on §9.5001, suggesting non-substantive revisions and proposing stylistic revisions. However, the current style aligns with our intended communication and maintains a specific format required for clarity and consistency. The comptroller's office declines to implement these stylistic changes.

Regarding §9.5002, TTARA commented on the application fee, seeking clarification and confirmation that there would be no additional charges for revised applications or resubmissions post-rejection. A refiled application is treated as a new application, necessitating the payment of an application fee. It's important to note that while the comptroller's office establishes the application fee, the comptroller's office cannot comment on whether additional fees may be imposed by parties to the agreement.

Several comments were made on qualified opportunity zones in §9.5002(c). Greater Houston Partnership, Fort Worth Chamber of Commerce, Dallas Regional Chamber, Austin Chamber of Commerce, and others proposed that the eligible project can be partially situated in the zone. The comptroller's office disagrees and declines to incorporate this suggested revision given the lack of legal support for their perspective.

Several commenters including Lone Star Chapter of Sierra Club, Texas IAF, TMO, Trinity United Methodist, St Francis of Assissi, All Saints Catholic Church, Congregation Beth Israel (Houston), Central Texas IAF, St. Christopher's Episcopal Church and others asserted that the rule should specify the school district's 15-day notice requirement for a public vote. While the school district is obligated to notify the public as matter of law, restating this information in rules is unnecessary, as it is already outlined in statute. The comptroller's office declines to accept this revision.

Some commenters including DRAX Group, greater.SATX, Opportunity Austin, and Texas Association of Business expressed concerns regarding the confidentiality of negotiations and the anonymity of applicants. While the comptroller's office acknowledges these concerns, there is a statutory obligation for the comptroller to disclose information from the application and other documents that are not confidential by law. Therefore, the comptroller's office declines to make any changes. Information deemed confidential by law and in accordance with the statute will be maintained as such and will not be posted on the website.

MoakCasey provided feedback on the economic benefit statement criteria in §9.5003, expressing concern about the broad interpretation of the term "local" in subsection (d)(1), particularly in relation to regional groupings affecting businesses across multiple counties. It's pinpointed that subsections (3)-(6) concentrate on the state impact whereas subsection (2) is silent on whether it pertains to the state or region. The comptroller's office does not share the same concerns. The comptroller will analyze the requested data in accordance with the statute and applicants are encouraged to provide relevant information based on their best knowledge. Additional information may be requested by the comptroller if needed. No revisions are warranted to §9.5003.

The comptroller's office received several comments relating to §9.5004 from organizations, interest groups and individuals. TTARA suggested that removing "all the information requested by the comptroller" in §9.5004(b), suggesting this language exceeds the scope of the statute. They also suggested incorporating "mutually acceptable to the comptroller and the applicant" in §9.5004(d) and "excluding any confidential information identified under Rule 9.5002(b)" in §9.5004(e). TXOGA suggested the rules in §9.5004(d) should provide a specific timeframe on the comptroller to inform the applicant on application completeness and the comptroller should work cooperatively with applicants to gather the requested documents. TTARA, TAM, TXOGA, Lone Star Chapter of Sierra Club, Every Texan, Opportunity Austin and all religious interest groups and churches previously identified, commented on the compelling factor in competitive site selection to locate in Texas (referred to as the determining factor by most commenters), contending that the determination should rest with the comptroller and some reiterate the factors set forth in the statute. There is also a request for clarification regarding the commencement of the 60-day period in §9.5004(i). Another commenter, greater.SATX requested deleting "any other information that may aid the comptroller in its determination" from §9.5004(g)(7) whereas DRAX Group requested further details

on the documents requested by the comptroller in §9.5004(g). Numerous comments from McAllen Economic Development Corporation, TTARA, TAM, TXOGA, Dallas Regional Chamber, Austin Chamber of Commerce, Texas Association of Business, Corpus Christi Regional Economic Development Corporation and DRAX Group highlighted concerns about the performance bond formula in §9.5004(j), contending that the amount is excessive and surpasses the program's benefit to an applicant and some seeking clarification on the impact of the bonds at the conclusion of the agreement term. Recommendations included reducing the percentage to 10%, establishing the bond at \$30,000, or basing it on the benefit received rather than the investment figure. TTARA also inquired whether the comptroller will decide on amendments or supplements within 60 days, referencing §9.5004(k). The comptroller's office acknowledges the comments related to §9.5004, specifically those regarding the performance bond. The comptroller's office has adjusted the formula to yield a reduced performance bond amount as suggested. However, the comptroller's office disagrees with the other comments, as the rules in §9.5004 align with the statute, and additional revisions to §9.5004 are not deemed necessary.

TXOGA, TAM, and TCC requested clarification on modifications to investments and job numbers within §9.5007. The latter specifically pertains to incentive period changes, while adjustments related to investments and job numbers are addressed in Government Code, § 403. 612(f). In response to TXOGA, TAM, and TCC, the comptroller's office finds that no revisions are required.

TTARA sought clarification on the application of §9.5008(e)(1) as well as examples. In response, the comptroller's office directs attention to the previous response concerning the definition of full-time jobs, emphasizing the 1600-hour annual requirement is a prerequisite for the position, not the employee. As this response adequately addresses the concern, no additional examples will be provided.

Many commenters representing religious organizations, churches and groups have requested for the incorporation of the statewide total difference in taxes paid outside the program minus the property tax paid under the program in the biennial report. The comment's specific reference to whether it pertains to the agreement holder's biennial compliance is unclear. Nevertheless, it's essential to highlight that the inclusion of this information is a requirement outlined in Government Code, §403.616(c) of the biennial compliance report. Consequently, no adjustments to the rules are deemed necessary.

Finally, the comptroller's office received comments unrelated to the proposed rules. Specifically, Opportunity Austin inquired about whether a company can make donations to a school district's education foundation or its 501(c)(3) without conflicting with Government Code, §403.610(11). The comptroller's office is unable to address this matter as it falls outside the scope of the proposed rules.

The new sections are adopted under Government Code, §403.623, which permits the comptroller to adopt rules regarding the Texas Jobs, Energy, Technology and Innovation Act as necessary to implement that chapter.

The new sections implement Government Code, Subchapter T, Chapter 403.

§9.5000. Definitions.

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

(1) Agreement holder--A person that is subject to an executed agreement under Government Code, §403.612.

(2) Construction job--A job that is temporary in nature, typically performed on a full-time basis and occurs before the commencement of the eligible project's incentive period. The purpose of the job is to perform construction, maintenance, remodeling or repair work for an applicant's project.

(3) Eligible project--The construction of a project, or the expansion of an existing facility that is:

(A) a manufacturing facility, classified in NAICS 31-33;

(B) a facility related to the provision of utility services, including an electric generation facility that is considered to be dispatchable because the facility's output can be controlled primarily by forces under human control, classified in NAICS 2211;

(C) a facility related to the development of natural resources, defined as the following Goods-Producing Industries subsector groups as identified by the U.S. Bureau of Labor Statistics:

(i) Agriculture, Forestry, Fishing and Hunting, classified in NAICS 11; and

(ii) Mining, Quarrying, and Oil and Gas Extraction, classified in NAICS 21;

(D) a facility engaged in research and development, classified in NAICS 5417, or manufacture of high-tech equipment or technology; or

(E) related to critical infrastructure such as:

(i) a water intake structure, water treatment facility, wastewater treatment plant, or pump station, classified in NAICS 2213;

(ii) a liquid natural gas terminal or storage facility, classified in NAICS 424710;

(iii) pipelines and pipeline appurtenances or facilities, including pipes, valves, meters, pumps, compressors, treating and processing facilities, cathodic protection facilities, and any other equipment, facilities, devices, structures, and buildings used or intended for use in the gathering, transportation, treating, storage, or processing of CO₂, oil, gas, or other minerals, and the liquefied or gaseous substances, constituents, products, or mixtures derived from those minerals through refining, processing, or other methods, classified in NAICS 486; and

(iv) utility-scale water or wastewater storage, treatment, or transmission facilities, classified in NAICS 2213.

(4) Eligible property--Property that is used in connection with an eligible project and is either wholly owned by an applicant or leased by an applicant through a capitalized lease. To be eligible, the property must be:

(A) a new building or expansion of an existing building, including a permanent and nonremovable part of a building that is:

(i) constructed after the execution of the agreement; and

(ii) located in an area that is, at the time the agreement is executed, designated as a contiguous reinvestment zone under Tax Code, Chapter 311 or 312, or as an enterprise zone under Government Code, Chapter 2303; or

(B) tangible personal property, excluding inventory, that is initially placed in a zone described in subparagraph(A)(ii) of this paragraph after the agreement execution.

(5) Full-time job--A permanent position of employment, other than a construction job, requiring a minimum of 1,600 hours of work per year in connection with an eligible project.

(6) Investment--Capital that is expended on the construction or acquisition of eligible property for an eligible project with the exclusion of expenses related to land and inventory for the project.

(7) NAICS--North American Industry Classification System, developed by the U.S. Office of Management and Budget as the standard for use in classifying business establishments.

(8) Performance bond--A surety bond with an amount determined by the comptroller.

(9) Required job--A job, other than construction jobs, that an applicant commits to create or demonstrate for an eligible project that meets the following requirements:

(A) must be a new full-time job in this state;

(B) must be performed by an employee hired by the applicant (including a Texans Work Program trainee under Labor Code, Chapter 308), or by an independent contractor or independent contractor's employee, primarily at the designated project site, allowing for hybrid work schedules but excluding 100% remote work;

(C) must require at least 1,600 hours of work a year;

(D) may not be transferred by the applicant from an existing facility or location in this state unless the applicant fills the vacancy caused by the transfer;

(E) may not create a job to replace an existing job, unless the applicant fills the vacancy caused by the replacement;

(F) must offer and contribute to a group health benefit plan for each full-time employee of the applicant; and

(G) must meet the wage requirement.

(10) Trainee--An individual enrolled in the Texans Work Program who fulfills the following eligibility criteria:

(A) receives a minimum monthly payment of \$300;

(B) is engaged for a duration of at least 6 months but not exceeding one year;

(C) contributes at least 30 hours weekly; and

(D) constitutes no more than 20% of the employer's total workforce.

(11) Wage Requirement-- For all jobs in the applicable industry sector as computed by the Texas Workforce Commission in the Quarterly Census of Employment and Wages and as described in the executed agreement under Government Code, §403.612, a wage for a job in a specified sector is determined by considering the average annual wage data available during the most recent four quarters. If county level data exists, the wage in a specified industry must exceed 110% of the county average annual wage, giving priority to 6-digit NAICS level, followed by 5-digit NAICS level, and then 4-digit NAICS level. If county data is unavailable, the same evaluation is performed on regional data. In the absence of both county and regional data, statewide average annual wage must be utilized.

§9.5001. *Applicant Eligibility Requirements.*

(a) An applicant that is listed as ineligible to receive a state contract or investment or is otherwise ineligible to contract with a

state governmental entity under Government Code, Chapters 808, 809, 2270, 2271, or 2274, is ineligible to apply for an agreement for limitation on taxable value of eligible property under Government Code, Chapter 403.

(b) The comptroller may reject an application based on an applicant's ineligibility under subsection (a) of this section.

(c) The comptroller shall send notice of the rejection described in subsection (b) of this section to the applicant.

(d) An applicant may not submit an administrative appeal to the comptroller for reconsideration of an application that has been rejected under subsection (b) of this section.

§9.5002. *Application Requirements.*

(a) Each application shall include:

(1) a completed application form;

(2) proof of a \$30,000 payment as a nonrefundable application fee, payable to the applicable school district;

(3) a sworn affidavit by an agent authorized to bind an applicant attesting that the applicant is not ineligible under Government Code, §403.606;

(4) a map of the proposed project site;

(5) an economic benefit statement for the proposed project as described in Government Code, §403.608; and

(6) any additional information requested by the comptroller to complete its evaluation of the application.

(b) Applicants must segregate confidential information described by Government Code, §403.621, or information that is confidential as a matter of law from other information in their application, amended application or supplement to an application. A cover sheet marked "Confidential" with the legal justification for confidential treatment must accompany all information that is considered confidential.

(c) If an applicant proposes to place an eligible property in a qualified opportunity zone, the entire project including its boundaries must fall within that qualified opportunity zone in order to be subject to the taxable value prescribed in Government Code, §403.605(a)(2).

§9.5003. *Economic Benefit Statement Criteria.*

(a) The economic benefit statement must include the information described in Government Code, §403.608(b), including the sources relied upon.

(b) The comptroller may require an applicant to supplement or modify the economic benefit statement to provide further clarity or if there are changes to project-related information.

(c) Information provided as an estimate of the associated economic benefits that may be reasonably attributed to the project may be generated from standard economic estimation techniques and multipliers. This information shall be used to obtain a generalized estimation of the economic benefits to be associated with the proposed project. Any economic estimation modeling software used and all modifiers that were incorporated in the calculations must be disclosed.

(d) The economic benefit statement must include the project's associated economic benefits that, at minimum, consist of the following:

(1) the impact on the gross revenues and employment levels of local businesses that provide goods or services in connection with the project or to an applicant's employees;

(2) the amount of state and local taxes that will be generated as a result of the indirect economic impact of the project;

(3) the development of complementary businesses or industries that locate in this state as a direct consequence of the project;

(4) the total impact of the project on the gross domestic product of this state;

(5) the total impact of the project on personal income in this state; and

(6) the total impact of the project on state and local taxes.

(e) The comptroller may reject an economic benefit statement that is determined to be unreasonable or relies on unrealistic assumptions of economic conditions.

(f) If the economic benefit statement is rejected, then the comptroller may recommend not to approve the application.

§9.5004. Application Process.

(a) An applicant must submit an application for a limitation on taxable value of eligible property in the form and manner prescribed by the comptroller. The comptroller may require applications to be submitted electronically.

(b) After the eligibility of the applicant is assessed in §9.5001 of this chapter, the comptroller shall review an application to determine if it is administratively complete. An application is considered administratively complete when it includes all the information requested by the comptroller.

(c) The comptroller shall provide notice of an administratively complete application to the applicant, the governor and the applicable school district. The comptroller may provide notice electronically.

(d) If an application is not administratively complete, the comptroller may require an applicant to submit the necessary information by a deadline.

(e) The comptroller shall publish on its website information from each application including maps, economic benefit statement and any amendments within 10 business days of receiving an administratively complete application.

(f) To assess whether a project proposed in an application is an eligible project, the comptroller must find that:

(1) an applicant satisfies the application requirements;

(2) the proposed project meets the definition of eligible project in §9.5000 of this title and Government Code, §403.602(8); and

(3) The applicant is willing to agree and accept the terms described in Government Code, §403.604, and the agreement terms.

(g) To assess whether an agreement is a compelling factor and whether the applicant would make the proposed investment in the absence of the agreement under Government Code, §403.609(b)(3), the comptroller may consider:

(1) any public documents and statements relating to the applicant, the proposed project or the proposed eligible property that is subject to the application;

(2) official statements by the applicant, government officials or industry officials concerning the proposed project;

(3) alternative sites and prospects explored including any specific incentive information;

(4) any information concerning the proposed project's impact on the Texas economy;

(5) previous applications for and subsequent granting of economic development incentives;

(6) documents pertaining to the proposed project's financials, real estate transactions, utilities, infrastructure, transportation, regulatory environment, permits, workforce, marketing, existing facilities, nature of market conditions, and raw materials that demonstrate whether the incentive is a compelling factor in a competitive site selection process to locate the proposed project in Texas; and

(7) any other information that may aid the comptroller in its determination.

(h) Upon request, the comptroller may require that an applicant provides additional documents to demonstrate a compelling factor in a competitive site selection process to locate the proposed project in Texas. Failure to provide these documents may result in the comptroller being unable to make a recommendation under Government Code, §403.609.

(i) Within 60 days of an application being deemed complete, the comptroller shall examine and determine whether the application should be recommended or not recommended for approval based on the criteria in Government Code, §403.609(b).

(j) The comptroller shall provide written notice of action under Government Code, §403.609(a), to the applicant, the governor and the applicable school district.

(1) The notice shall indicate the comptroller's recommendation either for approval or non-approval of the application along with a copy of the application, and all documents or information relied upon to make the findings prescribed by Government Code, §403.609(b).

(2) A recommendation for approval shall specify a performance bond amount that is 10% of the estimated gross tax benefit to the applicant.

(k) An applicant may submit an amended or supplemental application to the comptroller at any time after the submission of the original application. If an applicant modifies an application recommended by the comptroller prior to the execution of the agreement, the applicant must submit said modifications to the comptroller to make a recommendation pursuant to Government Code, §403.609, before the agreement can be executed.

§9.5005. Agreement for Limitation on Taxable Value of Eligible Property.

(a) An applicant, the governor and the governing body of the applicable school district must mutually agree to enter into an agreement for limitation on taxable value of eligible property that includes the requisite terms in Government Code, §403.604 and §403.612.

(b) An applicant must satisfy the criteria required to enter in a contract with the state of Texas.

(c) The agreement must be based on information from an application that was recommended for approval by the comptroller.

(d) The agreement must comply with all applicable rules, regulations and statutes.

§9.5006. Agreement Process.

(a) Both the governor and the governing body of the applicable school district must decide under Government Code, §403.610(a) and §403.611(a), that they are agreeable to entering into an agreement with the applicant for a limitation on taxable value of eligible property.

(b) The governor and the governing body of the applicable school district must provide written notice of their determination in compliance with Government Code, §403.610(b) and §403.611(d).

(c) The agreement must be written in the manner and form prescribed by the governor.

§9.5007. *Amendment Process.*

(a) An agreement holder may propose to modify the beginning and ending dates of the incentive period. Notice of the proposed modification must be provided to the comptroller, the governor, and the applicable school district not later than the 90th day before the first day of the incentive period specified in Government Code, §403.612(b)(3), or not later than the 90th day before the first day of the proposed incentive period, whichever is earlier.

(b) Failure to provide notice of a proposed modification in a timely manner could lead to a denial of the modification request.

(c) To change the beginning and ending dates of the incentive period, the agreement holder must update the most recent schedules and economic benefit statement as necessary to reflect the proposed change to the incentive period. The agreement holder must include the revised schedules and economic benefit statement with the notice provided to the comptroller, the governor, and the applicable school district under this section.

(d) The comptroller shall make the finding required by Government Code, §403.609(b)(2), regarding the project as proposed to be modified or determine that the finding cannot be made.

(e) The comptroller shall notify the agreement holder, the governor and the applicable school district of the comptroller's finding not later than the 60th day after the date the comptroller receives the notice and revised economic benefit statement from the agreement holder of the proposed modification.

(f) The incentive period for the project may not be modified if the comptroller determines that the finding required by Government Code, §403.609(b)(2), regarding the project as proposed to be modified cannot be made or if the governor or the applicable school district objects to the proposed modification.

§9.5008. *Job and Wage Requirements; Penalty for Failing to Comply with Job or Wage Requirement.*

(a) Except as otherwise provided in Government Code, §403.604(a), the number of required jobs may not be waived.

(b) The wage requirement applies to required jobs and additional jobs, as the terms are defined in §9.5000 of this title and Government Code, §403.602. The wage requirement may not be waived.

(c) The comptroller shall conduct a biennial review of the periods covered by two consecutive reports submitted by an agreement holder to determine whether the agreement holder has created the number of required jobs and has met the wage requirement under Government Code, Chapter 403.

(d) To make the determination, the comptroller may:

(1) review the Biennial Compliance Report submitted by the agreement holder;

(2) request additional information from the agreement holder to substantiate the number of required jobs and the wage requirement and/or inspect the eligible property with a 3-day advance notice to the agreement holder in order to perform the inspection at a mutually agreeable time during regular business hours; or

(3) consider any other information that is available to the comptroller.

(e) The comptroller may issue a determination that a job created by the agreement holder is not a required job if the job as identified by the agreement holder:

(1) does not provide 1,600 hours or more of work for that year;

(2) is not a new job but rather a position that was transferred from a facility of the agreement holder from one area of the state to the project covered by the agreement, unless the agreement holder fills the vacancy caused by the transfer;

(3) is not a new job but rather a position that replaced an existing job of the agreement holder, unless the agreement holder filled the vacancy caused by the replacement;

(4) is not covered by a group health benefit plan for which the agreement holder contributes; or

(5) does not meet the wage requirement.

(f) If the comptroller makes a determination that the agreement holder did not create the required number of jobs or meet the wage requirement, the comptroller shall provide notice to the agreement holder, which shall include an explanation for the adverse determination.

(g) If the comptroller finds that an agreement holder received two consecutive adverse determinations for failing to meet the wage requirement prescribed by the agreement, the comptroller shall impose a penalty on the agreement holder in an amount equal to two times the difference between:

(1) the product of:

(A) the actual average annual wage paid to all persons employed by the agreement holder in connection with the project that is the subject of the agreement as computed under Government Code, §403.612(b)(6); and

(B) the number of required jobs prescribed by the agreement; and

(2) the product of:

(A) the average annual wage prescribed by the agreement; and

(B) the number of required jobs prescribed by the agreement.

(h) If the comptroller finds that an agreement holder received two consecutive adverse determinations for failing to maintain at least the number of required jobs prescribed by the agreement, the comptroller shall impose a penalty on the agreement holder in an amount equal to two times the difference between:

(1) the product of:

(A) the number of required jobs prescribed by the agreement; and

(B) the number of required jobs actually created as stated in the most recent report submitted by the agreement holder under Government Code, §403.616; and

(2) the average annual wage prescribed by the agreement during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission.

(i) A determination by the comptroller under subsection (f) of this section is a deficiency determination under Tax Code, §111.008. A penalty imposed under this section is an amount the comptroller is required to collect, receive, administer, or enforce and is subject to

the payment and redetermination requirements of Tax Code, §111.0081 and §111.009. A redetermination under Tax Code, §111.009, of a determination under this section is a contested case as defined by Government Code, §2001.003.

(j) In no event shall a penalty imposed under this section exceed the amount of the ad valorem tax benefit received by the agreement holder under the agreement.

(k) The comptroller shall deposit a penalty collected under this section and any interest on the penalty to the credit of the foundation school fund.

§9.5009. Biennial Compliance Report.

(a) Each agreement holder must submit a biennial compliance report with the supportive documents required by Government Code, §403.616 in the manner and form prescribed by the comptroller. The comptroller may require the report to be submitted electronically.

(b) The report must be submitted by June 1 of every even numbered year from the start to the conclusion of the incentive period.

(c) The report must include the minimum number of required jobs described in Government Code, §403.604(b) for every tax year throughout the duration of the incentive period.

(d) The report must include the signature of agreement holder's authorized representative(s) by which the representative confirms and attests to the truth and accuracy of the information submitted in the form to the best knowledge and belief of the agreement holder and its representative(s).

(e) Agreement holders must segregate confidential information described by Government Code, §403.621(b) or information that is confidential as a matter of law from other information within the biennial report. A cover sheet marked "Confidential" with the legal justification for confidential treatment must accompany all information that is considered confidential.

(f) For trainees identified in the report, the agreement holder must also submit documentation confirming its approval to take part in the Texans Work Program as set forth in Labor Code, §308.003, along with proof of the trainee's participation in the program including the beginning and ending dates of the trainee's participation.

§9.5010. Biennial Report to Legislature.

(a) Each agreement holder must submit information for the report described in Government Code, §403.617(b), in the form and manner prescribed by the comptroller.

(b) Not later than December 1 of each even year, the comptroller may electronically submit the report under Government Code, §403.617(b), to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature.

§9.5011. Conflicts.

To comply with Government Code, §403.619, both applicant and applicable school district must disclose any potential conflicts of interest related to a submitted application or an agreement, as mandated by state and federal laws, before executing the same agreement.

§9.5012. Electronic Submission; Notices.

Unless otherwise required by law, the comptroller may require forms, notices and other documents to be submitted electronically (including via web form).

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 December 27, 2023.

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Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



CHAPTER 16. COMPTROLLER GRANT PROGRAMS
SUBCHAPTER D. RURAL LAW ENFORCEMENT SALARY ASSISTANCE PROGRAM

34 TAC §§16.300 - 16.306

The Comptroller of Public Accounts adopts new §16.300, concerning definitions, §16.301, concerning applications, §16.302, concerning review by comptroller, §16.303, concerning awards; grant agreement, §16.304, concerning authorized uses of grant funds; limitations, §16.305, concerning reporting and compliance; §16.306, concerning provisions applicable to fiscal year 2024, with changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5964). The rules will be republished. These new sections will be located in 34 Texas Administrative Code Chapter 16, new Subchapter D (Rural Law Enforcement Salary Assistance Program). The new sections are required by Local Government Code, §§130.911, 130.912 and 130.913 which were enacted by Senate Bill 22, 88th Legislature, R.S., (2023). Senate Bill 22 establishes a new grant program to provide financial assistance to qualified sheriff's offices, constable's offices, and prosecutor's offices in rural counties.

Section 16.300 provides definitions.

Section 16.301 describes the application process.

Section 16.302 describes review by the comptroller.

Section 16.303 describes award decisions and the requirement for grant agreements.

Section 16.304 describes the authorized uses of grant funds and limitations on uses of grant funds.

Section 16.305 describes reporting requirements and available remedies for noncompliance.

Section 16.306 describes provisions applicable to Fiscal Year 2024.

The comptroller received comments regarding adoption of the proposed rules from The Honorable Carl Squyres, Runnels County Sheriff; Mr. Chase Goetz, Assistant Criminal District Attorney, Caldwell County; Ms. Cheryll Jones, County Auditor, Wichita County; Mr. Clinton Fielder; The Honorable Jeff Swain, District Attorney, Parker County; Mr. John Wren, Chief Investigator, Grimes County District Attorney's Office; The Honorable Kyle Schmalzried, Swisher County Sheriff; Ms. Lisa Constant Wylie, County Auditor, Rockwall County; Ms. Melissa Jeter, County Auditor, Houston County; Ms. Misti

Hayes, Administrative Assistant, Coke County Sheriff's Office; The Honorable Stephen Wadsworth, Gillespie County Attorney; Mr. Steve Lilley, First Assistant District Attorney, Hunt County; The Honorable Tammy Brown, Shackelford County Treasurer; The Honorable Terry Bouchard, Ochiltree County Sheriff; Mr. Timothy Poynter, First Assistant District Attorney, 24th Judicial District; and The Honorable Bill Helwig, Yoakum County Criminal District Attorney.

Mr. Helwig asked that the definition of applicant in §16.300(1) be revised to clarify that prosecutor's offices are the entities authorized to apply for grants related to their offices. The comptroller thanks Mr. Helwig for this comment. The comptroller agrees with this comment and adopts the proposed definition with changes to clarify this distinction and adopts §16.301 with a conforming change.

Ms. Constant Wylie asked what data will be used to determine the population under §16.300(9). The comptroller thanks Ms. Constant Wylie for this question. The definition of population indicates the most recent federal decennial census will be used, so no change to the rule is required.

Ms. Brown asked whether a person performing dispatch duties who holds a jailer's license is eligible for salary increases as a county jailer. The comptroller thanks Ms. Brown for this comment and adopts a definition of county jailer in §16.300(2) with the additional requirements stated in Local Government Code, §130.911(e)(1)(C).

Two commenters asked about the definition of deputy sheriff in §16.300(4). Ms. Constant Wylie asked if the definition of deputy sheriff would include detectives, court bailiffs, and other types of deputies. Ms. Jeter asked whether the definition of deputy sheriff would include deputies who do not make motor vehicle stops except in rare instances and deputies who have the authority to perform motor vehicle stops but do not perform motor vehicle stops. The comptroller thanks Ms. Constant Wylie and Ms. Jeter for these questions and the opportunity to address them. To comply with the statute, deputy sheriffs will only meet the definition if those deputies perform motor vehicle stops in the routine performance of their duties. However, in contrast with the Local Government Code, §130.912 requirement for constables, Local Government Code, §130.911, does not require motor vehicle stops to be a deputy sheriff's primary duty. The comptroller does not believe any action is necessary as a result of these comments.

Sheriff Bouchard and Sherriff Schmalzried questioned whether software could be included in the definition of safety equipment in §16.300(13). The comptroller notes that in most instances, software cannot be treated as safety equipment because it is not tangible equipment. For example, personnel software used for scheduling shifts would not meet the definition of safety equipment. However, tangible electronic systems that are permanently affixed to a patrol vehicle could meet the definition if installed to protect the health and physical safety of a sheriff, deputy sheriff or jailer while performing their duties. The comptroller thanks Sheriff Bouchard and Sherriff Schmalzried for these comments, but declines to modify the definition of safety equipment in response to these comments.

Sherriff Bouchard asked that the definition of safety equipment in §16.300(13) be expanded to include radio equipment, in-car camera systems and body cameras. The comptroller notes that the definition of safety equipment is not limited to the specific items listed and may include other items as long as they are tan-

gible equipment used by a sheriff's office that are necessary to protect the health and physical safety of a county sheriff, deputy sheriff or county jailer while performing their duties. While the comptroller cannot make a blanket determination that a specific item is always an allowable cost because each purchase is subject to the rules, grant agreement and grant management standards, the comptroller thanks Sheriff Bouchard for this comment, agrees that radio equipment, in-car camera systems and body cameras are tangible equipment that can be used to protect the health and safety of a county sheriff, deputy sheriff or county jailer while performing their duties, and adopts the definition with the addition of these items.

Ms. Jones asked if a sheriff's office could purchase any kind of vehicle, for example, an expensive sports car. The comptroller thanks Ms. Jones for this question and the opportunity to address it. The comptroller adds subsection (g) to §16.304 in response to this and other comments. The new subsection implements the legislative directive from Senate Bill 22 that, for sheriffs and constables, grant funds are to be used to "support the state purpose of ensuring professional law enforcement throughout the state", and, for prosecutor's offices, grant funds are to be used "to support the state purpose of ensuring professional legal representation of the people's interests throughout the state."

Two commenters sought clarification of the term victim assistance coordinator in §16.300(14). Ms. Jeter asked if victim assistance duties are divided among the whole staff of a prosecutor's office, all positions would then qualify for salary increases using grant funds. Ms. Constant Wylie asked whether paralegals who carry out the duties of victim assistance coordinators would be eligible to receive salary increases as victim assistance coordinators. The comptroller thanks Ms. Jeter and Ms. Constant Wylie for these questions and the opportunity to clarify this issue. The legislature explicitly included victim assistance coordinator in Local Government Code, §130.913(e)(1), in contrast with the term "staff" used in Local Government Code, §130.913(e)(1). The legislature did not contemplate treating all staff of a prosecutor's office as victim assistance coordinators. While it is likely that every employee of a rural prosecutor's office frequently assists crime victims, and that assistance often overlaps with a victim assistance coordinator's list of responsibilities under Code of Criminal Procedure, art. 56A.202, a person must be designated under Code of Criminal Procedure, art. 56A.201, and must be responsible for the duties listed in Code of Criminal Procedure, art. 56A.202, to be a victim assistance coordinator. In response to these comments, the comptroller adopts §16.300 with an added definition of victim assistance coordinator that references the Code of Criminal Procedure requirements.

Sheriff Bouchard, Sheriff Squyres and Mr. Fielder commented that the sheriff rather than the commissioner's court should have authority to apply for grant funds and determine how the funds are spent. The comptroller appreciates Sheriff Bouchard, Sheriff Squyres and Mr. Fielder for raising this important topic. The proposed rule mirrors the statutory language contained in Local Government Code, §130.911(c). Senate Bill 22 did not change the Government Code and Local Government Code provisions related to the budget process. The comptroller does not believe that, absent a statutory amendment or a court or attorney general opinion to the contrary, it has the authority to receive applications from the office of the sheriff. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

Ms. Jones commented on proposed §16.301, asking whether the application will require an exact breakdown per employee,

vehicle or safety equipment or if it will be based on broad categories. The application does not require this level of detail. This information will be required as set out in the grant agreement rather than in the application. Under §16.305, compliance with grant terms will be reported and monitored, and reports and financial records, including payroll records, invoices and receipts, will be required. Although the comptroller thanks Ms. Jones for this comment, no change to the rule is needed in response.

Ms. Jones asked whether the proposed use of grant funds could be changed subsequent to the submission of the application. As an example, she asked whether salary funds that are not fully used due to a vacancy could be used for safety equipment. The comptroller thanks Ms. Jones for this comment. The application itself will not include budgets. Information confirming grant funds are used in compliance with the statute and rules will be submitted under §16.305, and reports and financial records, including payroll records, invoices and receipts, will be required. No change to the rule is needed in response to this comment.

Ms. Jones asked whether errors in a rejected application can be corrected and the application resubmitted. The comptroller thanks Ms. Jones for raising this issue. If an application is incomplete or contains errors, §16.302 allows the comptroller to request additional information and provides 14 days for the applicant to respond. No change to the rule is needed in response to this comment.

Two commenters asked about legislative intent. Ms. Constant Wylie asked whether the intent of grant funding is to ensure salaries are competitive in the market. Mr. Helwig commented that a statement should be added to the rule about the intent of the legislature. The comptroller thanks Ms. Constant Wylie and Mr. Helwig for these comments and adds subsection (g) to §16.304 in response to these and other comments. The new subsection implements the legislative directive from Senate Bill 22 that, for sheriffs and constables, grant funds are to be used to "support the state purpose of ensuring professional law enforcement throughout the state", and, for prosecutor's offices, grant funds are to be used "to support the state purpose of ensuring professional legal representation of the people's interests throughout the state."

Mr. Lilley sought clarification on whether grant funds may be used to pay legally required benefits for salary increases described by §16.304(a)(2)(A) and (c)(1), or if grant funds may only be used to pay legally required benefits for increases required to bring a salary to the minimum annual salary required by §16.304(a)(1) and (b)(1). The comptroller thanks Mr. Lilley for this comment and notes that several smaller rural counties would find it impossible to provide the salary increases described by §16.304(a)(2)(A) and (c)(1) without grant funding to pay the increase in legally required benefits. The comptroller adopts §16.304 with changes to clarify that grant funds may be used to pay for salary increases described by §16.304(a)(2)(A) and (c)(1) as well as for increases required to bring a salary to the minimum annual salary required by §16.304(a)(1) and (b)(1).

Ms. Constant Wylie and Ms. Jones asked whether grant money may be used to pay overtime wages or may be used to pay the incremental amount of legally required nonmonetary benefits for paying an increased overtime rate. Ms. Jones also asked whether the amounts of the minimum annual salaries exclude any overtime. The comptroller thanks Ms. Constant Wylie and Ms. Jones for these comments and states that neither overtime, nor increases in the legally required nonmonetary benefits for

overtime payments, are eligible for Senate Bill 22 funding, and confirms that minimum annual salaries exclude any overtime. The program seeks to raise the salary of existing law enforcement officers and to recruit new law enforcement officers rather than requiring more work hours of existing personnel. The comptroller adopts §16.304 with a clarification that overtime payments are excluded.

Ms. Jeter commented that many counties in Texas adopt an extended work period for certain law enforcement employees as authorized by section 7(k) of the Fair Labor Standards Act, 29 U.S.C.A. § 207. The comptroller appreciates this comment and adopts §16.304 with an alternate formula to convert a minimum annual salary to a minimum hourly wage for these employees.

Mr. Goetz noted that proposed §16.304(d) only covers the use of grant funds to pay the increase in legally required nonmonetary benefits if used in conjunction with reaching a minimum annual salary, and suggested similar authority where minimum salaries are not required. The comptroller thanks Mr. Goetz for this comment and adopts §16.304(d) with added language to implement this comment.

Two commenters address grant funding for sheriff support staff. Sheriff Bouchard commented that sheriff dispatchers and control room operators should be funded under the grant as they are the lifeline for deputies and jailers. Ms. Hayes commented that sheriff support staff including secretaries and dispatchers should be funded due to their crucial support duties. The comptroller appreciates Sheriff Bouchard and Ms. Hayes for raising this important issue. The comptroller agrees that sheriff dispatchers, secretaries, control room operators and other staff provide critical support to sheriff's offices throughout the state. However, the proposed rule mirrors the statutory language contained in Local Government Code, §130.911(e)(2), and the comptroller does not believe that it has the authority to stretch the statute beyond its plain and ordinary meaning to include additional staff not described by §130.911(e)(1). Therefore, the comptroller declines to make changes to the proposed rule based on these comments. The comptroller notes that while these positions are not eligible for salary increases, grant funds may be used for additional staff hired under §16.304(a)(2)(B) so long as those staff support the purpose described §16.304(g).

Mr. Wren commented on the §16.304(c) requirement for the victim assistance coordinator to be employed at the prosecutor's office, stating the victim assistance coordinator in his county has a stand-alone budget. The proposed rule mirrors the statutory language contained in Local Government Code, §130.913(e). The comptroller does not believe that it has the authority to approve a prosecutor's use of grant funds for a victim assistance coordinator who is not an employee of the prosecutor's office. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

Mr. Wadsworth sought clarification regarding whether salary increases under proposed §16.304(c) will be eligible for grant funding in subsequent grant years. The comptroller thanks Mr. Wadsworth for this comment and adopts §16.304 with an added clarification that salary increases will be measured based on the salary provided on the last day of the entity's fiscal year ending in 2023. Mr. Wadsworth also sought confirmation that funds can be used for both salary and hourly wages. The comptroller appreciates this comment and adopts §16.304 with new subsection (h) to clarify that grant funds may be used to pay salary increases for employees who are paid an hourly wage.

Mr. Wadsworth asked whether additional staff described in §16.304(c)(2) must be an assistant prosecutor, investigator, or victim assistance coordinator, or if any additional staff for the prosecutor's office will qualify. The comptroller thanks Mr. Wadsworth for this question and the opportunity to address it. While additional staff hired under §16.304(c)(2) are not explicitly limited to certain types of positions, the position must support the purpose described in Local Government Code, §130.913(b). The comptroller adds subsection (g) to §16.304 in response to this and other comments. The new subsection implements the legislative directive from Senate Bill 22 that, for sheriffs and constables, grant funds are to be used to "support the state purpose of ensuring professional law enforcement throughout the state", and, for prosecutor's offices, grant funds are to be used "to support the state purpose of ensuring professional legal representation of the people's interests throughout the state."

Mr. Helwig commented that additional staff under §16.304(c)(2) should encompass remote workers and contract services such as word processing services. The comptroller appreciates this comment but notes that the proposed rule complies with the statutory language contained in Local Government Code, §130.913 which applies to staff, i.e., employees, of the prosecutor's office and does not impose restrictions on whether work is performed at the office or remotely. Additional staff hired under §16.304(c)(2) must be employees of the prosecutor's office. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

Ms. Jones asked whether a single deputy prosecutor may receive all of the funds. The comptroller notes that Senate Bill 22 did not alter the roles and authority of a county commissioner's court, county auditor, county treasurer or other county officer provided in Local Government Code, Title 4, Subtitle B and Title 5, Subtitle B, and in Government Code Title 2, Subtitle C. The use of grant funds is subject to existing authority, as well as the requirement in §16.304(g) that grant funds must be used to support the program's statutory purpose. New subsection (g) is added to §16.304 in response to this and other comments.

Regarding reporting and compliance, Ms. Brown asked whether the comptroller will check to see whether deputies are making motor vehicle stops, and also asked whether there will be accountability. The comptroller responds that under §16.305, grant recipients must certify compliance and submit reports and financial records, including payroll records, invoices and receipts, and any other information necessary to substantiate that grant funds are being used for the intended purpose and the grant recipient has complied with the terms. Compliance with the requirements of the grant agreement is also subject to audit by the comptroller and by the State Auditor.

The comptroller received several comments regarding the Fiscal Year 2024 provisions in §16.306. Mr. Goetz and Ms. Constant Wylie sought clarification on whether §16.306 would violate the constitutional prohibitions against extra compensation. The comptroller thanks Mr. Goetz and Ms. Constant Wylie for these questions and the opportunity to address them. To comply with article III, §44 of the Texas Constitution, the program must have a pre-existing valid law to support the appropriation. And to comply with article III, §53 of the Texas Constitution, the program may not grant extra compensation to a public officer or servant after service has been rendered. Because Senate Bill 22 was effective beginning September 1, 2023, the program has been supported by pre-existing law since that date. While counties may not grant retroactive salary increases for work performed,

§53 does not prohibit the use of grant funds to support a county budget that increased a salary prior to the grant award. For example, a county whose sheriff was paid a salary of \$50,000 in 2023, after meeting all of the statutory prerequisites, grants the sheriff a salary of \$75,000 for the fiscal year beginning October 1, 2023, and, prior to the grant award pays the salary using county funds. The county may apply a portion of grant funds received to the pre-award costs of the salary increase that would have been allowable if incurred during the grant period. In response to these comments, §16.303 is adopted as modified to clarify this issue. The comptroller notes that Senate Bill 22 was effective beginning September 1, 2023 and its requirements apply to actions taken after that date.

Mr. Swain commented that a provision should be added to §16.306 to clarify authority to use grant funds for costs incurred prior to the grant award date but during the entity's fiscal year 2024. Mr. Swain notes the legislature intended this result by giving Senate Bill 22 a September 1, 2023, effective date and appropriating the amount required to fund the grant program for the entire fiscal year including the months prior to January 2024 for entities whose fiscal years begin October 1, 2023. The comptroller agrees with this comment and adopts §16.303 and §16.306 with changes to clarify this issue.

Mr. Helwig commented that the rules should address the authority to use funds received after the beginning of the fiscal year. The comptroller notes that Local Government Code, §§130.911, 130.912 and 130.913 do not create exceptions to a county's budget making process and statutory authority to adopt a special budget to expend grant funds received during the fiscal year. The comptroller does not believe it has the authority to change the rule in response to this comment.

Ms. Constant Wylie sought clarification on whether a salary increase may be awarded to a county sheriff if the statutory prerequisites were not met at the beginning of the county's fiscal year. The comptroller thanks Ms. Constant Wylie for submitting this comment. The comptroller notes that Local Government Code, §§130.911, 130.912 and 130.913 do not create exceptions to the ordinary budget making process and the statutory prerequisites for granting salary increases to elected county officers. The comptroller does not believe it has the authority to change the rule in response to this comment.

Ms. Jones asked whether a prosecutor will need commissioner's court approval and whether a prosecutor may delegate responsibility for compliance reporting. The comptroller thanks Ms. Jones for raising this issue. The comptroller notes that Senate Bill 22 did not alter the roles and authority of a county commissioner's court, county auditor, county treasurer or other county officer provided in Local Government Code Title 4, Subtitle B and Title 5, Subtitle B, and in Government Code Title 2, Subtitle C. Local Government Code, §§130.911, 130.912 and 130.913 do not create exceptions to the ordinary budget making process and do not create exceptions to a county commissioner's court's authority to set budgets or to accept grants. The comptroller does not believe it has the authority to change the rule in response to this comment.

Mr. Poynter suggested adding language to address how grant funds should be managed in districts that include multiple counties. The comptroller notes that Local Government Code, §130.913 does not create exceptions to the ordinary budget making process and authority related to multi-county prosecutor's offices such as the provision cited by Mr. Poynter. The comptroller does not believe it has the authority to change the

rule in response to this comment, but thanks Mr. Poynter for this comment.

Mr. Helwig commented that the rules should address the authorized signatory for the application and authority to bind the applicant, address a role for the county auditor, and address the procedures for the delivery and administration of funds. The comptroller thanks Mr. Helwig for raising this issue. The comptroller notes that Senate Bill 22 did not alter the roles and authority of a county commissioner's court, county auditor, county treasurer or other county officer provided in Local Government Code Title 4, Subtitle B and Title 5, Subtitle B, and in Government Code Title 2, Subtitle C. The comptroller does not believe it has the authority to change the rule in response to this comment.

The new sections are adopted under Local Government Code, §§130.911, 130.912 and 130.913, which require the comptroller to adopt rules to implement a new grant program to provide financial assistance to qualified sheriff's offices, constable's offices, and prosecutor's offices in rural counties.

The new sections implement Local Government Code, §§130.911, 130.912 and 130.913.

§16.300. Definitions.

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

(1) Applicant--For an entity that applies for a grant under Local Government Code, §130.911 or §130.912, a qualified county, or for an entity that applies for a grant under Local Government Code, §130.913, a qualified prosecutor's office.

(2) County jailer--A person employed by the county sheriff as a licensed county jailer, under the provisions and requirements of Local Government Code, §85.005 and Occupations Code, §1701.301 whose duties include the safekeeping of prisoners and the security of a jail operated by the county.

(3) County sheriff--A person elected or appointed as the county sheriff and who performs the duties of the office after complying with Local Government Code, §85.001.

(4) Deputy sheriff--A person appointed as deputy sheriff pursuant to Local Government Code, §85.003 who performs motor vehicle stops in the routine performance of their duties.

(5) Fiscal year--The twelve consecutive calendar months during which an applicant tracks its finances for budget and accounting purposes.

(6) Grant--A grant awarded under this subchapter that is a rural sheriff's office salary assistance grant under Local Government Code, §130.911, a rural constable's office salary assistance grant under Local Government Code, §130.912, or a rural prosecutor's office salary assistance grant under Local Government Code, §130.913.

(7) Grant agreement--An agreement between the comptroller and a grant recipient that governs the terms of a grant.

(8) Grant recipient--A qualified county or a qualified prosecutor's office that receives a grant under this subchapter.

(9) Population--The population shown by the most recent federal decennial census.

(10) Qualified constable--A constable who meets the following standards:

(A) is elected to, and currently holds, an office created on or before January 1, 2023;

(B) performs motor vehicle stops in the routine performance of their duties for the majority of their time on duty; and

(C) meets all eligibility requirements to serve under Local Government Code, §86.0021, and Code of Criminal Procedure, article 2.12(2).

(11) Qualified county--A county with a population of 300,000 or less.

(12) Qualified prosecutor's office--An office of a district attorney, criminal district attorney, or county attorney with criminal prosecution duties whose jurisdiction has a population of 300,000 or less.

(13) Safety equipment--Any tangible equipment used by a sheriff's office that is necessary to protect the health and physical safety of a county sheriff or deputy sheriff or county jailer while performing their duties, and may include radio equipment or in-car camera systems added to previously owned vehicles, ballistic helmets, ballistic plates, ballistic shields, entry tools, body armor, medical gear & masks, outer carriers, pepper spray, plate carriers, personal alarm, riot batons, riot helmets, riot shields, body cameras, and miscellaneous safety gear which consists of door jams, disposable cuffs and knee pads.

(14) Victim Assistance Coordinator--The person designated to serve as victim assistance coordinator under Code of Criminal Procedure, article 56A.201, by a district attorney, criminal district attorney, or county attorney who prosecutes criminal cases and who is responsible for the duties listed in Code of Criminal Procedure, article 56A.202.

(15) Vehicle--A law enforcement vehicle used by a sheriff's office for transportation while performing duties of the office such as patrols, responses to calls for service, and transport of persons in custody, and includes equipment affixed to the vehicle for law enforcement purposes.

§16.301. Applications.

(a) In order to receive payment under this subchapter, an applicant must submit a completed application.

(b) An application for funding under this subchapter shall be submitted electronically. The electronic form may require information the comptroller determines is necessary to make an award determination including a certification that the county has not and will not reduce the amount of funds provided to the sheriff's office, constable's office or prosecutor's office, as applicable, because of the award of grant funds under this subchapter. The electronic application process may require a signed grant agreement contingent on approval of a grant award by the comptroller.

(c) An application under this subchapter must be submitted during the period that begins 60 days prior to the first day of the applicant's fiscal year and ends on the 30th day of the applicant's fiscal year.

(d) The application must be electronically signed by an official of the applicant that is authorized to bind the applicant. The authorized official must certify that all information in the application is true and correct.

§16.302. Review by Comptroller.

(a) Upon receipt of an application, the comptroller shall review the application to ensure that it is complete. If the application is incomplete, as determined by the comptroller, the comptroller may contact the applicant and request any required information. Any required information requested by the comptroller must be submitted by the applicant within 14 calendar days of the request.

(b) An application shall be rejected by the comptroller if the application is submitted:

(1) by an applicant that does not meet the definition of a qualified county or qualified prosecutor's office;

(2) before 60 days prior to the first day of the applicant's fiscal year for which the applicant is seeking a grant;

(3) after the 30th day of a fiscal year for which the applicant is seeking a grant; or

(4) on a form other than the electronic form prescribed by the comptroller.

(c) The comptroller may reject an application if the applicant or the application does not comply with this subchapter, or does not comply with Local Government Code, §§130.911, 130.912, or 130.913, as applicable.

(d) The comptroller shall make a determination of award not later than 90 days after the date the application is received.

§16.303. Awards; Grant Agreement.

(a) All funding is contingent upon the appropriation of funds by the Texas Legislature and upon approval of a grant application by the comptroller.

(b) If the comptroller makes an award, the comptroller shall notify the applicant of the award decision and shall provide a grant agreement to the applicant for signature if the grant agreement was not already submitted as part of the application.

(c) All award decisions shall be made at the sole discretion of the comptroller and are not appealable or subject to protest.

(d) A grant agreement shall require the comptroller to disburse funds as soon as practicable and shall require funds to be expended during the grant period except the agreement may provide for the reimbursement of certain pre-award costs. Funds for purchases are considered expended when the grant recipient is legally obligated to expend the funds.

(e) Grant award payments are subject to Government Code, §403.055 and §403.0551.

§16.304. Authorized uses of Grant Funds; Limitations.

(a) A rural sheriff's office salary assistance grant awarded under this subchapter and Local Government Code, §130.911, may only be used:

(1) to provide a minimum annual salary of at least:

(A) \$75,000 for the county sheriff;

(B) \$45,000 for each deputy sheriff who performs motor vehicle stops in the routine performance of their duties; and

(C) \$40,000 for each jailer whose duties include the safekeeping of prisoners and the security of a jail operated by the county; and

(2) provided that each county sheriff that meets the definition in §16.300(3) of this title, and each deputy sheriff that meets the definition in §16.300(4) of this title, and county jailer that meets the definition in §16.300(2) of this title that is employed by the county sheriff receives the minimum salary described by paragraph (1) of this subsection,

(A) to increase the salary of a person described by paragraph (1) of this subsection;

(B) to hire additional deputies or staff for the sheriff's office; or

(C) to purchase vehicles, firearms, and safety equipment for the sheriff's office.

(b) A rural constable's office salary assistance grant awarded under this subchapter and Local Government Code, §130.912:

(1) may only be used to provide a minimum annual salary of \$45,000 to a qualified constable; and

(2) for each qualified constable whose salary is funded in part by the grant awarded under this subchapter, the county must contribute at least 75% of the money required to meet the minimum annual salary requirement.

(c) A rural prosecutor's office salary assistance grant awarded under this subchapter and Local Government Code, §130.913, may only be used:

(1) to increase the salary of an assistant attorney, an investigator, or a victim assistance coordinator employed at the prosecutor's office; or

(2) to hire additional staff for the prosecutor's office.

(d) A minimum annual salary as described in subsections (a)(1) and (b)(1) of this section does not include any overtime compensation. A salary increase includes increases required to bring a salary to the minimum annual salary as described by subsections (a)(1) and (b)(1) of this section, and salary increases described by subsections (a)(2)(A) and (c)(1) of this section, and will be measured based on the salary provided on the last day of the entity's fiscal year ending in 2023, excluding any overtime. The cost of a salary increase as described in this section includes the increase of legally required nonmonetary benefits and taxes for that salary. A salary increase does not include overtime and the cost of a salary increase does not include an increase of legally required nonmonetary benefits and taxes for overtime compensation. For example, in Fiscal Year 2023, a county sheriff's minimum annual salary is \$50,000 and the county pays \$3825.00 for the employer's share of payroll taxes, pays \$2500 to Texas County and District Retirement System (TCDRS) for an employer's matching retirement contribution, and \$2500 for health insurance premiums. In Fiscal Year 2024, because of the grant, the annual salary is \$75,000, the employer's share of payroll taxes is \$5737.50, the employer's matching contribution to TCERS is \$3750, and health insurance premiums are \$2500. The county may use grant funds to increase the sheriff's annual budget by $\$25,000 + \$1912.50 + \$1250 = \$28,162.50$. A county may only use grant funds for the legally required nonmonetary benefits and taxes for a salary if the county provides the minimum annual salary required by subsections (a)(1) and (b)(1) of this section, if applicable. A county may not reduce a salary below a minimum salary required by subsection (a)(1) or (b)(1) of this section in order to use grant funds for legally required nonmonetary benefits and taxes for that salary.

(e) For the purpose of subsection (a)(1) of this section, if a grant recipient does not have sufficient grant funding to fund the minimum annual salaries required by this subsection, the grant recipient may use grant funds to increase the salaries of the persons described in that subsection on a pro-rata basis.

(f) If a person described by subsection (a)(1) or (b)(1) of this section is a part-time or hourly employee, or holds a dual office or otherwise divides work hours between a position described in this section and another position, the minimum annual salary required by this section may be converted to a minimum hourly wage and will apply only to the hours of work performed for a position described in this section.

(1) for an employee with a 40-hour work week, the minimum hourly wage shall be the product of:

(A) the minimum annual salary described in this section; and

(B) a quotient:

(i) the numerator of which is equal to the number of hours the employee normally works performing duties for a position described in this section each week, not to exceed 40; and

(ii) the denominator of which is equal to 40; and

(2) for an employee with a county adopted work period as authorized by the Fair Labor Standards Act, 29 U.S.C.A. § 207(k), the minimum hourly wage shall be the product of:

(A) the minimum annual salary described in this section; and

(B) a quotient:

(i) the numerator of which is equal to the number of hours the employee normally works performing duties for a position described in this section each period, not to exceed the number of hours that are nonovertime as determined under the Fair Labor Standards Act; and

(ii) the denominator of which is equal to the number of hours that are nonovertime as determined under the Fair Labor Standards Act.

(g) For grants awarded under Local Government Code, §130.911 or §130.912, grant funds may only be used for the state purpose of ensuring professional law enforcement throughout the state. For grants awarded under Local Government Code, §130.913, grant funds may only be used for the state purpose of ensuring professional legal representation of the people's interests throughout the state.

(h) A person whose salary increase may be paid with grant funds under subsections (a)(2)(A) or (c)(1) of this section may be paid an increase in hourly wages if they are paid an hourly wage rather than an annual salary.

§16.305. Reporting and Compliance.

(a) A grant recipient shall submit a compliance report certifying compliance and detailing expenditures of grant funds using the comptroller's electronic form. The comptroller may request supporting documentation regarding expenditures and any other information required to substantiate that grant funds are being used for the intended purpose and that the grant recipient has complied with the terms, conditions, and requirements of the applicable statute, the grant agreement and this subchapter. Any information requested by the comptroller must be submitted by the grant recipient within 14 calendar days of the request.

(b) Grant recipients must comply with:

(1) the terms and conditions of the grant agreement;

(2) the requirements of Local Government Code, §§130.911, 130.912, or 130.913, as applicable;

(3) the relevant provisions of the Texas Grant Management Standards and the State of Texas Procurement and Contract Management Guide, or their successors, adopted in accordance with Texas law; and

(4) all applicable state or federal statutes, rules, regulations, or guidance applicable to the grant award, including this subchapter.

(c) If the comptroller finds that a grant recipient has failed to comply with any requirement described in subsection (b) of this section, the comptroller may:

(1) require the grant recipient to return the grant award or a portion of the grant award;

(2) withhold grant award amounts from the current grant or future grants to be received by a grant recipient pending correction of the deficiency;

(3) disallow all or part of the cost of the activity or action that is not in compliance;

(4) terminate the grant award in whole or in part;

(5) bar the grant recipient from future consideration for grant funds under this subchapter; or

(6) exercise any other legal remedies available at law.

§16.306. Provisions Applicable to Fiscal Year 2024.

(a) Notwithstanding anything to the contrary in this title, the first application period for all applicants in Fiscal Year 2024 will be for a thirty day period beginning on the later of January 1, 2024 or the date the application is first made available.

(b) For the purpose of §16.304(b)(2) of this title, for a grant recipient whose fiscal year begins on October 1, 2023, the county's contribution shall include county funds used to pay an annual minimum salary from October 1, 2023 through the end of the grant agreement awarded for Fiscal Year 2024.

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 December 27, 2023.

TRD-202304968

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: January 16, 2024

Proposal publication date: October 13, 2023

For further information, please call: (512) 475-2220



TITLE 43. TRANSPORTATION

PART 3. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

CHAPTER 57. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

43 TAC §57.48

INTRODUCTION. The Motor Vehicle Crime Prevention Authority (Authority) adopts amendments to 57 Texas Administrative Code (TAC) §57.48 concerning Motor Vehicle Years of Insurance Calculations. The authority adopts §57.48 without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5017). The rules will not be republished.

REASONED JUSTIFICATION. The amended sections are necessary to implement Senate Bill (SB) 224 enacted during the 88th Legislature, Regular Session (2023). An amendment to Transportation Code §1006.153 increased the fee that insurers pay to the Authority.

Amendments to §57.48(a)(1) and §57.48(a)(4) increase the statutory fee from \$4 payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals to \$5 payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals to implement SB 224. SB 224 requires the additional \$1 of the fee to be deposited into the general revenue fund to be used for certain activities intended to detect and prevent catalytic converter theft.

SUMMARY OF COMMENTS.

The Authority received one comment from State Senator Carol Alvarado, the author of SB 224. Sen. Alvarado offered her appreciation to the Authority for engaging in rulemaking to further implement SB 224.

Response: The Authority agrees with the commenter and appreciates Sen. Alvarado's support in enacting this legislation. No changes were made as a result of this comment.

STATUTORY AUTHORITY. The department adopts amendments to §57.48(a)(1) and §57.48(a)(4) under Transportation Code §1006.101. Transportation Code §1006.101 authorizes the MVCPA to adopt rules that are necessary and appropriate to implement the powers and duties of the authority.

CROSS REFERENCE TO STATUTE. Art. 4413(37) §6.

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 December 21, 2023.

TRD-202304943

David Richards

General Counsel

Motor Vehicle Crime Prevention Authority

Effective date: January 10, 2024

Proposal publication date: September 8, 2023

For further information, please call: (512) 465-1423



43 TAC §57.52

INTRODUCTION. The Motor Vehicle Crime Prevention Authority (Authority) adopts new 43 Texas Administrative Code (TAC) §57.52 concerning a penalty for late payment of fee or filing of report; appeal. The authority adopts §57.52 without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 Tex Reg 5018). The rules will not be republished.

REASONED JUSTIFICATION. New §57.52 implements House Bill (HB) 3514 enacted during the 87th Legislature, Regular Session (2021). Transportation Code §1006.153, Fee Imposed on

Insurers, provides "motor vehicle years of insurance" means the total number of years or portions of years during which a motor vehicle is covered by insurance. Insurers are required to pay the authority a fee equal to five dollars multiplied by the total number of years of insurance policies delivered, issued for delivery, or renewed by the insurer. Transportation Code §1006.153(b), requires insurers to pay the fee not later than: (1) March 1 of each year for a policy delivered, issued, or renewed from July 1 to December 31 of the previous calendar year; and (2) August 1 of each year for a policy delivered, issued, or renewed from January 1 through June 30 of that year.

New §57.52 provides that a penalty shall be imposed on an insurer for the delinquent payment of the required fee or the delinquent filing of the report of a fee that is required by law. The penalty shall be assessed in the same manner as the assessment of a penalty for a delinquent tax payment or a report under Tax Code §111.061(a). Interest accrues in the manner described in Tax Code §111.060 on any fee paid after the due date required under Transportation Code §1006.153(b). HB 3514 provides the authority with the ability to audit or contract for the audit of fees paid under Transportation Code §1006.153(b-2) and requires the authority to establish procedures by rule that provide a right of appeal to an insurer assessed a penalty or interest under this section. The final decision regarding an insurer's appeal is decided by a majority vote of the authority. The appeal of the assessment of a penalty or interest is not a contested case under Government Code, Chapter 2001.

SUMMARY OF COMMENTS.

No comments were received by the authority on this rule proposal.

STATUTORY AUTHORITY. The department adopts new section §57.52 under Transportation Code §1006.101. Transportation Code §1006.101 authorizes the MVCPA to adopt rules that are necessary and appropriate to implement the powers and duties of the authority.

CROSS REFERENCE TO STATUTE. Art. 4413(37) §6.

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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David Richards

General Counsel

Motor Vehicle Crime Prevention Authority

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For further information, please call: (512) 465-1423

