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 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. CHARTER APPLICATIONS

7 TAC §§52.1 - 52.15

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 52, as follows: §§52.1 - 52.15. The commission's proposal for the repeals was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2267). The repeals are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Repeals

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 52.

Summary of Public Comments

Publication of the commission's proposal for the repeals recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302276
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 53. ADDITIONAL OFFICES

7 TAC §§53.1 - 53.5, 53.7 - 53.10, 53.17, 53.18

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 53, as follows: §§53.1 - 53.5, 53.7 - 53.10, 53.17, and 53.18. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2268). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into

one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 53.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302277
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 57. CHANGE OF OFFICE LOCATION OR NAME

7 TAC §§57.1 - 57.4

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 57, as follows: §§57.1 - 57.4. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2269). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 57.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302278
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 60. SAVINGS ASSOCIATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts new rules in 7 TAC Chapter 60, as follows: §§60.1, 60.2, 60.101 - 60.104, 60.121 - 60.123, 60.131 - 60.133, 60.141 - 60.145, 60.161 - 60.165, 60.171, 60.181, 60.191, 60.201 - 60.204, 60.221 - 60.227, 60.231 - 60.234, 60.241 - 60.245, 60.251, 60.252, 60.261, 60.301 - 60.309, 60.321, 60.323 - 60.326, and 60.331. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2271). The following rules are adopted with changes to the published text and are republished to reflect such changes: §§60.2, 60.101, 60.103, 60.104, 60.121, 60.122, 60.131 - 60.133, 60.141, 60.144, 60.145, 60.161, 60.162, 60.165, 60.181, 60.201, 60.203, 60.223, 60.305, 60.308, 60.309, and 60.324. The changes do not cause the rules to regulate new parties or affect new subjects of regulation. As a result, the rules will not be republished as proposed rules for public comment. The remaining rules in the proposal are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Exami-

nations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules.

Changes Concerning Loan Requirements

The department's preexisting rules in Chapter 65, §§65.4 - 65.10, 65.13, 65.14, 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such preexisting rules is not included in the adopted rules.

Changes Concerning Savings and Deposit Accounts

The department's preexisting rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such preexisting rules is not included in the adopted rules.

Changes Concerning Holding Companies

Pursuant to Finance Code §66.051(a), the department's commissioner (commissioner) is required to conduct periodic examinations of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.053, the commissioner is entitled access to the books and records of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.103(a), the commissioner may intervene in the affairs of a savings association if a person that participates in the affairs of the savings association, its subsidiaries, or any holding company of the savings association, is about to commit: a fraudulent or criminal act that may cause the savings association to be insolvent; an act that threatens harm to the public, the savings association, or its account holders or creditors; or a breach of fiduciary duty that results in substantial financial losses or other damages to the savings association or that would prejudice the interests of its account holders or shareholders. Pursuant to Finance Code §66.104, the commissioner may intervene in the affairs of a savings association if a person who participates in the affairs of the association, its subsidiaries, or any holding company of the savings association, refuses to submit to or otherwise interferes with an examination conducted by the commissioner. In order to facilitate the examination of a savings association holding company and ensure the department has adequate knowledge of its existence and affairs, the adopted rules: require a savings association to register with the department any holding company of the savings association on or before 90 days after the date the holding company becomes a holding company and pay a one-time application fee of $2,000; require a savings association holding company and its subsidiaries to file periodic reports with the department as determined by the commissioner; require a savings association holding company and its subsidiaries to maintain books and records in the same manner required of a savings association; clarify the preexisting requirements of Finance Code §66.051(a) by requiring a savings association holding company and its subsidiaries to submit to and bear the costs of an examination; require a savings association holding company, if directed by the commissioner, to appoint an agent for service of process; and establish conditions under which a savings association holding company may be released from the registration requirements under the adopted rules, including a requirement that a savings association holding company maintain books and records after it has been released from such registration requirements.

Changes Concerning Fees

Pursuant to Finance Code §61.007(1), the commission, by rule, determines the fees assessed by the commissioner in connection with filing an application or other documents with the department. The department's preexisting rules in Chapter 63 (repealed elsewhere in this issue of the *Texas Register* in connection with the adopted rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), establish fees for various applications filed with the department. Such preexisting rules do not establish a specific fee concerning an application by a financial institution other than a savings association seeking to convert to a savings association charter. Instead, the $10,000 fee for a de novo charter application under preexisting §63.1 is assessed. The adopted rules establish a specific fee for an application concerning such a conversion by a financial institution other than a savings association to a savings association charter. The fee is determined based on the total asset size of the financial institution seeking to convert to a savings association charter, as follows: $0 to less than $125 million - $2,500; $125 million to less than $500 million - $5,000; $500 million to less than $1 billion - $10,000; over $1 billion - $15,000. Under the adopted rules, the fee for converting to a savings association charter could therefore be higher or lower depending on the asset size of the financial institution seeking conversion; however, the department anticipates any potential application for conversion to a savings association charter under the adopted rules will be filed by a financial institution with an asset size of less than $1 billion and will therefore result in a fee equal to or lesser than the fee under preexisting §63.1. The department asserts a graduated fee for an application for conversion based on the asset size of the financial institution seeking conversion better reflects the true costs of the department in processing the application and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions. Under preexisting §63.11 (repealed elsewhere in this issue of the *Texas Register* in connection with the adopted rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of $10,000 for an application concerning change of control of a savings association made in accordance with Finance Code Chapter 62, Subchapter L. The adopted rules lower such fee from $10,000 to $5,000. Pursuant to Finance Code §66.052, the commissioner is required to con-

duct periodic examinations of the savings associations it regulates. Pursuant to Finance Code §66.052(a), the commissioner may conduct additional examinations of a savings association (each a special examination) if deemed by the commissioner to be appropriate based on the condition of the savings association. Pursuant to Finance Code §66.052(a), the savings association being examined is required to bear the costs of such special examination. Under preexisting §63.5 (repealed elsewhere in this issue of the *Texas Register* in connection with the adopted rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of $325 per day for each examiner performing a special examination. The adopted rules: assess a maximum fee of $75 per hour for each examiner performing a special examination; clarify the preexisting requirement, pursuant to Finance Code §66.052(a), that a savings association bear the cost of the special examination, by clarifying that such costs include expenses related to travel, food, and lodging of the examiner performing the special examination; and clarify the commissioner's preexisting authority to assess a lower fee rate or otherwise waive any fees or costs related to a special examination. To the extent an examiner performing a special examination works a standard eight-hour day, the adopted rules have the effect of raising the per diem fee from $325 to $600; however, if an examiner works four hours or less on any given day, the adopted rules have the effect of lowering such per diem fee. The department asserts a per hour fee better reflects the true costs of the department in conducting a special examination and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions.

Other Modernization and Update Changes.

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §60.1, §60.2

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.2 is also adopted under the authority of, and to implement, Finance Code: §61.002; and §62.004(a).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code Title 3, Subtitle B, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(2) Affiliated person--

(A) a director, officer, or controlling person of a savings association;

(B) a spouse of a director, officer, or controlling person of a savings association;

(C) a member of the immediate family of a director, officer, or controlling person of a savings association, who is a director or officer of any subsidiary of a savings association or of any holding company affiliate of a savings association;

(D) any company (other than the savings association, its holding company, or an operating subsidiary) of which a director, officer, or controlling person of a savings association:

(i) is a director or officer;

(ii) in the case of a limited liability company, is a manager or managing member;

(iii) in the case of a partnership, is a general partner;

(iv) in the case of a partnership, is a limited partner who, directly or indirectly, either alone or with his or her spouse and the members of their immediate family who are also affiliated persons of the savings association, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of a savings association, and their spouses and their immediate family members who are also affiliated persons of the savings association, owns an interest of 25% or more in the partnership; or

(v) directly or indirectly, either alone or with their spouse and the members of their immediate family, who are also affiliated persons of the savings association, owns or controls 10% or more of any class of equity securities, or owns or controls with other directors, officers, and controlling persons of a savings association and their spouses and their immediate family members, who are also affiliated persons of the savings association, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of a savings association, or a member of the director's, officer's, or controlling person's immediate family, has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

(3) Application--An application requesting authorization or other relief from the Commissioner pursuant to this chapter or under the Texas Savings and Loan Act for which a filing fee is required under §60.102 of this title (relating to Application Fees and Charges).

(4) Appropriate banking agency--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(5) Board--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(6) Bylaws--The rules adopted to regulate or manage a company, regardless of the name used to designate the rules, and with respect to a limited liability company, means the company agreement, or similar rules adopted to regulate or manage the limited liability company.

(7) Capital stock--Has the meaning assigned by the Texas Savings and Loan Act (Tex. Fin. Code §61.002).

(8) Capital stock association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(9) Certificate of formation--The document evidencing the formation of the business entity, referred to in other governmental jurisdictions as the articles of incorporation, certificate of incorporation, or articles of organization, as applicable.

(10) Commissioner--The savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(11) Company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(12) Control--The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. Control is deemed to exist when a person, directly or indirectly, or acting through or in concert with one or more persons:

(A) owns, controls, or has the power to vote 25% or more of any class of voting securities of a company;

(B) is an officer or director of the company and owns, controls, or has the power to vote 10% or more of any class of voting securities of a company, and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities; or

(C) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of a company.

(13) Controlling person--A person having control as defined by paragraph (12) of this section.

(14) Day--A calendar day, unless another method of counting days is specified.

(15) Deposit account--A savings account, certificate of deposit, withdrawable deposit, demand deposit account, checking account, or any other term referring to the amount of money a savings association owes an account holder as a result of the deposit of money in the savings association.

(16) Deposit liability--The aggregate amount of money shown by the books of the savings association to be owed to the savings association's bank deposit account holders after applying any legal or contractual reduction.

(17) FDIC--The Federal Deposit Insurance Corporation, including any successor.

(18) Finance Commission--The Finance Commission of Texas, the oversight body responsible for overseeing and coordinating the Department under Finance Code Chapter 11.

(19) Financial institution--Has the meaning assigned by Finance Code §201.101.

(20) GAAP--Generally Accepted Accounting Principles.

(21) Holding company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "savings and loan holding company."

(22) Holding company affiliate--A company of which a savings association is a subsidiary and any other subsidiary of such company other than a subsidiary of the savings association.

(23) Home office--The office where a savings association has its headquarters and from which all of its operations are directed.

(24) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(25) Issuer--The savings association that issued the security in question.

(26) Managing officer--An individual designated by the board as being responsible for, and having the authority to direct, the day-to-day operations of the savings association. The managing officer must have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that, under the management and supervision of the managing officer, the savings association will operate in compliance with applicable law and that success of the savings association is probable.

(27) Member--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(28) Mutual association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(29) Officer--The president, any vice president (but not an assistant vice president, second president, or other vice president having authority similar to an assistant or second vice president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any entity or organization, whether incorporated or unincorporated. The term "officer" includes the chairman of the board, if the savings association's certificate of formation or bylaws authorize the chairman to participate in the operating management of the entity or organization, or if the chairman actually participates in such management.

(30) Person--An individual, corporation, a partnership, a savings association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(31) Recourse--A contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(32) Savings Association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "association."

(33) Shareholder--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(34) Subsidiary--Any company that is controlled by the savings association or by a company that is controlled by a company which is controlled, directly or indirectly, by the savings association.

(35) Surplus--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(36) Texas Savings and Loan Act--Finance Code Title 3, Subtitle B (Finance Code §61.001 et seq.).

(37) Unsafe and unsound practice--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002), and includes excessive operating expenses, excessive growth, high-risk or undiversified investment positions, and non-existent or poorly followed lending or underwriting policies, procedures, or guidelines.

(38) Voting security--Includes any security convertible into or evidencing a right to acquire a voting security.

(39) Withdrawal value--The net amount of money that may be withdrawn by an account holder from a deposit account.

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 June 26, 2023.

TRD-202302287
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

SUBCHAPTER B. APPLICATIONS
DIVISION 1. GENERAL PROVISIONS

7 TAC §§60.101 - 60.104

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §§60.101 - 60.103 are also adopted under the authority of, and to implement, Finance Code §66.002(3). 7 TAC §60.102 is also adopted under the authority of Finance Code: §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to filing an application or other documents with the department. 7 TAC §60.102 is also adopted under the authority of, and to implement, Finance Code: §62.001(a); §62.011; and §63.004(d). 7 TAC §60.103 is also adopted under the authority of, and to implement, Finance Code: §62.006(a)(1); and §62.353(a)(1). 7 TAC §60.104 is also adopted under the authority of, and to implement, Finance Code §61.006.

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.101. Application Filing Requirements.

(a) Purpose and Applicability. Applications submitted to the Department must comply with the requirements of this section.

(b) Application Forms. All applications must be made on the current form for the application prescribed by the Commissioner.

(c) Incomplete Filings; Notice of Acceptance; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. On or before 30 days after the date the Department receives the application, the Commissioner or the Commissioner's designee will issue a written notice to the applicant informing them either that the application is complete and accepted for filing, or that the application is incomplete and specifying the information required to render the application complete. The application may be deemed withdrawn and the applicable fee forfeited if, on or before 30 days after the date the applicant is notified the application is incomplete, the applicant fails to provide to the Department the supplemental information or supporting documentation necessary to render the application complete.

(d) Duty to Supplement. The applicant has a continuing obligation and duty to supplement the application with any other information or supporting documentation requested by the Commissioner in writing. The applicant must provide any information or supporting documentation submitted in connection with any related application made to the appropriate federal banking agency, to the extent not previously provided to the Department.

(e) Duty to Amend. If a material change occurs in the facts contained in or information furnished in support of the application, the applicant must file an amended application or otherwise supplement the application to address the material change. The applicant must endeavor to resolve any potential changes or amendments to the application prior to publishing public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application). The Commissioner may, in his or her sole discretion, require the applicant to republish the public notice.

§60.103. Public Notice of Application.

If an application requires that notice to the public be given, such notice must comply with the requirements of this section. The notice must use language and content preapproved by the Commissioner prior to publishing. The notice must be submitted to the publisher for publication on or before 15 days after the date the applicant receives notice that the application is complete and accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The notice must be published in an English language newspaper of general circulation in each county required by the rule(s) governing such application. The applicant must, on or before 10 days after the date the notice is published, provide the Commissioner with a publisher's affidavit evidencing that the notice was properly published in conformity with this section. The notice is deemed properly effected when the appropriate notice has been published in conformity with this section, and more than 10 days have elapsed.

§60.104. Motions for Rehearing.

A motion for rehearing pursuant to Finance Code §61.006 must be filed on or before 14 days after the date the decision or order that is the subject of the motion is signed. A copy of the motion for rehearing must be served on all parties who made an appearance or otherwise submitted a filing in the proceeding, and the motion must include a certificate of service reciting the parties served and the method of service. A party must file a reply to the motion for rehearing, if any, on or before 30 days after the date the decision or order that is the subject of the motion is signed. The Commissioner must act on the motion for rehearing on or before 45 days after the date the decision or order that is the subject of the motion is signed or the motion is deemed overruled by operation of law.

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 June 26, 2023.

TRD-202302289
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 2. CHARTER APPLICATIONS AND AMENDMENTS

7 TAC §§60.121 - 60.123

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable

to savings associations. 7 TAC §60.121 is also adopted to implement Finance Code: Chapter 62, Subchapter A; §62.152; and §66.002(3). 7 TAC §60.122 is also adopted under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.121. Savings Association Charter.

(a) Application Requirements. The charter application and all required supporting information must be executed by the proposed incorporators of the proposed savings association which must consist of at least five adult residents of this state and must include all of the information required by Finance Code §62.001. The application must include a request for a corporate name to be approved by the Commissioner. The application must include the proposed home office of the savings association, the identity and qualifications of the proposed managing officer(s), and any additional information the Commissioner deems necessary to enable the Commissioner to determine the matters set forth in Finance Code §62.007.

(b) Identification of Home Office; Definition of Community; Temporary Office Location. The proposed location for the home office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in the Finance Code §62.007 means the geographical area surrounding the proposed location of the home office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business. The Commissioner may approve the opening and operation of a temporary home office location for an approved charter, provided that such office is within the 1/2-mile radius of the permanent home office approved in the charter. If a temporary home office location is approved, the savings association must promptly cease operations at such office upon the permanent home office being constructed or rendered fit for occupancy, but in any event must cease operations on or before 18 months after the date the charter was approved, unless extended in writing by the Commissioner.

(c) Capital Requirements. No application to incorporate a savings association will be approved unless the Commissioner determines the proposed savings association has received subscriptions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the FDIC or the amount required of a national bank. No savings association with an approved charter may open or do business as a savings association until the Commissioner certifies that the Commissioner has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings association in cash, free of encumbrance.

(d) Public Notice. A charter application is deemed to be a complete application for purposes of Finance Code §62.006 at the time the Department notifies the applicant that the application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the charter application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the proposed savings association will have its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the application for purposes of Finance Code §62.006.

(e) Request for Hearing; Deadline to Protest. A person may protest or otherwise request a hearing on the application as provided by Finance Code §62.006. Any person desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.006 is deemed waived.

(f) Hearing. If a charter application is protested or a hearing on the application is otherwise requested, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the charter application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the charter application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by Finance Code §62.006 and subsection (e) of this section.

§60.122. Change of Name.

(a) Approval Required. A savings association may not change its name without the prior written approval of the Commissioner, and a savings association may not operate under any name which has not been approved by the Commissioner in writing.

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(c) Request for Hearing; Deadline to Protest. A person affected by the proposed name change may protest or otherwise request a hearing on the change of name application as provided by Finance Code §62.011. Any person affected by the proposed name change and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (b) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(d) Persons Affected by the Change of Name. A person is affected by a change of name for purposes of Finance Code §62.011 only if the requested name change, if granted, would result in the savings association's name being substantially or deceptively similar to the party alleged to be affected, or is otherwise reasonably anticipated to create confusion in the marketplace involving the party alleged to be affected. A person requesting a hearing on a change of name application must allege and provide information in support of the request indicating they are a person that might be affected by the proposed name change as provided by this section. The Commissioner will review the request for hearing and determine, in his or her sole discretion, if the person might be affected so as to require a hearing under Finance Code §62.011.

(e) Hearing. If a hearing is required, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning

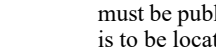
contested cases contained in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(f) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (c) of this section.

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

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

TRD-202302292
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535



DIVISION 3. OFFICE LOCATIONS

7 TAC §§60.131 - 60.133

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.131. Branch Office.

(a) Approval Required. A savings association may not establish a branch office or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner. A branch office application is required if a savings association would like to establish and operate a courier/messenger service pursuant to §60.202 of this title.

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

(1) proposed location for the office;

(2) the personnel and office facilities to be provided;

(3) the estimated cost and projected profits of such office; and

(4) any information deemed necessary by the Commissioner to render a determination on the matters set forth in subsection (c) of this section.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that:

(1) the operation and condition of the savings association affords no basis for supervisory objection;

(2) the character, responsibility, and general fitness of the current management of the savings association warrant a belief that the branch office will be operated in accordance with the Texas Savings and Loan Act; and

(3) the financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the savings association.

(d) Commencement of Operations. The branch office must commence operations on or before 12 months after the date of approval unless the Commissioner grants a written extension. No more than one 12-month extension will be approved by the Commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the approval for such office is deemed revoked and a new application must be made.

(e) Identification of Branch Office; Definition of Community. The proposed location for the branch office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in Finance Code §62.008 means the geographical area surrounding the proposed location of the branch office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business.

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published both in the county where the proposed branch office is to be located and in the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed branch office may protest or otherwise request a hearing on the branch office application as provided by Finance Code §62.011. Any person affected by the proposed establishment of a branch office and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (f) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

(j) Offices in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this chapter, a savings association may establish branch offices in any state or territory of the United States. Each application for permission to establish such a branch office must comply with the requirements of this section and must include a certified copy of an order from the appropriate banking agency approving the office, or other

evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve the application unless the Commissioner determines that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

§60.132. Mobile Facility.

(a) Approval Required. A savings association may not establish a mobile facility as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner.

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

(1) the proposed location(s) at and times during which the mobile facility will operate;

(2) the need for the mobile facility within the community;

(3) the personnel and office facilities to be provided; and

(4) the estimated expense to operate the mobile facility.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met. Additionally, the savings association must show that adequate safeguards exist for the security of the mobile facility.

(d) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county or counties where the proposed mobile facility will be operating and in the county where the savings association has its home office.

(e) Request for a Hearing; Deadline to Protest. A person affected by the proposed establishment of a mobile facility may protest or otherwise request a hearing on the mobile facility application, as provided by Finance Code §62.011. Any person affected by the proposed establishment of a mobile facility and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(f) Hearing. If a hearing is required, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (e) of this section.

§60.133. Relocate Home or Additional Office.

(a) Approval Required. A savings association may not move its home office or any additional office as provided by §60.202 of this title (relating to Types of Additional Offices) beyond its immediate vicinity without the prior written approval of the Commissioner.

(b) Immediate Vicinity. The term "immediate vicinity" as used in Finance Code §62.011 means the area within a radius of 1 mile from the present location of such office. However, if the office to be relocated has not been open for business at its present location for more than 2 years, approval in accordance with this section is required as if the office were not within the immediate vicinity. If the existing office has been open for more than 2 years, prior written notice must be provided to the Commissioner describing the saving association's plans for the relocation, including the precise location for the new office, the date of the relocation, and information supporting that the new location of the office will be within the immediate vicinity of the present location and does not require the Commissioner's approval.

(c) Relocation of Existing Offices. Notwithstanding subsection (a) of this section, a savings association may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the Commissioner prior written notice. Upon such notification, the establishment of such office is deemed to be an approved branch office of the savings association.

(d) Required Information. Each application for prior approval, or prior written notice, whichever is applicable, must provide the following information, subscribed to and sworn before a notary:

(1) the addresses of the existing and new office location;

(2) a description of the land and building to be built or leased and terms thereof;

(3) estimates of the cost of removal to and maintenance of the new location;

(4) whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office;

(5) evidence of the board's approval of the relocation; and

(6) any other information deemed necessary by the Commissioner.

(e) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met.

(f) Public Notice. An applicant seeking to change the location of the home or an additional office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the office is presently located, the county where the proposed new location is located, and the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or additional office location may protest or otherwise request a hearing on the application, as provided by Finance Code §62.011. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (f) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal or decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

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

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

TRD-202302293
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 4. REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

7 TAC §§60.141 - 60.145

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.141 is also adopted under the authority of, and to implement, Finance Code: Chapter 62, Subchapters B, H, and I; and §66.002(3). 7 TAC §60.142 is also adopted under the authority of, and to implement, Finance Code §62.353. 7 TAC §60.143 is also adopted under the authority of, and to implement, Finance Code: Chapter 62, Subchapter E; and §66.002(3). 7 TAC §60.144 is adopted under the authority of, and to implement, Finance Code: Chapter 62, Subchapter F; and §66.002(a)(3). 7 TAC §60.145 is also adopted under the authority of, and to implement, Finance Code: §62.002; and §66.002(3).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.141. Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association.

(a) Applicability. This section governs:

(1) A reorganization, merger, or consolidation transaction in which the resulting institution will be a savings association; and

(2) A purchase and assumption transaction by a savings association as purchaser.

(b) Non-Applicability. This section does not govern:

(1) the conversion of a savings association into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings association reorganizing into, or merging or consolidating with, a financial institution that is not a savings association, which is governed by section §60.143 of this title (relating to Reorganization, Merger or Conversion by a Savings Association to Another Financial Institution Charter); or

(2) the conversion by a financial institution that is not a savings association into a savings association, which is governed by section §60.144 of this title (relating to Conversion into a Savings Association).

(c) Plan Required. Any savings association seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in which the resulting institution will be a savings association must do so pursuant to a plan adopted by the board and filed with the Commissioner as a part of an application for approval. Purchase and assumption transactions include purchases of assets, deposit accounts, or other liabilities in bulk not made in the ordinary course of business.

(d) Application Required. The application for approval of the plan must contain: proof that the plan was adopted by the board of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the members or shareholders entitled to vote on the plan; a statement that the corporate continuity of the resulting institution will possess the same incidents as that of a savings association which has converted in accordance with the Texas Savings and Loan Act; and a statement identifying the home office of the resulting institution. A true and correct copy of the plan, as adopted, must be filed as part of the application. All documents and their contents must be subscribed and sworn to before a notary.

(e) Public Notice. An applicant seeking reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition must publish a public notice of the plan and application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which a financial institution participating in the plan has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the plan and application for purposes of Finance Code §62.353.

(f) Request for Hearing; Deadline to Protest. Any interested person desiring to protest the plan and application or otherwise request a hearing on the plan and application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (e) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.353 is deemed waived.

(g) Hearing. If a hearing is required, the Commissioner will set a hearing on the plan and application on or before 60 days after the date the protest or request for hearing and the required fee are received, unless the Commissioner determines that the provisions set forth in §60.142 of this title (relating to Exemption for Supervisory Merger) apply, and the merger is designated as a supervisory merger for purposes of Finance Code §62.353(e). The hearing is governed by the procedural requirements concerning contested cases set forth in Government Code Chapter 2001 and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(h) Time of Decision. To the extent a hearing on the plan and application is required, the Commissioner will render a decision on or before 30 days after the hearings officer issues his or her proposal

for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the plan and application is not required, the Commissioner will render a decision on or before 30 days after the time period for requesting a hearing on the plan and application lapsed as provided by subsection (f) of this section, unless the Commissioner establishes a longer time period, with written notice to the applicant.

(i) Transactions Involving Financial Institutions in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this section, a savings association may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state or territory. Each such application must include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve such an application unless the Commissioner determines that all requirements of this section have been met, and all applicable requirements of the laws of the state or territory in question have been met.

§60.144. Conversion into a Savings Association.

(a) The Commissioner may authorize any financial institution to convert itself into a savings association in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) Plan and Application. In order to obtain such authorization, the converting institution's board must approve and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings association will be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, must be filed with the Commissioner and mailed to the appropriate banking agency on or before 10 days after the date of its adoption. At the meeting to vote on a conversion to a savings association, the members or stockholders must also vote on the directors of the savings association. The proposed directors must execute an application for savings association charter as provided by Finance Code Chapter 62, Subchapter A, and §60.121 of this title (relating to Savings Association Charter).

(c) Review by Commissioner; Approval. The Commissioner, on receipt of the application and verified copy of the minutes, will conduct an examination of the financial institution seeking conversion. Following the examination, the Commissioner will approve the conversion if the Commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code Chapter 62, Subchapter A, and §60.121 of this title.

§60.145. Mutual to Stock Conversion.

(a) The application for mutual to stock conversion must include:

(1) a plan of conversion;

(2) amendments to the savings association's certificate of formation and bylaws;

(3) a copy of the proxy and soliciting materials to be used; and

(4) such other information the Commissioner may require.

(b) The plan of conversion must provide:

(1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;

(2) that the shares of the converting savings association be offered to persons with subscription rights and management, in that order, and that any remaining shares will be sold either in a public offering through an underwriter or directly by the converting savings association in a direct community offering;

(3) that a direct community offering by the converting savings association will give a preference to natural persons residing in the counties in which the savings association has an office;

(4) that the sale price of the shares of capital stock to be sold in the conversion will be a uniform price determined in accordance with paragraph (1) of this subsection, and specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be completed on or before 24 months after the date the savings association members approve the plan of conversion;

(6) that each savings accountholder of the converting savings association will receive, without payment, a withdrawable savings account or accounts in the converted savings association equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings association;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion are reasonable;

(9) that the converting savings association may not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings association;

(10) that the proxies held with respect to voting rights in the saving association will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder will be the total of the deposit balances in the accountholder's savings accounts in the converting savings association as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than $50 (or any lesser amounts) will not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion must be adopted by not less than two-thirds of the board.

(d) Public Notice. An application for mutual to stock conversion is deemed to be a complete application at the time the Department notifies the applicant that application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which the savings association has an office, and must prominently post the notice in each of its offices.

(e) Following approval of the application for conversion by the Commissioner, the plan of conversion must be submitted to the members at an annual or special meeting and the plan must be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members.

(f) No offer to sell securities of a savings association pursuant to a plan of conversion may be made prior to Commissioner's approval of the:

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(g) Within 45 days:

(1) of the date of the mailing of the subscription form, the subscription rights must be exercised;

(2) after the last day of the subscription period, the sale of all shares of capital stock of the converting savings association to be made under the plan of conversion, including any sale in a public offering or direct community marketing, must be completed.

(h) The converting savings association must pay interest at not less than the savings account interest rate on all amounts paid in cash or by check or money order to the savings association to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings association until the conversion is completed or terminated.

(i) For the purpose of this rule, the public offering and a direct community offering is deemed to commence upon the declaration of effectiveness by the Commissioner of the final offering circular.

(j) The Commissioner may grant a written waiver from any requirement of this rule that is not otherwise required by statute.

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 June 26, 2023.

TRD-202302295
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 6. CHANGE OF CONTROL

7 TAC §§60.161 - 60.165

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The adopted rules are also made under the authority of, and to implement, Finance Code: Chapter 62, Subchapter L; and §66.002(3).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.161. Acquisition of a Savings Association.

The following procedures must be followed when a person desires to obtain control of a savings association (including change of control of a savings association holding company).

(1) No person other than the issuer may make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings association if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings association, unless such person has filed with the Commissioner all of the following information on an application form approved by the Commissioner and which application form is deemed by the Commissioner to be complete and has received a written order from the Commissioner approving such acquisition or change of control:

(A) the background and identity of the applicant, if such applicant and any affiliate is an individual, or all individuals who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Such filing must contain the following information:

(i) name and address;

(ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

(iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulations, and, if so, giving the date, style of the suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the Commissioner;

(B) if the applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there must be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare dividends to liquidate such savings associations, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any

management contracts, and any financial or employment guarantees given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the savings association's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings association in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the Commissioner determines are relevant to the review of the application; and

(J) any other relevant information requested by the Commissioner.

(2) If the person required to file the information required by paragraph (1) of this section is a partnership, limited partnership, syndicate, trust, or other group, the Commissioner may require that the information must be given to:

(A) each partner of such partnership or limited partnership;

(B) each member of such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information required by paragraph (1) of this section is a corporation, the Commissioner may require that the information called for must be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings association may not be consummated until the Commissioner approves the application for acquisition of control. The application will be processed and considered in accordance with Finance Code §62.555 and §62.556. The Commissioner will render a decision on or before 60 days after the application is complete and accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The application will be denied if the Commissioner finds any of the following:

(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings association or savings bank industry in any part of the state, unless the Commissioner also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) the financial condition of any acquiring party might jeopardize the financial stability of the savings association being acquired;

(C) plans or proposals to liquidate or sell the savings association or its assets are not in the best interest of the savings association;

(D) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the savings association;

(E) the savings association will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;

(F) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the savings association or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings association has been evidenced;

(G) the applicant has not provided information pertinent to the application requested by the Commissioner; or

(H) the applicant is not acting in good faith.

§60.162. Notice and Hearing.

(a) Public Notice. An applicant timely requesting a hearing on the Commissioner's decision to deny the application must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(b) Hearing. If a hearing is required, the Commissioner will set a hearing on the denial on or before 60 days after the date the request for a hearing on the denial is received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(c) Time of Decision. To the extent a hearing on the Commissioner's decision to deny the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to be closed for purposes of Finance Code §62.556.

§60.165. Exempt Transactions.

The following transactions are exempt from the application requirements of this division:

(1) control of an insured institution acquired solely as a result of foreclosure on the stock of a savings association which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the Commissioner on or before 30 days after the date of acquisition and provided further that the acquiror may not retain such control for more than one year after the date on which such control was acquired. The Commissioner may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed three years, if the Commissioner finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection prevents such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same; and

(3) acquisition of additional stock of a savings association by any person who has held power to vote 25% or more of any class

of voting stock in such savings association continuously for the three-year period preceding such acquisition, or has maintained control of the savings association continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

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 June 26, 2023.

TRD-202302297
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 7. CAPITAL NOTES AND DEBENTURES

7 TAC §60.171

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code §63.004(d).

The adopted rule affects the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302298
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 8. HOLDING COMPANY APPLICATIONS

7 TAC §60.181

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code: §66.002(3); §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

The adopted rule affects the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.181. Registration.

A holding company must apply and register with the Commissioner on or before 90 days after the date the company becomes a holding company. The application must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the Commissioner finds necessary and appropriate. On written request, the Commissioner may, in his or her sole discretion, extend the time within which a holding company is required to register and file the required information.

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 June 26, 2023.

TRD-202302299
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 9. SUBSIDIARY APPLICATIONS

7 TAC §60.191

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code: §64.001; §64.002(18) and (19); and §66.002(3).

The adopted rule affects the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302301
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

SUBCHAPTER C. OPERATIONS

DIVISION 1. OFFICE LOCATIONS

7 TAC §§60.201 - 60.204

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code §62.011.

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.201. Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.

(a) Approval Required. No savings association may establish, maintain, or relocate its home office, or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices), without the prior written approval of the Commissioner, except as otherwise provided by §60.133 of this title (relating to Relocate Home or Additional Office).

(b) Ancillary Facilities. An authorized or approved office of a savings association is the place where the business of the savings association is conducted, and with the prior written consent of the Commissioner, may include facilities ancillary thereto for the extension of the savings association's services to the public. Any authorized or approved office of a savings association also means, with the prior written consent of the Commissioner, separate quarters or facilities to be used by the savings association for the purpose of performing service functions in the efficient conduct of its business.

(c) Notice of Home Office. All offices of a savings association which are located outside the county of its home office must display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such savings association.

(d) Closing an Office. Before closing an approved branch or other office, other than a temporary closure as provided by §60.203 of this title (relating to Temporary Closing of Additional Offices), or an emergency closure as provided by Finance Code §63.009, a savings association must comply with the notice requirements of federal law, and provide the Commissioner with a copy of the closing notice filed with the appropriate federal banking agency, if applicable, upon filing such notice. A savings association must provide the Commissioner with confirmation on or before 10 days after the actual closing date. Once closed, prior written approval from the Commissioner to operate a branch or other office is deemed revoked, and a savings association may not reopen the branch or other office without seeking new approval from the Commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings association, or any combination thereof, may be performed at a location other than the home or a branch office and such location does not constitute an "additional office" requiring notice to or the prior approval of the Commissioner for purposes of Finance Code §62.011:

(1) Automated or remote activities. A savings association may engage in limited banking activities through infrastructure and equipment by automated or remote means, including use of an automated teller machine (ATM), automated loan machine, automated device for receiving deposits (remote deposit capture), or other remote service unit.

(2) Loan production activities. A savings association may engage in loan production activities including taking loan applications, making a credit decision, accepting payments on loans, or managing or selling real estate owned by the institution in connection with such loans, unless such activity conflicts with applicable state or federal law.

(3) Administrative activities (administrative offices). A savings association may establish or maintain administrative offices to perform the internal operations of the institution, provided the savings association does not conduct banking activities.

(4) Advertising and marketing. A savings association may advertise and market itself to the public including soliciting deposits, providing information about the financial products of the savings association, and assisting persons in completing application forms to open a deposit account, provided the savings association does not conduct banking activities.

(5) Trade association participation; community events and engagement. A savings association may participate in trade association events promoting the banking or financial services industry broadly. A savings association may also host, attend, or otherwise participate in community events, provided the savings association does not conduct banking activities at such event.

(6) Information technology (IT) infrastructure. A savings association may operate information technology infrastructure or equipment including the placement of IT infrastructure in a data center, the hosting or processing of a website or data by a third-party IT service provider, or such other physical presence tied to the IT infrastructure of the savings association.

(7) Ancillary customer service activities. A savings association may engage in customer service activities ancillary to its banking functions including relating to accessing or using its website or a software application.

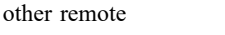
§60.203. Temporary Closing of Additional Offices.

In the event a savings association closes any additional office of any type on a temporary basis, such office must be reopened on before 12 months after the date of such closing, unless otherwise extended by written authorization of the Commissioner. In the event such office is not reopened within the allotted 12-month period, or the longer period established by the Commissioner, if applicable, the Commissioner's approval to establish such office for purposes of §60.201 of this title (relating to Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office) is deemed revoked. Written notice of any temporary closing must be provided to the Commissioner on or before 10 days after the date of such closing, and the office may not reopen until the Commissioner receives written notification on or before 10 days prior to such reopening.

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 June 26, 2023.

TRD-202302302
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535



DIVISION 2. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, AND RESERVES

7 TAC §§60.221 - 60.227

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.221 is also adopted under the authority of, and to implement, Finance Code: §66.002(4) and (6); and §66.053. 7 TAC §60.222 is also adopted under the authority of, and to implement, Finance Code §66.002(5). 7 TAC §60.223 is also adopted under the authority of, and to implement, Finance Code: §66.002(8); and §66.051. 7 TAC §60.225 is also adopted under the authority of, and to implement, Finance Code §66.002(10). 7 TAC §60.226 is also adopted under the authority of, and to implement, Finance Code §66.051. 7 TAC §60.227 is also adopted under the authority of, and to implement, Finance Code: §62.051(b)(2); §62.007(b)(3); §62.010; §62.106; and §62.151(a).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.223. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, on or before 90 days after the date its fiscal year ends, each savings association is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of the FDIC set forth in 12 C.F.R. §363.2 and §363.3, with the exception of any matters specifically addressed by this section, the Texas Savings and Loan Act, or the rules (regulations) adopted thereunder.

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 June 26, 2023.

TRD-202302303
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 3. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§60.231 - 60.234

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.231 and §60.232 are also adopted under the authority of, and to implement, Finance Code: §62.002(b); §62.003(b); §62.052(c); §62.152; and §66.002(1) and (2). 7 TAC §60.233 is also adopted under the authority of, and to implement, Finance Code Chapter 66, Subchapter C. 7 TAC §60.234 is also adopted under the authority of, and to implement, Finance Code §63.004(d).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302304
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 4. HOLDING COMPANIES

7 TAC §§60.241 - 60.245

Statutory Authority

The rules are adopted under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code: §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302305
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 5. ASSESSMENTS AND FEES

7 TAC §60.251, §60.252

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations; §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to the supervision and examination of savings associations. 7 TAC §60.252 is also adopted under the authority of, and to implement, Finance Code §66.052(a).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302306

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 6. COMPLAINT PROCEDURES

7 TAC §60.261

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code: §13.011(a); and Chapter 66, Subchapter C.

The adopted rule affects the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302307
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

SUBCHAPTER D. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS
DIVISION 1. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §§60.301 - 60.309

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code: §64.001; and §64.002. 7 TAC §60.303 is also adopted under the authority of, and to implement, Finance Code Chapter 64, Subchapter E.

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.305. Loan Policies and Documentation.

(a) Policies. Each savings association must establish written policies approved by its board establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings association's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board; take adequate account of concentration of credit risk; and are appropriate to the size of the savings association and the scope of its lending activities.

(b) Loan Documentation Standards. Loan documentation standards must be established and maintained to enable the savings association to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings association may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their agent (and if the borrower is a corporation, a board resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date on or before 180 days prior to the date the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, and any conditions of approval;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the savings association);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the savings association as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the savings association arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Title (Finance Code §301.001 et seq.).

(c) Unsecured Loans. Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (b)(1) and (3) - (7) of this section.

(d) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(e) Closing Agent. A savings association may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents must be forwarded to the savings association on or before 5 business days after the date of closing, or immediately after recording, for those documents which require filing of record.

(f) Permanent Loan File Requirements.

(1) Loan documentation must be in the possession of the savings association or an escrow agent designated by the savings association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records must be placed in one permanent loan file immediately upon receipt by the savings association.

(2) The permanent loan file required by this section must be located at an office of the savings association. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings association's discretion. Files for loans which are fully secured by accounts at the association may be maintained at the office where the loan was originated.

(3) The permanent loan file must contain evidence that the savings association obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings association's interest therein. This requirement does not apply to loan participations purchased by the savings association.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw must be part of the permanent file.

(5) When a savings association purchases whole loans or participations in loans, it must cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement must be a part of the permanent file. The savings association must obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(g) The records of the savings association must reflect that the board has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings association and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings association. Loans originating in branch offices, loan offices, or agencies must be approved in the same manner as loans originating in the principal office.

(h) A savings association must maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§60.308. Investment in Securities.

(a) A savings association is deemed to have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the FDIC; in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the FDIC; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings association's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the Commissioner.

(b) A savings association investing in securities under this section must ensure that the securities are delivered to the savings association, or for the savings association's account to a custodial agent or trustee designated by the savings association, on or before 3 business days after the date the savings association pays for or becomes obligated to pay for the securities. The savings association may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the FDIC, any financial institution legally exercising trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation, or such other trust company approved in advance by the Commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings association must ensure that it receives a custodial or trust receipt for the securities on or before 3 business days after the date the securities are delivered.

(c) No savings association or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes, or other secu-

rities of any affiliated person without the prior written approval of the Commissioner.

(d) No savings association or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings association.

(e) Investments in equity securities.

(1) A savings association or any service corporation, operating subsidiary, or finance subsidiary of a savings association may not invest in stock or equity securities unless the securities qualify as investment grade securities. Additionally, no savings association may invest in stock or equity securities unless the securities are eligible investments for federal associations.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings association.

(f) A savings association may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

§60.309. Investment in Banking Premises and Other Real Estate Owned.

(a) A savings association may not, without prior written consent of the Commissioner, invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) A savings association may not acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association, or for the use of the savings association in future expansion of its banking facilities.

(c) Real estate acquired for the future expansion of a savings association's facilities not improved and occupied as banking facilities on or before 5 years after the date of its acquisition must be sold or otherwise disposed of. Existing bank facilities must be sold or otherwise disposed of on or before 5 years after the date the real estate ceases to be used for banking purposes. The Commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association may be held by a savings association for no more than 5 years, unless the Commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings association must substantiate the market value of the real estate by obtaining an appraisal on or before 90 days after the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is $500,000 or less. The Commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings association acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than 1 year old.

(g) An evaluation must be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal must be made at least once every 3 years on real estate with a recorded book value in excess of $500,000.

(h) Notwithstanding any other provision of this section, the Commissioner may require an appraisal of real estate if the Commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the FDIC in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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 June 26, 2023.

TRD-202302308
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 2. SUBSIDIARIES

7 TAC §§60.321, 60.323 - 60.326

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code §64.002(18) - (20).

The adopted rules affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.324. Subsidiary Operations.

(a) The savings association must obtain prior written approval of the Commissioner for the establishment and location of the home office, and any branch office, agency office, or any other office or facility of the subsidiary, and for any change of name of the subsidiary.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments must be furnished to the savings association on or before 30 days after the date of execution.

(c) The subsidiary must furnish, at the expense of the subsidiary or parent savings association or its holding company, an independent appraiser's report or other expert opinion as determined to be necessary by the Commissioner for the purpose of establishing the value of any investments made by the subsidiary.

(d) Each subsidiary must maintain fidelity bond coverage with an acceptable bonding company in an amount that adequately protects the subsidiary from such loss. Coverage as an additional insured entity

under a fidelity bond of the parent savings association or its holding company may satisfy this requirement.

(e) All directors of the savings association and subsidiary must furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

(f) Each subsidiary must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §60.221 of this title (relating to Books and Records), pertaining to savings associations.

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 June 26, 2023.

TRD-202302309
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

DIVISION 3. SAVINGS AND DEPOSITS

7 TAC §60.331

The rule is adopted under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations; and §59.310, requiring the commission to adopt rules to implement Finance Code Chapter 59, Subchapter D. The rule is also adopted under the authority of, and to implement Finance Code Chapter 59, Subchapter D.

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302310
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 61. HEARINGS

7 TAC §§61.1 - 61.3

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 61, as follows: §§61.1 - 61.3. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2298). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 61.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302279
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 63. FEES AND CHARGES

7 TAC §§63.1 - 63.9, 63.11 - 63.13, 63.15

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 63, as follows: §§63.1 - 63.9, 63.11 - 63.13, and 63.15. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2299). The rules are

adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 63.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302280
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 64. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, RESERVES, NET WORTH, EXAMINATIONS, COMPLAINTS

7 TAC §§64.1 - 64.10

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 64, as follows: §§64.1 - 64.10. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2300). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 64.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302281
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 65. LOANS AND INVESTMENTS

7 TAC §§65.1 - 65.21, 65.23, 65.24

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 65, as follows: §§65.1 - 65.21, 65.23, and 65.24. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2302). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60.

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 65.

Changes Concerning Loan Requirements

The department's preexisting rules in Chapter 65, §§65.4 - 65.10, 65.13 - 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such rules is not included in the department's related adoption concerning new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register.*

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302282
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §§67.1 - 67.3, 67.6 -67.13, 67.15, 67.17

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 67, as follows: §§67.1 - 67.3, 67.6 - 67.13, 67.15, and 67.17. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2303). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 67.

Changes Concerning Savings and Deposit Accounts

The department's preexisting rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such preexisting rules is not included in the department's related adoption concerning new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register.*

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hear-

ing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302283
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 69. REORGANIZATION, MERGER, CONSOLIDATION, ACQUISITION, AND CONVERSION

7 TAC §§69.1 - 69.11

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 69, as follows: §§69.1 - 69.11. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2305). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 69.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302284
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 71. CHANGE OF CONTROL

7 TAC §§71.1 - 71.8

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 71, as follows: §§71.1 - 71.8. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2306). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the de-

partment's rules. The adopted rules repeal all preexisting rules in Chapter 71.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302285
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

CHAPTER 73. SUBSIDIARY CORPORATIONS

7 TAC §§73.1 - 73.6

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 73, as follows: §§73.1 - 73.6. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2307). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 73.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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 June 26, 2023.

TRD-202302286
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: July 16, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-1535

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 26. EMPLOYER-RELATED HEALTH BENEFIT PLAN REGULATIONS

The commissioner of insurance adopts amendments to 28 TAC §26.5 and §26.301, concerning employer-related health benefit plan regulations. The amendments clarify that the requirements and mandates of Senate Bill 1264, 86th Legislature, 2019, including Insurance Code Chapter 1467, apply to certificates of insurance (COIs) issued to certain Texas residents. The amendments are adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8479). The rules will not be republished. A notice of hearing was published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 435), and the hearing was held on February 10, 2023.

REASONED JUSTIFICATION.

The amendments to §26.5(g) and §26.301(j) clarify that SB 1264, including Insurance Code Chapter 1467, applies to carriers that:

- are licensed and doing business in Texas,

- issue group accident or health plans to an out-of-state employer, and

- deliver COIs to Texas-resident employees of the out-of-state employer.

The express listing of SB 1264 in §26.5(g) and §26.301(j) does not limit the applicability of other laws and mandates to carriers licensed in this state that issue COIs covering Texas residents.

The Texas Department of Insurance (TDI) has historically applied Texas insurance laws and mandates to COIs issued to Texas-resident employees under a group accident or health plan that is issued to the employee's out-of-state employer by an insurer licensed and doing business in Texas. *See* the adoption order for §26.5 and §26.301 at 42 TexReg 2545 (stating in response to a comment that the language adopted in §26.5(g) and §26.301(j) "is not a change and reflects how TDI has consistently applied the statutory and regulatory requirements"). TDI has, however, received questions from stakeholders about whether the requirements of SB 1264 apply to these COIs.

SB 1264 amended the Insurance Code to establish consumer protections against balance billing by certain out-of-network providers. The bill (1) prohibits those providers from billing health benefit plan enrollees for certain covered health care services or supplies in an amount greater than an applicable copayment, coinsurance, or deductible under the plan; (2) provides for the right of those providers to receive payment for those services or supplies at the usual and customary rate or at an agreed rate; and (3) establishes requirements for the inclusion of a balance billing prohibition notice in an explanation of benefits. *See, e.g.*, Insurance Code §§1271.008, 1271.157, 1301.010, and 1301.164. The bill also establishes procedures for out-of-network claim dispute resolution through arbitration or mediation, depending on the type of provider at issue. *See id.*; Insurance Code Chapter 1467.

The amendments also implement Insurance Code Article 21.42, which provides, "Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same." *See Howell v. Am. Live Stock Ins. Co.*, 483 F.2d 1354, 1360 n.4 (5th Cir. 1973) (stating in the context of group policies, "the fact that the insurer does any business in Texas is sufficient to require that Texas law apply to any contract between it and a Texas resident, regardless of the intention or expectation of the parties"); *General Am. Life Ins. Co. v. Rodriguez*, 641 S.W.2d 264, 266-67 (Tex. App.--Houston {14th Dist.} 1982, no writ) (holding Insurance Code Article 21.42 applies where group life policy issued to out-of-state employer covered employee residing in Texas).

In addition, an amendment to §26.5 revises a reference to a code chapter for consistency with agency style.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments from four commenters. One of the commenters also spoke at a public hearing on the proposal held on February 10, 2023. Commenters in support of the proposal were Texas Medical Association and Texas Society of Anesthesiologists. Commenters against the proposal were Texas Association of Health Plans and Texas Association of Life and Health Insurers.

General comments.

Comment. Two commenters state that they support the proposed rules, and that the proposed rule amendments provide needed guidance and clarification. They state that the amendments clarify that employer-sponsored fully insured health plans providing benefits to Texas residents are subject to the Insurance Code's and TDI's independent dispute resolution (IDR) processes, even if the employer is not based in Texas.

Agency Response. TDI appreciates the support.

Comments on statutory authority and rulemaking

Comment. Two commenters state that TDI is impermissibly applying Insurance Code Article 21.42 to "give it extraterritorial effect."

One commenter contends that the *Wann* rule should not be applied broadly to cover out-of-state plans and that TDI should wait until courts clarify its applicability. *See Metropolitan Life Ins. Co. v. Wann*, 109 S.W.2d 470 (Tex. 1937). The commenter urges that in the meantime, when a policy covers risks in several jurisdictions, the places of contracting, negotiation, domicile, and business should determine which law applies, and neither the location of the insured risk nor location of the payment should be of any consequence.

The other commenter maintains that TDI is erroneously interpreting *Howell* and should not rely on the *Howell* court's dictum in footnote 4 regarding the *Wann* rule. *Howell*, 483 F.2d at 1360 n.4 ("The difficulty *Wann*, *Zorn*, and *Schroder* present is that they seem to assume a theory of article 21.42 that is basically contradictory to the theory implicit in the *Austin Building Co.* case, which we regard as controlling. *Austin Building Co.* interprets article 21.42 to mean that Texas law applies only when the insurance company has made the contract in question within the same course of 'business done in Texas' which satisfies the statutory condition of its 'doing business in Texas.' *Wann* and its progeny, on the other hand, permit a kind of 'bootstrapping,' whereby the fact that the insurer does *any* business in Texas is sufficient to require that Texas law apply to any contract between it and a Texas resident, regardless of the intention or expectation of the parties."). The commenter states that TDI's explanation does not comply with the reasoning used in the case, and the commenter also states that the proposed rule does not allow for the inquiry and determination of whether a particular group contract was negotiated, issued, or delivered as part of the insurer's business in Texas. The commenter states that such an inquiry is necessary before Insurance Code Article 21.42 can be applied. The commenter also states that the cases cited in the proposal should not be given more weight than the holdings in *Austin Building Co.*, 432 S.W.2d 697 (Tex. 1968) or *Great Am. Ins. Co. v. North Austin Utility*, 908 S.W.2d 415 (Tex. 1995).

Agency Response. TDI declines to make a change. The issue of extraterritorial effect focuses on whether the interpretation of Insurance Code Article 21.42 results in regulation of business outside of Texas. TDI's proposal does not result in extraterritorial effect because the proposed rules apply SB 1264 to an insurer that is licensed in Texas, doing business in Texas, and providing insurance services and payments to Texas residents. Under the commenters' interpretation, TDI would be unable to regulate insurance services provided to Texas residents and thus unable to fulfill its mission to protect and ensure the fair treatment of consumers of insurance services in Texas.

As the *Howell* court recognized, the *Wann* rule applies to group insurance policies and has been the law in Texas since 1937, and TDI declines to discount the rule. *Howell*, 483 F.2d at 1360

n.4 (interpreting *Wann*, 109 S.W.2d at 472 and its progeny, "This 'bootstrapping' logic is, of course, consistent with the literal language of the statute. This tension between *Wann* and *Austin Building Co.* does not appear ever to have been confronted by the Texas courts. The Texas Supreme Court decided *Austin Building Co.* in 1968, after the *Wann* rule had existed for over thirty years, without mentioning *Wann*. The *Wann* rule represents an exceptional rule designed only for the special case of group insurance contracts. The efforts of the Texas courts to apply article 21.42 to group insurance contracts have a very peculiar history, and the *Wann* rule can be understood only in light of that history. {...} *Wann* and *Austin Building Co.* continue to coexist, however uneasily, and *Austin Building Co.* governs cases outside the context of group insurance policies."). As Texas courts have held, the *Wann* rule can apply to group policies contracted by entities outside of Texas. *See Int'l Bhd. of Boilermakers, Iron Shipbuilders & Helpers of Am. v. Huval*, 166 S.W.2d 107 (Tex. 1942)..."("Very clearly, the contract {for disability and death benefits} entered into by the Insurance Company {with the association} was a contract of insurance payable to the {members of the association}.").

TDI also declines to disregard the *Howell* court's comments about the *Wann* rule; Texas courts have acknowledged that a higher court's dicta can be binding authority. *See, e.g., Kuykendall v. State*, 335 S.W.3d 429, 433 (Tex. App.--Beaumont 2011, pet. ref'd) ("A higher court's statements of law that are not pivotal to that Court's decision may still be considered binding on lower courts."). As the commenter acknowledges, the *Howell* reasoning was specific to the circumstances of the case and did not involve group policies.

Facts that arise from situations like *Austin Building Co.* are distinguishable because they involve covered losses occurring outside of Texas. Further, the *Austin Building Co.* court did not overturn the *Wann* rule, nor did it limit the rule's applicability to group insurance policies. The 5th Circuit's analysis has not been called into question in any subsequent case, and TDI is not aware of any subsequent case that took a different approach to group plans.

Comment. A commenter states that the proposed rule completely disregards agreements made between the issuer and the employer, that Insurance Code Article 21.42 is most properly understood as a choice of law provision, and that Texas courts such as the *Reddy Ice* court have acknowledged that an express choice of law provision in an insurance contract is controlling and only in the absence of such a provision should the court look to statute. *See Reddy Ice Corp. v. Travelers Lloyds Ins. Co.*, 145 S.W.3d 337 (Tex. App.--Houston {14th} 2004, pet. denied).

The commenter cites Texas courts' reliance on the Restatement (Second) of Conflict of Laws §187 and contends that the parties' agreement should control unless the selected state has no substantial relationship or applying the selected state's law would be contrary to the interest of another state with greater interest. The commenter further contends that TDI is attempting to longarm its way into contracts when the parties have chosen the laws of another state to control and that TDI does not have the authority to circumvent non-Texas laws.

Agency Response. TDI declines to withdraw or amend the rule. Insurance Code Article 21.42 mandates the application of Texas law to certain out-of-state insurance contracts. *See* Restatement (Second) of Conflict of Laws §6 ("A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.").

Assuming that Insurance Code Article 21.42 is applicable, the inquiry is whether it would control over a contractual choice-of-law provision to the contrary. Contrary to the commenter's contention, the answer to that question is not clear-cut, and there appears to be a divergence of opinions on the issue. As the commenter notes, at least one court has indicated that when a contract contains a choice-of-law provision, that provision controls over Insurance Code Article 21.42. *Reddy*, 145 S.W.3d at 340 ("In Texas, when . . . a contract does not contain an express choice-of-law provision, a court must determine whether a relevant statute directs the court to apply the laws of a particular state."). However, in multiple other instances, courts have held that if Insurance Code Article 21.42 is applicable, Texas law will govern despite a contractual choice of law provision to the contrary. *See Prashant P. v. Liberty Life Assurance Co. of Boston*, 2017 WL 10109450 (S.D. Tex. 2017); *Preferred Contractors Ins. Co. Risk Retention Grp., LLC v. Oyoque Masonry, Inc.*, 2013 WL 3899332 (S.D. Tex. 2013); *In re ATP Oil & Gas Corp.*, 531 B.R. 694, 701 (Bankr. S.D. Tex. 2015).

Furthermore, as the commenter notes, a contractual choice-of-law provision may be set aside if "application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which . . . would be the state of the applicable law in the absence" of the contractual provision. *See* Restatement (Second) of Conflict of Laws §187(2)(b).

The rule applies to policies where the ultimate beneficiaries--the employees--reside. Texas has a material interest in seeing that Texas residents are protected by its laws even if they happen to work for employers that are based outside the state. *See, e.g.,* Tex. Ins. Code §31.002(2) (TDI shall "protect and ensure the fair treatment of consumers."). Texas's strong consumer protection policy is codified in TDI's statutory mandate to protect consumers and supports TDI's position that contractual choice-of-law provisions in insurance contracts can be set aside, and Texas law should apply to the COIs issued to Texas consumers.

Comment. Two commenters state that the rule circumvents the specific applicability language of Insurance Code Chapter 1467, specifically Insurance Code §1467.002. The commenters state that since Insurance Code Chapter 1467 applies to plans operating under Insurance Code Chapter 843 or offered under Insurance Code Chapter 1301, and Insurance Code Chapters 843 and 1301 apply only to insurers authorized to offer coverage issued in Texas, then the proposed amendments to Insurance Code Chapter 1467 should not apply to out-of-state plans. One commenter cites Government Code §311.026, which requires that if a general provision conflicts with a special provision, the special provision prevails over the general.

Agency Response. TDI declines to make a change. TDI disagrees that the provisions of Insurance Code Chapter 1467 conflict with Insurance Code Article 21.42 or that Insurance Code Chapter 1467 cannot apply to out-of-state plans.

There is no express blanket exemption of out-of-state plans in Insurance Code Chapters 843, 1301, and 1467. Section 843.003 allows certain entities to organize and operate a health maintenance organization (HMO) and Insurance Code §843.101 provides that an HMO may provide or arrange for care. Under Insurance Code §1301.001, Insurance Code Chapter 1301 applies to insurers that issue, deliver, or issue for delivery policies in Texas. Neither chapter expressly exempts out-of-state plans.

Insurance Code §1467.002(2) applies IDR requirements, in part, to preferred provider benefit (PPO) plans "offered by an insurer under Chapter 1301." Insurance Code §1301.001(9) defines a PPO plan by referencing a "health insurance policy," which in turn is defined in Insurance Code §1301.001(2) to include a group "policy, certificate, or contract." And an "insurer" under Insurance Code Chapter 1301 means an insurance company "operating under Chapter 841, 842, 884, 885, *982*, or 1501, that is authorized to issue, deliver, or issue for delivery in this state health insurance policies" (emphasis added). That includes foreign insurers licensed in Texas.

Also, it is not TDI's position that all out-of-state HMOs or PPOs must comply with the rule. Rather, in accordance with Insurance Code Article 21.42, the rule applies if the insurance company is licensed in Texas, does business in Texas, and delivers COIs to Texas residents. The applicability language of Insurance Code Chapters 843 and 1301 does not conflict with this approach, and, therefore, conflict-of-law canons are not pertinent.

The Legislature in other instances has exempted COIs issued under out-of-state group plans from Texas mandates; that is not the case here. *See* Insurance Code §1651.002(a) (chapter governing long-term care benefit plans does not apply to "a certificate that is delivered or issued for delivery in this state under a single employer or labor union group policy that is delivered or issued for delivery outside this state.").

Comment. One commenter states that SB 1264 does not specifically allow rulemaking to apply to out-of-state policies and that none of the statutes cited in TDI's proposal (Insurance Code Article 21.42 and Insurance Code §§843.151, 1301.007, 1467.003, 1501.010, and 36.001) provide rulemaking authority to adopt the proposed rules or refer to certificates for policies issued and delivered outside of Texas. The commenter states that this lack of specific legislative authority raises serious questions about the validity of the proposed changes.

Agency Response. TDI declines to make a change. TDI acknowledges that the statutory authority cited, other than Insurance Code Article 21.42, is generally silent on out-of-state group contracts with certificates issued in Texas. However, TDI disagrees that this significantly undermines the statutory authority for the rule. Insurance Code Article 21.42 is the key statutory authority, and TDI agrees that if Insurance Code Article 21.42 were to be limited in the future by the courts or legislation, then such limitation would affect the sufficiency of statutory authority for the TDI rules as proposed and adopted. However, under the current interpretation of Insurance Code Article 21.42--which is consistent with TDI's proposal--the statutory authority cited, although mainly general in nature, is sufficient to propose and adopt these rules. In addition, Insurance Code §36.001 states that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under this code and other laws of this state.

Comment. One commenter states that the rule constitutes regulation of the business of insurance outside of the state of Texas, which is not within TDI's regulatory purview. The commenter states that Insurance Code §101.053 defines the business of insurance to exclude transactions involving group policies issued or delivered outside of Texas and to exclude certificates.

The commenter also states that because Insurance Code §1251.451(a) expressly lists specific chapters of the Insurance Code that apply to COIs issued to Texas residents under a policy delivered outside of Texas, that demonstrates legislative intent to exclude all other Insurance Code provisions, including Insurance Code Chapter 1467.

Agency Response. TDI declines to make a change. Regarding the citation to Insurance Code §101.053, the Texas Supreme Court has noted that the definition is limited to Insurance Code Chapter 101 and does not determine the applicability of other provisions of the Insurance Code. *See Tex. Dep't of Ins. v. Am. Nat'l Ins. Co.*, 410 S.W.3d 843, 849-50 (Tex. 2012); *Great Am. Ins. Co. v. North Austin Utility*, 908 S.W.2d 415, 423 (Tex. 1995).

Regarding Insurance Code §1251.451(a), the stated purpose of the predecessor statute was to ensure that COIs issued under out-of-state plans by foreign insurers not licensed in Texas complied with various provisions of Texas law that the bill authors assumed applied to COIs issued by foreign insurers licensed in Texas. The legislative history of Insurance Code §1251.451(a) does not indicate any clear intent to narrow the list of applicable laws, and predates Insurance Code Chapter 1467.

Comment. One commenter disagrees with TDI's assertion that the proposed amendments to the rule are consistent with TDI's historical practice. The commenter states that from the inception of the surprise billing requirements in 2009, up through the current law, all claims for mediation under Insurance Code Chapter 1467 for plans issued out of state were rejected on the basis that the claim was ineligible. The comment indicates that the subsequently amended "mark ineligible" checkbox was included on the IDR platform as part of the rollout after passage of SB 1264 and then subsequently removed in July 2020. The commenter also states that this significant change in policy should have been made through Administrative Procedure Act rulemaking. Another commenter states that Insurance Code Article 21.42 has been the subject of litigation on its extraterritorial application dating back nearly 100 years and that the statute has not always been construed consistently by either TDI or courts.

Agency Response. TDI acknowledges that Insurance Code Article 21.42 and the issues of extraterritorial application have been litigated several times in the past. The current position is consistent with court decisions and legislative guidance. TDI did not modify its interpretation of how Insurance Code Article 21.42 should be applied to Insurance Code Chapter 1467.

To the extent that the portal checkbox provided incorrect instructions, TDI changed the portal so that claims could not be marked as ineligible on the basis that the plan was issued outside of Texas. The checkbox, for the brief time it appeared on the portal, conflated out-of-state group contracts without Texas resident certificates with group contracts that, when viewed properly through Insurance Code Article 21.42, the state could regulate. Notably, marking the checkbox did not automatically mark the claim as ineligible. It indicated only that the contract required manual examination by TDI staff and possible follow-up with the parties. To the best of TDI's knowledge, no claims marked as "ineligible" and not processed further were actually eligible for IDR under Chapter 1467.

TDI disagrees that rulemaking was necessary to correct the portal checkbox error described above. However, to the extent that any inadvertent rulemaking process errors occurred, this rulemaking corrects them. TDI appreciates the input from all stakeholders, and this rulemaking is made consistent with the procedure and intent of the Administrative Procedures Act.

TDI's position is consistent with the *Wann* rule. The *Wann* rule dates to 1937, and the *Austin Building* decision did not extinguish

Wann's interpretation of Insurance Code Article 21.42. The 1973 *Howell* case acknowledges the continued existence of the *Wann* application of Insurance Code Article 21.42, which TDI continues to recognize and apply. Absent administrative rulemaking that would overturn this long-standing position, or other legal decisions such as an Attorney General opinion or court ruling, TDI is obligated to maintain its long-standing position.

Comment. One commenter states that the proposed rule would create confusion and be difficult to implement because of conflicts between SB 1264 and the No Surprises Act and/or other states' regulations. The commenter notes that some states, including Arkansas, have their own balance billing protections. The commenter also notes that the proposed framework could require some insurers to provide coverage and cost sharing to Texas residents compliant with Texas regulations, while other insurers might be subject to another state's regulations under the No Surprises Act. The commenter states that plans would be required to comply with different notice and consent requirements, resolution processes, and appeals procedures, and that insurers will have other difficulties such as providing required notations on enrollee identification cards. The commenter claims that the rule does not provide any additional protections since the federal No Surprises Act already provides balance billing protections and an IDR pathway. Another commenter poses questions relating to implementation of the rule, including compliance with out-of-network billing limits, COI disclosure requirements, reimbursement rates, and notice requirements in SB 1264 that may conflict with other states' regulations or the No Surprises Act.

Agency Response. TDI acknowledges that the patchwork of state and federal balance billing protections can pose practical challenges. However, this is true even if Texas does not require SB 1264 protections to apply where the state has jurisdiction. Health benefit plans doing business in multiple states will face regulatory complexity no matter what position TDI takes. Health benefit plans already need to potentially comply with their home state's regulations, the federal No Surprises Act for ERISA or other situations falling outside state regulations, and regulations in any other jurisdictions that may apply. Similarly, providers are faced with a multitude of relevant regulatory regimes. However, applying SB 1264 as described in this rule has the benefit of including Texas providers and Texas resident insureds under the protection of regulations passed by the Texas Legislature and TDI.

TDI's position, consistent with the *Wann* rule, protects Texas insureds and enrollees where the health plan is licensed to do business in this state. The health plans, by virtue of being licensed in this state, have already voluntarily consented to the authority and jurisdiction of state law. The amendments adopted here, like the *Wann* rule, are designed only for the special case of group insurance contracts. TDI has a duty to ensure that the insurance laws are executed, and to protect and ensure the fair treatment of consumers. *See* Tex. Ins. Code §31.002.

TDI acknowledges that the federal regulations may apply where a covered state law is not applicable. However, here a state law is applicable. There are some differences between the Texas and federal IDR procedures. The Texas law--SB 1264 and later amendments--represents the Texas Legislature's vision for how balance billing disputes ought to be handled in this state. The rule clarifies how the legislation is applied in Texas. In addition, federal rules implementing the No Surprises Act have multiple lawsuits pending, and until those suits or additional rulemaking are concluded, parties may lack a federal alternative. Even where federal regulations could apply, Texas law reflects the measured policy decisions the Legislature has decided ought to apply to situations within the state's jurisdiction.

Comment. Two commenters suggest that TDI withdraw the proposal. One commenter asks TDI to instead alter the portal to reflect the commenter's view of SB 1264's applicability and provide a clarifying statement so that plans and consumers understand the applicability of the IDR process.

The other commenter asks TDI to instead consider amending §26.5 and §26.301 to delete the requirement that mandates apply on all out-of-state group health policies. This commenter also requests that TDI consider adopting other rules that clarify how it will apply Insurance Code Article 21.42 to be consistent with constitutional requirements imposing limitations on its extraterritorial application, including the application of Texas laws to certificates for group accident and health policies issued outside of Texas. The commenter requests that if the proposed rule is not withdrawn, TDI include in its Reasoned Justification section the reasons why it disagrees with the legal issues raised in these comments and provide answers to the specific questions submitted as part of these comments.

Agency Response. TDI declines to withdraw the proposal. TDI has a different view as to the scope and application of Texas state law than the commenters. TDI has addressed its long-standing and present view of the legal issues raised by commenters. Unless and until the Legislature, courts, or TDI through future APA rulemaking provides otherwise, TDI's position on IDR is as provided in this rule adoption.

SUBCHAPTER A. DEFINITIONS, SEVERABILITY, AND SMALL EMPLOYER HEALTH REGULATIONS

28 TAC §26.5

STATUTORY AUTHORITY. The commissioner adopts amendments to §26.5 under Insurance Code Article 21.42 and §§843.151, 1301.007, 1467.003, 1501.010, and 36.001.Insurance Code Article 21.42 provides that any insurance payable to any citizen or inhabitant of this state by a company doing business within this state is held to be a contract made and entered into and governed by Texas insurance law despite execution of the contract or payment of the premiums outside of this state.

Insurance Code §843.151 authorizes the commissioner to adopt rules as necessary and proper to implement laws applicable to HMOs, including Insurance Code Chapters 843 and 1271.

Insurance Code §1301.007 authorizes the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §1501.010 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 1501.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 June 22, 2023.

TRD-202302260
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: July 12, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 676-6555

♦ ♦ ♦

SUBCHAPTER C. LARGE EMPLOYER HEALTH INSURANCE REGULATIONS

28 TAC §26.301

STATUTORY AUTHORITY. The commissioner adopts amendments to §26.301 under Insurance Code Article 21.42 and §§843.151, 1301.007, 1467.003, 1501.010, and 36.001.

Insurance Code Article 21.42 provides that any insurance payable to any citizen or inhabitant of this state by a company doing business within this state is held to be a contract made and entered into and governed by Texas insurance law despite execution of the contract or payment of the premiums outside of this state.

Insurance Code §843.151 authorizes the commissioner to adopt rules as necessary and proper to implement laws applicable to HMOs, including Insurance Code Chapters 843 and 1271.

Insurance Code §1301.007 authorizes the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §1501.010 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 1501.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 June 22, 2023.

TRD-202302261
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: July 12, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 676-6555

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 26. COASTAL MANAGEMENT PROGRAM

The General Land Office (GLO) adopts amendments to §§26.3, 26.4, 26.10, 26.13, 26.15, 26.18, 26.21, 26.23 - 26.25, 26.31, and 26.34 in 31 TAC Chapter 26, relating to the Coastal Management Program. The amendments are adopted without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 313) and therefore will not be republished.

JUSTIFICATION

These amendments are adopted to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 501 to 31 TAC Chapter 26, effective on December 1, 2022. The adoption of the amendments is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The adopted amendments update cross references within the following sections: §26.3, relating to Definitions and Abbreviations; §26.4, relating to Coastal Coordination Advisory Committee; §26.10, relating to Compliance with CMP Goals and Policies; §26.13, relating to Administrative Policies Review; §26.15, relating to Policy for Major Actions; §26.18, relating to Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities; §26.23, relating to Policies for Development in Critical Areas; §26.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands; §26.25, relating to Policies for Dredging and Dredged Material and Placement; §26.31, relating to Policies for Transportation Projects; and §26.34, relating to Policies for Levee and Flood Control Projects.

The adopted amendment to §26.21, relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters, updates the name of a state agency from Texas Department of Health to Texas Department of State Health Services.

PUBLIC COMMENTS

The GLO received no comments regarding the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §26.3, §26.4

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302219
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

SUBCHAPTER B. GOALS AND POLICIES

31 TAC §§26.10, 26.13, 26.15, 26.18, 26.23 - 26.25, 26.31, 26.34

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302220
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

CHAPTER 27. COASTAL MANAGEMENT PROGRAM BOUNDARY

31 TAC §27.1

The General Land Office (GLO) adopts an amendment to §27.1 in 31 TAC Chapter 27, relating to the Coastal Management Program Boundary. The amendment is adopted with changes to correct punctuation to the proposed text to published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 316), and therefore the rule will be republished.

JUSTIFICATION

This amendment is adopted to update a rule reference that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 503 to 31 TAC Chapter 27, effective on December 1, 2022. The adoption of the amendment is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The adopted amendment updates the rule reference labeling the Attached Graphic in §27.1(a).

PUBLIC COMMENTS

The GLO received no comments regarding the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; and §33.054, which allows the commissioner to review and amend the CMP.

The adoption of the amendment is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§27.1. Coastal Management Program Boundary.

(a) General Description of the Coastal Management Program Boundary. The coastal management program boundary delineates the coastal zone. The inland part of the boundary is a modification of the coastal facility designation line, which is the line the State of Texas adopted under the Oil Spill Prevention and Response Act of 1991 (Texas Natural Resources Code, Chapter 40) to describe areas where oil spills are likely to enter coastal waters. Generally, the boundary encompasses the area within Texas lying seaward of the coastal facility designation line. It also includes coastal wetlands landward of the coastal facility designation line. The boundary includes areas within the following Texas counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Jefferson, and Orange. The seaward reach of the boundary extends into the Gulf of Mexico to the limit of state title and ownership under the Submerged Lands Management Act (43 United States Code, §§1301 et seq.), that is, three marine leagues. The following maps outline the coastal management program boundary.
Figure: 31 TAC §27.1(a)

(b) Particular Description of the Coastal Management Program Boundary. The boundary is more particularly described in terms of the inland boundary, the boundary with the State of Louisiana, the seaward boundary, the boundary with the Republic of Mexico, and the excluded federal lands.

(1) The inland boundary. The inland boundary encompasses the following areas:

(A) Roadway portion of boundary. The boundary begins at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (FM Road 1847) in Brownsville, thence northward along FM Road 1847 to the junction of FM Road 106 east of Rio Hondo, thence westward along FM Road 106 to the junction of FM Road 508 in Rio Hondo, thence northward along FM Road 508 to the junction of FM Road 1420,

thence northward along FM Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of FM Road 774 in Refugio, thence eastward along FM Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of FM Road 616 in Bloomington, thence northeastward along FM Road 616 to the junction of State Highway 35 east of Blessing, thence southward along the State Highway 35 to the junction of FM Road 521 north of Palacios, thence northeastward along FM Road 521 to the junction of State Highway 36 south of Brazoria, thence northward along State Highway 36 to the junction of State Highway 332 in Brazoria, thence eastward along State Highway 332 to the junction of FM Road 2004 in Lake Jackson, thence northeastward along FM Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the Louisiana State line.

(B) Tidal portion of the boundary. The boundary runs at a distance of 100 yards inland from the mean high tide line along each of the following tidal river and stream segments from the points where they intersect the roadway boundary described in subparagraph (A) of this paragraph:

(i) on the Arroyo Colorado, to a point 100 meters (110 yards) downstream of Cemetery Road south of Port Harlingen in Cameron County;

(ii) on the Nueces River, to Calallen Dam 1.7 kilometers (1.1 miles) upstream of U.S. Highway 77 in Nueces/San Patricio County;

(iii) on the Guadalupe River, to the Guadalupe-Blanco River Authority Salt Water Barrier 0.7 kilometers (0.4 mile) downstream of the confluence of the San Antonio River in Calhoun and Refugio Counties;

(iv) on the Lavaca River, to a point 8.6 kilometers (5.3 miles) downstream of U.S. Highway 59 in Jackson County;

(v) on the Navidad River, to Palmetto Bend Dam in Jackson County;

(vi) on Tres Palacios Creek, to a point 0.6 kilometer (1.0 mile) upstream of the confluence of Wilson Creek in Matagorda County;

(vii) on the Colorado River, to a point 2.1 kilometers (1.3 miles) downstream of the Missouri-Pacific Railroad in Matagorda County;

(viii) on the San Bernard River, to a point 3.2 kilometers (2.0 miles) upstream of State Highway 35 in Brazoria County;

(ix) on Chocolate Bayou, to a point 4.2 kilometers (2.6 miles) downstream of State Highway 35 in Brazoria County;

(x) on Clear Creek, to a point 100 meters (110 yards) upstream of FM Road 528 in Galveston/Harris County;

(xi) on Buffalo Bayou, to a point 400 meters (440 yards) upstream of Shepherd Drive in Harris County;

(xii) on the San Jacinto River, to Lake Houston Dam in Harris County;

(xiii) on Cedar Bayou, to a point 2.2 kilometers (1.4 miles) upstream of Interstate Highway 10 in Chambers/Harris County;

(xiv) on the Trinity River, to the border between Chambers and Liberty Counties;

(xv) on the Neches River, to a point 11.3 kilometers (7.0 miles) upstream of Interstate Highway 10 in Orange County; and

(xvi) on the Sabine River, to Morgan Bluff in Orange County.

(C) Wetlands portion of boundary. Except for the part of the boundary adjacent to the Trinity and Neches rivers, the boundary includes wetlands lying within one mile inland of the mean high tide lines of the tidal river and stream segments identified in subparagraph (B) of this paragraph.

(i) Adjacent to the Trinity River, the boundary includes wetlands within the area located between the mean high tide line on the western shoreline of the river and Farm-to-Market Road 565 and Farm-to-Market Road 1409, and wetlands within the area located between the mean high tide line on the eastern shoreline of that portion of the river and Farm-to-Market Road 563.

(ii) Adjacent to the Neches River, the boundary includes wetlands within one mile of the mean high tide line on the western shoreline of the river, and wetlands within the area located between the mean high tide line on the eastern shoreline of that portion of the river and Farm-to-Market Road 105.

(2) The boundary with the State of Louisiana. The boundary with the State of Louisiana begins in Orange County at Morgans Bluff, the northernmost extent of tidal influence, along the adjudicated boundary between the State of Texas and the State of Louisiana, as established by the United States Supreme Court in Texas v. Louisiana, 410 U.S. 702 (1973); thence it continues in a southerly direction along the adjudicated boundary out into the Gulf of Mexico until it intersects the seaward boundary.

(3) The seaward boundary. The seaward boundary is that line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 United States Code, §1301 et seq.), as recognized by the United States Supreme Court in United States v. Louisiana et al., 364 U.S. 502 (1960).

(4) The boundary with the Republic of Mexico. The boundary with the Republic of Mexico begins at a point three marine leagues into the Gulf of Mexico where the line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 United States Code, §§1301 et seq.) intersects the international boundary between the United States and the Republic of Mexico, as established pursuant to the Treaty of Guadalupe-Hidalgo (February 2, 1848) between the United States and the Republic of Mexico; thence it continues in a westerly direction along the international border with the Republic of Mexico until it meets the International Toll Bridge in Brownsville.

(5) The excluded federal lands. The excluded federal lands are those lands owned, leased, held in trust by, or whose use is otherwise by law subject solely to the discretion of the federal government, its officers or agents.

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 June 20, 2023.

TRD-202302221

Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

CHAPTER 28. PERMITTING ASSISTANCE AND PRELIMINARY CONSISTENCY REVIEW

The General Land Office (GLO) adopts amendments to §§28.2, 28.3, 28.10, 28.11, and 28.20 in 31 TAC Chapter 28, relating to Permitting Assistance and Preliminary Consistency Review. The amendments to §§28.3, 28.10, 28.11, and 28.20 are adopted without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 317) and therefore will not be republished. The amendments to §28.2 are adopted with changes to the proposed text and will be republished.

JUSTIFICATION

These amendments are adopted to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 504 to 31 TAC Chapter 28, effective on December 1, 2022. The adopted amendments also include minor revisions to ensure that the role of the Permitting Assistance Group conforms with current practice. The adoption of the amendments is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The adopted amendments update cross references within the following sections: §28.2, relating to Definitions; §28.11, relating to Permitting Assistance Coordinator; and §28.20, relating to Requests for Preliminary Consistency Review.

The adopted amendment to §28.10, relating to Permit Service Center, adds updated terminology, including a clarification that the Texas Parks and Wildlife Department issues "certificates of location."

The adopted amendment to §28.3, relating to Permitting Assistance Group (PAG), adds a new subsection (d) to conform with current practice by clarifying that the PAG's role may include participation in the planning and development of regional general permits and general permits to support future beach management and nourishment, coastal restoration projects, and the continued development of the Texas Coastal Management Program, as needed.

PUBLIC COMMENTS

The GLO received no comments regarding the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §28.2, §28.3

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§28.2. Definitions.

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

(1) Agency of subdivision--Any state agency, department, board, or commission or political subdivision of the state.

(2) Applicant--An individual or small business. In addition, the term includes a city, county, or special district.

(3) Coastal zone--The area within the CMP boundary established in §27.1 of this title.

(4) Commissioner--Commissioner of the General Land Office (GLO).

(5) Committee--Coastal Coordination Advisory Committee.

(6) CMP goals and policies--The goals and policies set forth in Chapter 26 of this title.

(7) Permitting assistance coordinator--The GLO staff member designated by the commissioner.

(8) Permitting assistance group (PAG)--The group composed of representatives of committee member agencies and other interested committee members.

(9) Permit service center (PSC)--The center that administers permitting assistance for activities in the coastal zone. The PSC has an office that serves the Upper Coast and an office that serves the Lower Coast.

(10) Program boundary--The CMP boundary established in §27.1 of this title.

(b) To the extent that reference is made to statutory or regulatory terms or phrases which are not defined in this chapter, such terms and phrases shall retain the meaning provided in the pertinent agency or political subdivision policies or regulations.

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 June 20, 2023.

TRD-202302222
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

SUBCHAPTER B. PERMITTING ASSISTANCE

31 TAC §28.10, §28.11

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302223
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

SUBCHAPTER C. PRELIMINARY CONSISTENCY REVIEW

31 TAC §28.20

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.205, which authorizes the commissioner to establish by rule processes for preliminary consistency review and permitting assistance.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302224
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

CHAPTER 29. PROCEDURE FOR STATE CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

The General Land Office (GLO) adopts amendments to §§29.11, 29.12, 29.20 - 29.26, 29.30 - 29.34, 29.36, 29.42, 29.51, 29.52, 29.60, 29.62 - 29.66, 29.68, and 29.74 in 31 TAC Chapter 29, relating to Procedures for State Consistency with Coastal Management Program Goals and Policies. The amendments are adopted without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 320) and therefore will not be republished.

JUSTIFICATION

These amendments are adopted to update cross references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 505 to 31 TAC Chapter 29, effective on December 1, 2022. The adoption of the amendments is necessary because it further implements amendments to the Coastal Coordination Act by Senate Bill 656, 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the Council's powers and duties to the GLO.

The adopted amendments update cross references within the following sections: §29.11, relating to Actions and Rules Subject to the Coastal Management Program; §29.12, relating to Definitions; §29.20, relating to Commissioner Review and Certification of Agency Rules and Rule Amendments; §29.21, relating to Effect of Commissioner Certification of Agency Rules and Rule Amendments; §29.22, relating to Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program; §29.23, relating to Expedited Certification of Rules and Rule Amendments; §29.24, relating to Pre-Certification Review of Draft Rules and Draft Rule Amendments; §29.25, relating to Revocation of Certification; §29.26, relating to Approval of Thresholds for Referral; §29.30, relating to Agency Consistency Determination; §29.31, relating to Preliminary Consistency Review of Proposed Agency Action; §29.32, relating to Requirements for Referral of a Proposed Agency Action; §29.33, relating to Filing of Request for Referral; §29.34, relating to Referral of a Proposed Agency Action to the Commissioner for Consistency Review; §29.36, relating to Standard of Commissioner Review of a Proposed Agency Action; §29.42, relating to Enforcement after Commissioner Protest of a Proposed Agency Action; §29.51 relating to Request for a Non-Binding Advisory Opinion and Commissioner Action; §29.52, relating to Request for Commissioner Participation in the Development of General Plans; §29.60, relating to Subdivisions Actions Subject to the Coastal Management Program; §29.62, relating to Subdivision Consistency Determinations; §29.63, relating to Preliminary Consistency Review of a Proposed Subdivision Action; §29.64, relating to Requirements for a Referral of a Proposed Subdivision Action; §29.65, relating to Filing of Request for Referral; §29.66, relating to Referral of a

Proposed Subdivision Action to the Commissioner for Review; §29.68, relating to Standard of Commissioner Review of a Proposed Subdivision Action; and §29.74, relating to Enforcement after Commissioner Protest of a Proposed Subdivision Action.

The adopted amendment to §29.11(a)(7)(A) adds updated terminology, including a clarification that the Texas Parks and Wildlife Department issues "certificates of location."

PUBLIC COMMENTS

The GLO received no comments regarding the proposed amendments.

SUBCHAPTER A. PURPOSE AND SCOPE

31 TAC §29.11, §29.12

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302225
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

SUBCHAPTER B. COMMISSIONER REVIEW AND CERTIFICATION OF AGENCY RULES

31 TAC §§29.20 - 29.26

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302226
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

SUBCHAPTER C. CONSISTENCY AND COMMISSIONER REVIEW OF PROPOSED STATE AGENCY ACTIONS

31 TAC §§29.30 - 29.34, 29.36, 29.42

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302227
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

SUBCHAPTER D. COMMISSIONER ADVISORY OPINIONS ON GENERAL PLANS

31 TAC §29.51, §29.52

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302228
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

SUBCHAPTER E. CONSISTENCY AND COMMISSIONER REVIEW OF LOCAL GOVERNMENT ACTIONS

31 TAC §§29.60, 29.62 - 29.66, 29.68, 29.74

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code, Chapter 33, including, §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the commissioner to establish by rule a process by which an agency may submit rules to the commissioner for review and certification for consistency with the goals and policies of the CMP.

The adoption of the amendments is necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302229
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

CHAPTER 30. COUNCIL PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND PRIORITIES

The General Land Office (GLO) adopts the repeal of §§30.10 - 30.13, 30.20 - 30.37, 30.40 - 30.45, and 30.50 - 30.54, and adopts new §§30.10, 30.11, 30.20, 30.30, 30.40, and 30.60 without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 326). These rules will not be republished.

The GLO adopts new §30.12 with changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 326). This rule will be republished.

The GLO has determined that the procedures in proposed new §30.50 are not needed at this time and therefore proposed §30.50 is withdrawn.

BACKGROUND AND JUSTIFICATION

The Texas Coastal Management Program (CMP) is based on the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F. In 1991, the Coastal Coordination Council (Council) was created for the purpose of developing CMP policy, facilitating interagency coordination, conducting dispute resolution, and overseeing the CMP. The CMP goals and policies are utilized for ensuring state and federal actions are consistent with the CMP. In 2010, the Council was reviewed by the Texas Sunset Advisory Commission. The Sunset Commission's review found that the Council had transitioned from developing and implementing the CMP to merely administering it. The Sunset Commission further determined that since the GLO was charged with the primary administrative responsibility for the CMP, the GLO could more efficiently perform the Council's duties. Based on these findings, the Sunset Commission recommended abolishing the Council and transferring the Council's functions to the Commissioner and GLO.

During the 82nd Legislative Session, the Texas Legislature passed Senate Bill (SB) 656, amending the Coastal Coordination Act. SB 656 abolished the Council and transferred the duties and powers of the Council to the Commissioner and GLO. SB 656 also directed the Commissioner to establish the Coastal Coordination Advisory Committee (Committee). The Committee's membership closely resembles the former Council's membership, as it requires a representative from each of eight state agencies with coastal duties, as well as four public members appointed by the Commissioner to represent coastal priorities.

The adopted rules repeal and replace the sections in Chapter 30 with new sections and a new chapter title. The new rules are intended to better reflect SB 656 and more closely conform to the Coastal Zone Management Act (CZMA) Federal Consistency regulations in 15 CFR Part 930. Specifically, the new rules help

further implement SB 656 by removing all references to the abolished Council, by clarifying the transfer of the Council's functions and duties to the Commissioner and the GLO, and by adding references to the Committee. Additionally, the GLO's federal consistency procedures are required to be consistent with the Federal Consistency regulations in 15 CFR Part 930, promulgated by the National Oceanic and Administrative Administration (NOAA). The new rules closely adhere to the Federal Consistency regulations and incorporate the review timeframes for federal agency actions in 15 CFR Part 930.

The adopted rules also reorganize, streamline, and clarify the GLO's federal consistency review procedures for federal license or permit activities, federal agency activities and development projects, and outer continental shelf (OCS) plans. In addition, the new sections incorporate updated rule cross-references that became outdated as a result of the administrative transfer of rules from 31 TAC Chapter 506 to 31 TAC Chapter 30, effective on December 1, 2022.

The adopted repeals and new sections are necessary for the continued implementation of the Coastal Coordination Act, as amended by SB 656, and to ensure the GLO's federal consistency procedures conform to the Federal Consistency regulations in 15 CFR Part 930.

SECTION BY SECTION SUMMARY

The adopted rules include repealing the title of Chapter 30, "Council Procedures for Federal Consistency with Coastal Management Program Goals and Priorities," and adopting a new title for Chapter 30, "Procedures for Federal Consistency with Coastal Management Program Goals and Policies."

New §30.10, relating to Purpose and Policy, stipulates that the rules in the Chapter establish a process for federal consistency review, as required by Texas Natural Resources Code, §33.206(d). This new section reflects federal procedures for implementing the federal consistency requirements of the CZMA and provides that federal actions and activities subject to the Texas CMP are consistent with the goals and enforceable policies. The procedures in this Chapter are also intended to allow the Commissioner to identify, address, and resolve federal consistency issues. The new section also stipulates that if any inconsistencies are found between these rules and those of the Federal Consistency regulations in 15 CFR Part 930, the federal regulations control. This new section is necessary to implement SB 656 and to update the rules to conform with the Federal Consistency regulations in 15 CFR Part 930.

New §30.11, relating to Definitions, sets forth the meanings of key terms used in the Chapter.

New §30.11(a) adds an interpretive provision clarifying that the defined terms have the meanings set forth in this section unless the context clearly indicates otherwise.

New §30.11(a)(1) adds a definition for "associated facilities," which means all "proposed facilities: (A) which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity, development project, license, permit, or assistance); and (B) without which the federal action, as proposed, could not be conducted." *See* 15 CFR §930.11(d).

New §30.11(a)(2) adds a definition for "Coastal Coordination Act," which is the short title of Texas Natural Resources Code, Chapter 33, Subchapter F.

New §30.11(a)(3) adds a definition for "coastal zone," which means the "portion of the coastal area located within the boundaries established by the CMP under Texas Natural Resources Code, §33.2053(k), and described in Chapter 27 of this title (relating to Coastal Management Program Boundary)."

New §30.11(a)(4) adds a definition for "CMP," which means "Texas Coastal Management Program, which was accepted into the federal Coastal Zone Management Program in 1996 after receiving approval from the federal Office for Coastal Management."

New §30.11(a)(5) adds a definition for "CMP coordinator," which means the "GLO Coastal Resources staff member designated by the commissioner."

New §30.11(a)(6) adds a definition for "CMP goals and enforceable policies," which means the "goals and enforceable policies set forth in Chapter 26 of this title."

New §30.11(a)(7) adds a definition for "Commissioner," which means the "Commissioner of the GLO."

New §30.11(a)(8) adds a definition for "Committee," which means the "Coastal Coordination Advisory Committee."

New §30.11(a)(9) adds a definition for "CZMA," which means the "Federal Coastal Zone Management Act of 1972, as amended."

New §30.11(a)(10) - (16) adds definitions for "development project," "Director," "federal agency," "federal agency activity," "federal assistance," "federal license or permit activity," and "Outer Continental Shelf (OCS) plan," that are consistent with the Federal Consistency Regulations in 15 CFR Part 930.

New §30.11(a)(17) adds a definition for "program boundary," which means "CMP program boundary established in §27.1 of this title (relating to the Coastal Management Program Boundary)."

New §30.11(b) adds an interpretive provision clarifying that statutory or regulatory terms or phrases that are not defined in the Chapter retain the meaning provided in the pertinent agency's regulations unless a different meaning is assigned in the applicable regulations under the CZMA.

New §30.12, relating to Federal Listed Activities Subject to CZMA Review, identifies federal agency actions that are subject to the Federal Consistency regulations set out in 15 CFR Part 930.

New §30.12(a) states that federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs) within the coastal zone. The list of federal actions that are subject to CZMA federal consistency review by the GLO include federal agency activities, federal license or permit activities, and federal assistance applications.

New §30.12(a)(1) explains that a consistency determination is required for federal agency activities and development projects by or on behalf of federal agencies that may have reasonably foreseeable effects on CNRAs. The new subsection also states that a consistency determination or negative determination must be submitted to the GLO in accordance with the requirements of the Federal Consistency regulations found at 15 CFR Part 930, subpart C.

New §30.12(a)(1)(A) - (F) identify federal agencies that must submit consistency determinations or negative determinations to the GLO for specifically listed activities in this section.

New §30.12(a)(1)(A)(i) and (ii) identify the following United States Department of the Interior activities subject to consistency review: "(i) modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c); and (ii) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337."

New §30.12(a)(1)(B) identifies a United States Environmental Protection Agency activity subject to consistency review: "Selection of remedial actions under 42 United States Code Annotated §9604(c)."

New §30.12(a)(1)(C)(i) - (viii) identify the following United States Army Corps of Engineer activities subject to consistency review: "(i) small river and harbor improvement projects under 33 United States Code Annotated, §577; (ii) water resources development projects under 42 United States Code Annotated, §1962d-5; (iii) small flood control projects under 33 United States Code Annotated, §701s; (iv) small beach erosion control projects under 33 United States Code Annotated, §426g; (v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338; (vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336; (vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i; and (viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j."

New §30.12(a)(1)(D)(i) and (ii) identify the following Federal Emergency Management Agency activities subject to consistency review: "(i) model floodplain ordinances; and (ii) approval of a community's participation in the National Flood Insurance Program (NFIP) under the Code of Federal Regulations, Title 44, Part 59, subpart B."

New §30.12(a)(1)(E)(i) and (ii) identify the following General Services Administration activities subject to consistency review: "(i) acquisitions under 40 United States Code Annotated, §602 and §603; and (ii) construction under 40 United States Code Annotated, §605."

New §30.12(a)(1)(F)(i) and (ii) identify the following federal agency activities subject to consistency review: "(i) all other development projects; (ii) and natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675)."

New §30.12(a)(2), relating to Federal License or Permit Activities, explains that for all proposed activities requiring a federal license or permit, a consistency certification must be submitted to GLO pursuant to the requirements of the Federal Consistency regulations in 15 CFR Part 930, subpart D.

New §30.12(a)(2)(A) - (F) identify federal agencies and associated licenses and permits that have reasonably foreseeable adverse effects upon CNRAs and require applicants to submit a consistency certification to the GLO if the proposed action occurs in the Texas coastal zone.

New §30.12(a)(2)(A)(i) - (v) identify the following Environmental Protection Agency activities that are subject to consistency review: "(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342; (ii) ocean dumping permits under 33 United States Code Annotated, §1412; (iii) approvals of land disposal of wastes under 42 United States Code Annotated, §6924(d); and (iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and (v) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f."

New §30.12(a)(2)(B)(i) - (v) identify the following United States Army Corps of Engineers activities and Memoranda of Agreement that are subject to consistency review: "(i) ocean dumping permits under 33 United States Code Annotated, §1413; (ii) dredge and fill permits under 33 United States Code Annotated, §1344; (iii) permits under §9 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §401; (iv) permits under §10 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §403; and (v) Memoranda of Agreement for mitigation banking."

New §30.12(a)(2)(C)(i) - (iii) identify the following United States Department of Transportation approvals and licenses that are subject to consistency review: "(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106; (ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525; and (iii) deepwater port licenses under 33 United States Code Annotated, §1503."

New §30.12(a)(2)(D)(i) identifies airport operating certificates for the Federal Aviation Administration under 49 United States Code Annotated, §44702.

New §30.12(a)(2)(E)(i) - (iii) identify the following Federal Energy Regulatory Commission authorizations that are subject to consistency review: "(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f; (ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and (iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978, 16 United States Code Annotated, §2705(d)."

New §30.12(a)(2)(F) identifies Nuclear Regulatory Commission licenses that are subject to consistency review: "Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133."

New §30.12(a)(3), relating to State and Local Government Applications for Federal Assistance, is adopted with changes from the language in the proposal. The change to this subsection was made in response to comments and discussion with NOAA Office for Coastal Management (OCM) staff regarding the list of federal financial assistance awards in the proposal, and the GLO's decision to postpone listing certain federal financial assistance awards pending further analysis and evaluation. Specifically, §30.12(a)(3) has been changed to remove the proposed list of federal financial assistance awards. Instead of the proposed list, the subsection adds and adopts language that provides as follows: "Federal financial assistance awards may be subject to federal consistency review in accordance with the procedures specified at 15 CFR §§ 930.98 and 930.54 with the approval of the Office for Coastal Management within the National Oceanic and Atmospheric Administration." As the GLO is no longer including listed federal financial assistance awards, the language in adopted §30.12(a)(3) is intended to outline the procedure for

reviewing unlisted federal financial assistance awards pursuant to the federal regulations.

New §30.12(b), relating to the review of OCS Exploration Plans, and Development and Production Plans, as set out in 43 United States Code, §§1340(c) and 1351, includes "activities that are authorized by the United States Department of the Interior and provides for the review of a federal license or permit activity described in detail in OCS plans, including pipeline activities."

New §30.12(c), relating to the review of a proposed federal agency activity that is unlisted in subsection (a)(1) of this section, states that the GLO will follow the federal regulations process set out in 15 CFR §930.34(c) and that if the GLO elects to review a proposed federal license or permit activity of a type that is unlisted in subsection (a)(2) of this section the GLO will follow the procedures set out in 15 CFR §930.54.

New §30.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects, adds a section that details the required information for a consistency determination and the associated federal consistency review process for a federal agency activity or development project.

New §30.20(a), relating to the Review of a Consistency Determination, sets forth the review standard that the GLO must follow when conducting a consistency review of a federal agency activity or development project as set out in 15 CFR Part 930, subpart C. The new subsection requires a federal agency activity or development project to be consistent with the CMP goals and enforceable policies.

New §30.20(b), relating to Required Information for a Consistency Determination, identifies the information required for a consistency determination as set out in 15 CFR §930.39. This includes: a detailed description of the activity, its associated facilities, coastal effects, and comprehensive data and information sufficient to support the federal agency's consistency statement. The new subsection also provides that the amount of detail in the evaluation of the enforceable policies, activity description and supporting information is to be commensurate with the expected coastal effects of the activity. Additionally, a federal agency may submit the information to the GLO in any manner that it chooses so long as the requirements in 15 CFR §930.39 are met. The federal agency is also required to provide the consistency determination to the GLO for review no later than ninety (90) days prior to the approval of the activity. The new subsection also requires a statement in the consistency determination indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Texas CMP. This is in conformance with 15 CFR §930.39(a).

New §30.20(c), relating to Request for Information, explains how GLO staff may request information from a federal agency if the federal agency provides an incomplete consistency determination, the GLO provides notice of the incomplete submission in accordance with the federal regulations, and it is the type of information identified in 15 CFR §930.39(a).

New §30.20(d), relating to NEPA or other Project documents, describes the types of documents, a federal agency may provide to GLO to sufficiently support the federal agency's consistency determination in accordance with 15 CFR §930.39(a).

New §30.20(e), relating to Demonstration of Consistency, describes the type of information a federal agency must provide in support of the federal agency's consistency determination. The information is set out in 15 CFR §930.39(a) and this section notes that the federal agency should demonstrate consistency to the maximum extent practicable with the CMP goals and enforceable policies. The demonstration of consistency may rely upon information contained in NEPA documents or other project documents, but if a consistency determination is embedded within a NEPA document, this should be clearly stated and provided to the GLO. The consistency determination should also meet all of the information requirements of 15 CFR §930.39(a) which can include a reference to the findings of the NEPA document.

New §30.20(f), relating to Public Participation, provides a description of the public notice and comment period for a consistency determination in accordance with 15 CFR §930.42. The new subsection provides that the GLO may issue joint public notices with federal agencies involved with the respective activity or development project. The GLO may also extend the public notice and comment period or schedule a public meeting. The new subsection also provides that the GLO will consider all comments received during the notice period.

New §30.20(g), relating to Referral to Commissioner, describes the process for referring a matter to the Commissioner for an elevated consistency review. This new subsection states that to refer an issue, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit a letter or email addressed to the CMP coordinator with a request that the matter be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts to CNRAs should be addressed in the letter or email. The referral process tracks the requirements in Texas Natural Resources Code, §33.206(e), as amended by SB 656.

New §30.20(h), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review for a federal agency activity or development project. The new subsection states that the Commissioner will consider: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or applicant; and (4) other relevant information to determine consistency with CMP goals and enforceable policies. This new subsection conforms to the requirements of Texas Natural Resources Code, §33.204(e), as amended by SB 656.

New §30.20(i), relating to the Review Period, sets the timeframe in which GLO will provide a decision or status update to the federal agency on the consistency determination. Under the new subsection, the GLO will provide a status update to the federal agency in writing within sixty (60) days from the date the consistency determination was deemed administratively complete. If the GLO has not completed its review during this time, the GLO will explain the basis for delay and follow the procedures set out in 15 CFR §930.36(b)(2) if an additional fifteen (15) days for review is necessary. The new subsection further states that a concurrence may be presumed by the federal agency if the matter has not been acted upon by the GLO after sixty (60) days from the date of administrative completeness and the GLO has not requested additional time for review. The sixty (60) day presumption of concurrence is set out in 15 CFR §930.41.

New §30.20(j), relating to Commissioner Objection, describes the process in which the Commissioner may object to the con-

sistency determination. The new subsection provides that the federal agency will be notified of the objection prior to the time, including any extensions, that the federal agency is entitled to presume the activity's consistency. The Commissioner's objection will follow the requirements provided in 15 CFR §930.43 which set out the required content for an objection.

New §30.20(k), relating to Mediation, describes how mediation may be sought if the Commissioner objects to the federal agency's consistency determination because it is deemed inconsistent with the CMP goals and enforceable policies. The mediation process is set out in 15 CFR §§930.110 et seq.

New §30.20(l), relating to Final Approval, describes the time that must pass before a federal agency may make a decision to undertake a proposed federal agency activity subject to CZMA review in §30.12 of this chapter.

New §30.30, relating to Consistency Certifications for Federal License or Permit Activities, describes the requirements for a consistency certification and the federal consistency process associated with the review of federal license or permit activities as provided for in 15 CFR Part 930, subpart D.

New §30.30(a), relating to Review of a Consistency Certification, describes the consistency certification review process for a non-federal applicant for a federal license or permit activity listed under §30.12 of this chapter. This new subsection provides the applicable review standard that the GLO will follow when conducting a consistency certification review of a federal license or permit activity in accordance with 15 CFR Part 930, subpart D. The new subsection also requires a federal license or permit activity listed under §30.12 of this Chapter to be consistent with the CMP goals and enforceable policies.

New §30.30(b), relating to Required Information for a Consistency Certification, requires an applicant for a federal license or permit activity to submit a consistency certification to the GLO for a consistency review. The consistency certification must be complete and follow the requirements set out in 15 CFR §930.57. This includes the necessary data and information that is required in 15 CFR §930.58 and §§30.30(b)(1), (2), (3), and (4) of this Chapter. The applicant must also provide a statement affirming that the "The proposed activity complies with the enforceable policies of Texas's approved coastal management program and will be conducted in a manner consistent with such program" which is in conformance with 15 CFR §930.57(b).

New §30.30(c), relating to a Request for Necessary Data and Information, states that GLO staff may request necessary data and information from the applicant when it has received an incomplete submission of information, as required by 15 CFR §§930.57 and 930.58. The GLO will send a notice of incomplete submission and may delay the start of the review period if the request for this information is provided within thirty (30) days from the date the consistency certification is received by the GLO.

New §30.30(d), relating to the Review Period, provides the GLO up to six (6) months to conduct the consistency review and issue a decision on the consistency certification request. The review period is initiated when the required necessary data and information has been received by the GLO. The required necessary data and information is identified in 15 CFR §930.58 and 31 TAC §30.30(b). The GLO cannot require the issuance of state or local permits to begin the consistency review, but the lack of this information may result in an objection based on lack of information because the GLO is unable to complete the consistency review without the identified information.

New §30.30(e), relating to Mutual Stay Agreement, allows the GLO and applicant to enter into a mutual written agreement with the applicant to stay the CZMA review period in accordance with 15 CFR §930.60(b). The mutual stay agreement provides additional time for the applicant and GLO to resolve any issues before the consistency review period expires. For a stay to be executed, the mutual stay agreement must be entered into before the consistency review period expires. The remaining day count in the federal consistency review period that is available on the date the mutual stay agreement is signed will be available to the GLO for purposes of completing the consistency review after the stay agreement expires.

New §30.30(f), relating to Permit Assistance, states that the GLO will provide permit assistance and guidance when requested by the applicant in accordance with 15 CFR §930.56.

New §30.30(g), relating to Consolidation of Federal License or Permit Activities, encourages applicants to consolidate related federal license or permit activities that are identified in §30.12 of this chapter (relating to Listed Federal Activities Subject to CZMA Review) to maximize efficiency and avoid unnecessary delays by reviewing all federal license or permit activities relating to a project at the same time.

New §30.30(h), relating to Public Participation, describes the public participation process which is in accordance with 15 CFR §930.61. The new subsection states that the GLO may issue joint public notices with the federal permitting or licensing agency. The new subsection also provides that the GLO may extend the public comment period or schedule a public meeting on the consistency certification. Comments received during the comment period will be considered.

New §30.30(i), relating to Demonstration of Consistency, explains how an applicant should demonstrate that the federal license or permit activity under review is consistent with the CMP goals and enforceable policies. The new subsection allows required state and local permits that have been issued to the applicant to be used by the applicant as evidence to demonstrate consistency with the CMP goals and enforceable policies.

New §30.30(j), relating to Referral to Commissioner, explains the process for referring a matter to the Commissioner for an elevated consistency review of the consistency certification. To refer a matter, at least three committee members must agree that a significant unresolved issue exists regarding consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit a letter or email addressed to the CMP coordinator with a request that the issue be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts should be addressed in the letter or email. The referral process is consistent with the requirements in Texas Natural Resources Code, §33.206(e), as amended by SB 656.

New §30.30(k), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review of a consistency certification. The factors that will be considered include: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or applicant; and (4) other relevant information to determine consistency with CMP goals and enforce-

able policies. This new subsection conforms to the requirements of Texas Natural Resource Code, §33.204(e), as amended by SB 656.

New §30.30(l), relating to Presumption of Concurrence, describes when a concurrence may be presumed. Under the new subsection, the GLO will provide a status update in writing within ninety (90) days to the applicant seeking a federal license or permit. If the GLO has not issued a decision within six (6) months from the date the GLO received the complete consistency certification, the applicant may presume a concurrence.

New §30.30(m), relating to Commissioner Objection, provides that once a matter has been referred to the Commissioner for an elevated consistency review with the goals and enforceable policies of the CMP, the Commissioner may object to the consistency certification in accordance with the requirements in 15 CFR §930.63.

New §30.30(n), relating to Right of Appeal, provides that if the Commissioner finds that the proposed federal license or permit activity is inconsistent with the CMP goals and enforceable policies and objects to the consistency certification, the GLO shall notify the applicant of its appeal rights to the U.S. Secretary of Commerce, and the federal agency shall not authorize the federal license or permit activity, except as provided through the appeal process established in 15 CFR Part 930, subpart H.

New §30.40(a), relating to Consistency Review of an Outer Continental Shelf (OCS) Exploration, Development, and Production Activities, requires that an authorization from the U.S. Department of the Interior pursuant to the Outer Continental Shelf Lands Act (43 USC §§1331-1356(a)) be consistent with the goals and enforceable policies of the CMP. The GLO shall conform to the requirements and procedures set out in 15 CFR Part 930, subpart E and 43 U.S.C. §§1331 et seq.

New §30.40(b), relating to Consistency Certification of an OCS Plan, requires that any person, as defined at 15 CFR §930.72, submitting any OCS plan to the Secretary of Interior or designee shall provide a copy of the OCS plan and that the consistency certification include a provision affirming as follows: "The proposed activities described in detail in this plan shall comply with Texas' approved coastal management program and will be conducted in a manner consistent with the program." The new section also incorporates the requirement in 15 CFR §930.76 that the Secretary of the Interior or designee must provide the plan and consistency certification to the appropriate State agency, which in this case is the GLO.

New §30.40(c), relating to Request for Information, states that GLO's six (6) month review period on a consistency certification for an OCS plan begins on the date the GLO receives the information required at 15 CFR §930.76, and all the necessary data and information required at 15 CFR §930.58(a). Pursuant to 15 CFR §930.60(a), within thirty (30) days of an incomplete submission, GLO shall inform the person submitting the OCS plan that the GLO six (6) month review period will commence on the date of receipt of the missing consistency certification or necessary data and information. The GLO may waive the requirement that all necessary data and information described in §930.58(a) be submitted before commencement of the State agency's six (6) month consistency review. In the event of such a waiver, the requirements of 15 CFR §930.58(a) must be satisfied prior to the end of the six (6) month consistency review period or the GLO may object to the consistency certification for insufficient information.

New §30.40(d), relating to Consolidation of Related Authorizations, encourages persons submitting OCS plans to consolidate related federal licenses and permits that are subject to GLO review. This is not required but would allow for a more efficient review and minimize the duplication of effort and unnecessary delays. *See* 15 CFR §930.81.

New §30.40(e), relating to Public Participation, describes the public notice and comment period in accordance with 15 CFR §930.77. The new subsection provides that the GLO may issue joint public notices with the federal permitting or licensing agency. The new subsection also provides that the GLO may extend the public comment period or schedule a public meeting on the consistency certification. Comments received during the comment period will be considered by the GLO.

New §30.40(f), relating to Referral to Commissioner, explains the process for referring a matter to the Commissioner for an elevated consistency review of the OCS plan's consistency certification. To refer an issue, at least three committee members must agree that a significant unresolved issue exists regarding the OCS plan's consistency with the CMP goals and enforceable policies. If this requirement is met, then at least three committee members must submit in writing a letter or email addressed to the CMP coordinator with a request that the issue be referred to the Commissioner for an elevated consistency review. Any applicable CMP goals and enforceable policies that are unresolved and potential impacts should be addressed in the letter or email. The referral process conforms to Texas Natural Resources Code, §33.206(e), as amended.

New §30.40(g), relating to Commissioner Review, describes the factors the Commissioner must consider when conducting an elevated consistency review of an OCS Plan's consistency certification. The factors that will be considered include: (1) oral or written testimony received during the public comment period; (2) applicable CMP goals and enforceable policies; (3) information submitted by the federal agency or person; and (4) other relevant information to determine consistency with CMP goals and enforceable policies. This new subsection follows the requirements of Texas Natural Resources Code, §33.204(e), as amended by SB 656.

New §30.40(h), relating to Review Period, states that if the GLO has not issued a decision regarding the OCS plan within three months from the date the GLO received the administratively complete consistency certification, then the GLO shall notify the person submitting the plan, Secretary of the Interior, and the Office for Coastal Management (OCM) Director of the status of the review and basis for further delay. *See* 15 CFR §930.78. The GLO's review period is up to six (6) months but if no action is taken by the GLO, a concurrence may be presumed after three (3) months.

New §30.40(i), relating to Presumption of Concurrence, provides that if the GLO does not act on an OCS plan within three (3) months of the date from when the GLO receives an administratively complete consistency certification, then the GLO's concurrence with the consistency certification shall be conclusively presumed. If the GLO provides a status of review letter within three (3) months and continues its review, a concurrence may be presumed at six (6) months. Additionally, if the GLO issues a concurrence or the action is presumed concurrent, then the person submitting the OCS plan is not required to submit additional consistency certifications to the GLO for the individual federal authorizations that will be required to authorize the activities described in detail in the OCS plan as set out in 15 CFR §930.79.

New §30.40(j), relating to Commissioner Objection, provides that once a matter has been referred to the Commissioner for an elevated consistency review with CMP goals and enforceable policies, the Commissioner may object to a federal license or permit activity described in detail in the OCS plan's consistency certification as provided for in 15 CFR §930.79. The GLO will notify the person of its appeal rights to the U.S. Secretary of Commerce.

Proposed new §30.50, relating to Consistency Review of Federal Assistance Applications, is withdrawn. Given that new §30.12(a)(3), as adopted with the changes discussed above, does not include listed federal financial assistance awards, the GLO has determined that the more detailed review procedures in proposed new §30.50 are not needed at this time. Although §30.50 is withdrawn, the GLO intends to reserve the section number for future use.

New §30.60, relating to Equivalent Federal and State Actions, sets out the referral thresholds of a proposed activity for state consistency review, and does not allow a state and federal consistency review to occur for the same action.

New §30.60(a), relating to Below Thresholds, provides that if a proposed activity requiring a state agency or subdivision action falls below thresholds for referral approved under Chapter 29, Subchapter B of this title (relating to Commissioner Certification of State Agency Rules and Approval of Thresholds for Referral) and requires an equivalent federal permit or license under this chapter, the GLO may only determine the state agency or subdivision action's consistency by using the process provided in Chapter 29 of this title (relating to Procedures for State Consistency with Coastal Management Program Goals and Policies). The GLO's determination regarding the consistency of an action under this subsection constitutes the state's determination regarding consistency of the equivalent federal action.

New §30.60(b), relating to Above Thresholds, states that if an activity requiring a state agency or subdivision action meets the threshold for referring the matter for an elevated consistency review and requires an equivalent federal permit or license, the GLO may determine the consistency of the state agency or subdivision action or the federal license or permit, but not both. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

New §30.60(c), relating to Equivalent State Action or Federal Action, explains that an action made by the GLO under §§30.60(a) and (b) is the state's determination regarding consistency of the equivalent agency or subdivision action or federal action. Texas Natural Resource Code, §33.206(f), as amended by SB 656.

PUBLIC COMMENTS

During the public comment period, GLO received comments from NOAA OCM staff regarding the proposed new rules in Chapter 30. Specifically, OCM staff provided comments regarding the federal consistency list in §30.12. Following discussion between GLO and OCM staff, several of the comments were resolved and resulted in no changes to the proposal. In response to OCM comments regarding proposed §30.12(a)(3), relating to State and Local Government Applications for Federal Assistance, the GLO decided to revise the subsection. Specifically, the proposed list of federal financial assistance awards in §30.12(a)(3) was removed and replaced with the adopted language which outlines the procedures for reviewing unlisted federal financial assistance awards pursuant to the federal regulations. Pending further evaluation and analysis, the GLO may decide in the future to propose adding a list of certain federal financial assistance awards and seek OCM approval of the same, in which case this rule would be proposed for amendment in a subsequent rulemaking action. In the meantime, given the changes to §30.12(a)(3) as adopted, the GLO has determined that the procedures in proposed §30.50 are not needed at this time and therefore §30.50 is withdrawn.

No other comments were received on the proposed repeals and new rules.

31 TAC §§30.10 - 30.13, 30.20 - 30.37, 30.40 - 30.45, 30.50 - 30.54

STATUTORY AUTHORITY

The repeals are adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The repeals are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

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

Filed with the Office of the Secretary of State on June 20, 2023.

TRD-202302230
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

CHAPTER 30. PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

31 TAC §§30.10 - 30.12, 30.20, 30.30, 30.40, 30.60

STATUTORY AUTHORITY

The new sections are adopted under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the GLO and the commissioner to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the GLO and the commissioner to develop, coordinate, and implement a continuing comprehensive CMP; §33.054, which allows the commissioner to review and amend the CMP; and §33.204, which authorizes the commissioner to adopt goals and policies of the CMP by rule.

The adopted new sections are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§30.12. Federal Listed Activities Subject to CZMA Review.

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs) within the coastal zone. This list of federal actions includes federal agency activities, federal license or permit activities, and federal assistance applications that are subject to CZMA federal consistency review by the GLO.

(1) Federal Agency Activities and Development Projects. For all actions proposed by or on behalf of federal agencies that may have reasonably foreseeable effects on CNRAs, a consistency determination or negative determination must be submitted to the GLO pursuant to the requirements of the Federal Consistency regulations found at 15 CFR Part 930, subpart C.

(A) United States Department of the Interior:

(i) modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c); and

(ii) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337;

(B) United States Environmental Protection Agency. Selection of remedial actions under 42 United States Code Annotated, §9604(c);

(C) United States Army Corps of Engineers:

(i) small river and harbor improvement projects under 33 United States Code Annotated, §577;

(ii) water resources development projects under 42 United States Code Annotated, §1962d-5;

(iii) small flood control projects under 33 United States Code Annotated, §701s;

(iv) small beach erosion control projects under 33 United States Code Annotated, §426g;

(v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338;

(vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336;

(vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i; and

(viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j;

(D) Federal Emergency Management Agency:

(i) model floodplain ordinances; and

(ii) approval of a community's participation in the National Flood Insurance Program (NFIP) under the Code of Federal Regulations, Title 44, Part 59, subpart B;

(E) General Services Administration:

(i) acquisitions under 40 United States Code Annotated, §602 and §603; and

(ii) construction under 40 United States Code Annotated, §605;

(F) All federal agencies:

(i) all other development projects; and

(ii) natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675).

(2) Federal license or permit activities. For all actions proposed by an applicant a consistency certification must be submitted to the GLO pursuant to the requirements of the Federal Consistency regulations in 15 CFR Part 930, subpart D.

(A) Environmental Protection Agency:

(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412;

(iii) approvals of land disposal of wastes under 42 United States Code Annotated, §6924(d);

(iv) development of total maximum daily loads (TMDLs) and associated federally developed TMDL implementation plans under 33 United States Code Annotated, §1313; and

(v) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f;

(B) United States Army Corps of Engineers:

(i) ocean dumping permits under 33 United States Code Annotated, §1413;

(ii) dredge and fill permits under 33 United States Code Annotated, §1344;

(iii) permits under §9 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §401;

(iv) permits under §10 of the Rivers and Harbor Act of 1899, 33 United States Code Annotated, §403; and

(v) Memoranda of Agreement for mitigation banking;

(C) United States Department of Transportation:

(i) approvals under §7(a) of the Federal-Aid Highway Amendments Act of 1963, 23 United States Code Annotated, §106;

(ii) approvals under §502 of the General Bridge Act of 1946, 33 United States Code Annotated, §525; and

(iii) Deepwater port licenses under 33 United States Code Annotated, §1503;

(D) Federal Aviation Administration: Airport operating certificates under 49 United States Code Annotated, §44702;

(E) Federal Energy Regulatory Commission:

(i) certificates under §7 of the Natural Gas Act, 15 United States Code Annotated, §717f;

(ii) licenses under §4 of the Federal Power Act, 16 United States Code Annotated, §797(e); and

(iii) exemptions under §403 of the Public Utility Regulatory Policies Act of 1978,16 United States Code Annotated, §2705(d);

(F) Nuclear Regulatory Commission. Licenses under §103 of the Atomic Energy Act of 1954, 42 United States Code Annotated, §2133.

(3) State and Local Government Applications for Federal Assistance. Federal financial assistance awards may be subject to federal consistency review in accordance with the procedures specified at 15 CFR §§ 930.98 and 930.54 with the approval of the Office for Coastal Management within the National Oceanic and Atmospheric Administration.

(b) OCS Exploration Plans and Development and Production Plans. 43 United States Code, §§1340(c) and 1351. United States Department of the Interior. This includes federal agency actions requiring a license or permit described in detail in OCS plans, including pipeline activities.

(c) In the event the GLO elects to review a proposed federal agency activity of a type that is unlisted in subsection (a)(1) of this section the GLO will follow the federal regulations process set out in 15 CFR §930.34(c). If the GLO elects to review a proposed federal license or permit activity of a type that is unlisted in subsection (a)(2) of this section, the GLO will follow the procedures set out in 15 CFR §930.54.

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 June 20, 2023.

TRD-202302231
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: July 10, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-1859

♦ ♦ ♦

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.2

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2023 adopted an amendment to 31 TAC §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules, without changes to the proposed text as published in the February 17, 2023, issue of the *Texas Register* (48 TexReg 824). The rule will not be republished.

The amendment authorizes reciprocal license privileges regarding the activities of freshwater fishing guides in the shared boundary waters of Texas and Louisiana. The department has entered into a reciprocity agreement with the Louisiana Department of Wildlife and Fisheries to allow appropriately licensed residents of both states to engage in business as freshwater fishing guides in the shared boundary fresh waters of either state.

The department received one comment opposing adoption of the rule as proposed. The commenter did not provide a reason or rationale for opposing adoption. No changes were made as a result of the comment.

The department received 11 comments supporting adoption of the rule as proposed.

The Coastal Conservation Association commented in support of adoption of the rule as proposed.

The amendment is adopted under Parks and Wildlife Code, §41.003, which authorizes the director to negotiate for the commission with the proper representatives of each state having a common border with Texas to allow reciprocal fishing on rivers and lakes on the common boundary between Texas and the border state, and under Parks and Wildlife Code, §41.006, which authorizes the commission to make regulations conforming to an agreement under §41.003 for the conservation of fish and wildlife.

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 June 21, 2023.

TRD-202302241
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: July 11, 2023
Proposal publication date: February 17, 2023
For further information, please call: (512) 389-4775

♦ ♦ ♦

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 23, 2023, adopted the repeal of §57.985 and amendments to 31 TAC §§57.971 - 57.974, 57.981, and 57.992, concerning the Statewide Recreational and Commercial Fishing Proclamation. The amendments to §57.981 and §57.992 are adopted with changes to the proposed text as published in the February 17, 2023, issue of the *Texas Register* (48 TexReg 825). The repeal of §57.985 and the amendments to §§57.971 - 57.974 are adopted without change and will not be republished.

The change to §57.981, concerning Bag, Possession, and Length Limits, removes an exception to catfish harvest regulations currently in effect for Dixieland Reservoir in Cameron County. Biological assessments have revealed that Dixieland Reservoir now meets the definition of a community fishing lake (CFL) because it is less than 75 acres in size and located within a city park.

The change to §57.981 also eliminates the proposed vessel limit for cobia. The proposed rule would have instituted a bag limit of one cobia per person per day with a vessel limit of two cobia per day. The proposal was intended to make harvest regulations for cobia in Texas waters consistent with federal rules in effect in federal waters. In the course of its deliberations, the commission determined that the vessel limit could in some cases act to

restrict angler opportunity in Texas waters by eliminating the opportunity for more than two persons aboard any vessel to retain a cobia if desired.

The change to §57.981 also alters subsection (d)(2) to replace the phrase "greater than 14 inches" with the phrase "14 inches or greater," with respect to minimum length limits for black bass, which is necessary to prevent confusion. The department does not intend for the length limit to prohibit the retention of fish of exactly 14 inches in length. The change also alters subsection (d)(2) by adding language to clarify that Elm Lake is on Brazos Bend State Park and inserting Lake Pilant (also in Brazos Bend State Park) in the list of affected waterbodies because it is one of the state park lakes that will continue to be managed under CFL rules.

The change to §57.992, concerning Bag, Possession, and Length Limits for commercial harvest, would also eliminate the proposed vessel limit for cobia in state waters, for the same reasons articulated in the discussion of the changes to §57.981.

The repeal of §57.985, concerning Largemouth Bass - Special Bag, Possession, and Length Limits, is necessary to rescind what was, in effect, a temporary regulation that is no longer necessary because its provisions are now contained in §57.981(d)(1)(C)(iii).

The amendment to §57.971, concerning Definitions, alters the definition for "community fishing lake" and add new definitions for "descending device" and "venting tool." The alteration to the definition of community fishing lake replaces the term "public park" with the phrase "municipal, city, county, or state park" to exclude federal parklands (which are not regulated by the department) and to clarify that the provisions of the subchapter with respect to angling on community fishing lakes apply to waterbodies at all levels of political jurisdiction within the state.

The amendment also defines the terms "descending device" and "venting tool." Federal law (50 CFR Part 622) requires anglers on commercial vessels, charter vessels and headboats (for-hire vessels), and private recreational vessels to have a descending device or venting tool rigged and ready to use when fishing for Gulf reef fish in federal waters, which is intended to reduce release mortality caused by barotrauma (the lethal expansion of gases inside a fish when it is caught at depth and quickly brought to the surface).

The amendment to §57.972, concerning General Rules, requires a descending device or venting tool be rigged, present, and ready for use while fishing for reef fish, and be deployed on reef fish exhibiting signs of barotrauma when returning reef fish to the water; thus, the terms must be defined for purposes of compliance and enforcement.

The amendment to §57.973, concerning Devices, Means and Methods, consists of several actions.

Several components of this rulemaking affect harvest regulations on community fishing lakes (CFLs). CFLs are currently defined as "all public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park." Because the overwhelming majority of CFLs are proximally located to urban and suburban environments, the department believes they are an ideal "gateway" to the angling experience for the uninitiated and curious public. The department wishes to encourage new participants to the angling experience and believes that making the experience less intimidating/confusing is crucial to that goal. Therefore, the amendments in concert implement a single harvest regulation applicable on all CFLs (with certain specific exceptions based on management goals on specific lakes), which the department believes will make the angling experience less daunting to those unfamiliar with it as well as making compliance and enforcement easier for all concerned. Historically, the department has treated virtually all state park lakes, irrespective of size, as CFLs. The CFL rules as adopted exclude several lakes associated with certain state parks that are currently being managed as CFLs (because of their size); however, the department wishes to retain certain restrictions governing means and methods (restriction of method of take to pole-and-line only, limitations on taking devices per angler) on those water bodies, which is necessary, given the high angling pressure typical on those water bodies, to equitably distribute angling opportunity and reduce user conflicts. Therefore, those state park water bodies must be identified for those restrictions to apply.

The amendment also removes Gibbons Creek Reservoir in Grimes County from special gear restriction rules because there is no longer public access to the reservoir. Therefore, the special restrictions are no longer necessary since the high angling pressure that originally necessitated them will be greatly reduced.

The amendment to §57.974, concerning Reservoir Boundaries, adds boundary descriptions for two reservoirs, corrects an inaccurate boundary description, and removes the boundary description for one reservoir. In cases where harvest regulations on a stream are different from those on a reservoir created by impounding the stream, angler confusion can occur; therefore, boundary descriptions are necessary to specifically delineate the physical point separating the differential harvest rules. The amendment adds boundary descriptions for Choke Canyon Reservoir in Live Oak and McMullen counties and O. H. Ivie Reservoir in Concho, Coleman, and Runnels counties, corrects an erroneous roadway identification in the boundary for Lake Conroe in Montgomery and Walker counties, and eliminates the description for Gibbons Creek Reservoir in Grimes County (for reasons discussed earlier in this preamble).

The amendment to §57.981, concerning Bag, Possession, and Length Limits, consists of several actions. As indicated earlier in this preamble, one aspect of this rulemaking is the implementation of a single harvest regulation on CFLs. Under current rule, harvest regulations on CFLs consist of the statewide standards for various species and numerous special exceptions. The amendment creates new subsection (d)(2) to implement a bag limit of five fish, all species combined, to include not more than one black bass of 14 inches or greater in length. By imposing a standard bag limit, the department intends to make angling opportunity less intimidating for those who are curious or simply wish to engage in angling activity during a park visit. Because CFLs are routinely stocked by the department, fish population and population structure management are less complicated than on much larger waterbodies. In this context, the bag limit for CFLs is more a matter of equitable distribution of angling opportunity than of concrete management goals for fish populations. As mentioned earlier in this preamble, the revised definition of CFLs excludes larger waterbodies associated with state parks; therefore, various portions of current rules must be altered to address harvest management on those waterbodies, in particular, various special exceptions in current rules for largemouth bass and blue and channel catfish. Current subsection (d)(1)(G)(v) - (vii) must be eliminated to accommodate the new

CFL standards, although the department notes that special exceptions for blue and channel catfish on lakes Bellwood (Smith County) and Tankersley (Titus County) are eliminated, which means the statewide standard catfish harvest rules are in effect on those waterbodies. Current special exceptions for largemouth bass are removed on Lake Bright, Cleburne State Park, Meridian State Park, Rusk State Park, Buescher State Park, and Lake Lakewood. Finally, the amendment imposes the CFL bag limits on seven waterbodies that are not CFLs by definition, but which department biologists believe, based on specific indices such as angling pressure and population data, are best managed under that standard. Lakes Abilene, Raven, and Sheldon are now subject to the exceptions for blue and channel catfish harvest rules because they are state park lakes that would no longer be managed as CFLs.

Under current rule, largemouth bass on Lake Nasworthy in Tom Green County are managed under a special exception to the statewide standard, which consists of a 14 to 18-inch slot length limit. Fisheries data at Lake Nasworthy indicate that no change in largemouth bass abundance, size structure, or growth resulted from the implementation of the slot length limit. Harvest is low and the harvest of additional largemouth bass less than 14 inches is needed to restructure the population. Therefore, the amendment removes the special exception and harvest regulations and harvest regulations on those waterbodies revert to the statewide standard.

The amendment also implements a catch-and-release restriction for harvest of largemouth bass on Lake Forest Park in Denton County. The lake has been undergoing renovation activities including dam replacement, silt removal, fish habitat improvements, and fish stocking. The catch-and-release restriction is intended to temporarily protect the initial year-classes of stocked largemouth bass to develop into a quality, self-sustaining population.

Additionally, what was previously known as the Bedford Boys Ranch Lake in Tarrant County has been renamed; therefore, the amendment reflects that fact. The new name is Generations Park.

As mentioned previously in this preamble, the amendments result in the removal of exceptions to the statewide harvest regulations specific to Gibbons Creek Reservoir in Grimes County; thus, the department notes that harvest regulations on Gibbons Creek revert to the statewide standard for all species.

Finally, the amendment alters recreational bag and possession limits for cobia and prohibits the recreational retention or landing of shortfin mako sharks, both in response to federal actions. The National Marine Fisheries Service has prohibited the retention or landing of shortfin mako sharks in response to concerns about declining populations. The amendment is intended to conform state regulations with federal regulations, which is intended to prevent angler confusion and enhance compliance, administration, and enforcement. Concerns with declining stocks of cobia in the Gulf of Mexico have resulted in federal changes that reduce the daily bag limit (from two fish to one fish) and implement a boat limit of two fish. The amendment makes Texas rules regarding personal daily bag limits consistent with federal rules with the exception of the two-fish vessel limit.

The amendment to §57.992, concerning Bag, Possession, and Length Limits, implements federal actions regarding cobia and shortfin mako sharks with respect to commercial fishing. Those actions are identical to the actions described in the discussion of the adopted amendment to §57.981 and are undertaken for the same reasons.

The department received 22 comments opposing adoption of the portion of the proposed amendments that affects community fishing lakes (CFLs) and selected state parks lakes managed under CFL regulations. Of those comments, four articulated a reason or rationale for opposition. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that pole restrictions on CFLs are unnecessary and overreaching. The department disagrees with the comment and responds that CFLs are small waterbodies stocked by the department in order to provide angling opportunities in urban areas and to introduce novice anglers to the fishing experience. As such they are quite popular. Gear restrictions are necessary to equitably distribute angling opportunity and to prevent user conflicts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the uniform five-fish bag limit on CFLs is "nonsense." The commenter stated the bag limit will result in "unnatural over breeding of certain fish versus others" and that instead of "sweeping blanket policies" the department should leave fisheries management to lake authorities, counties or cities. The department disagrees with the comment and responds that because CFLs are regularly stocked by the department and typically experience significant angling pressure, species composition is not a significant management concern. The department also responds that by statute the department is the sole management authority for the public fisheries resources of the state, which means that lake authorities, counties, and cities are prohibited from resource regulation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the gear restrictions for CFLs should allow no more than three, rather than two, pole-and-line taking devices per person, because gear can break and anglers should be allowed to have a back-up. The department disagrees with the comment and responds that the rules prohibit the use of more than two devices by any person at the same time, not the possession of more than two devices. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the CFL daily bag limit of one black bass of 14 inches or greater is too restrictive and unnecessary because it limits a husband and wife to one fish. The department disagrees with the comment and responds that the bag limit is a personal bag limit, meaning any person with a fishing license (if one is required) is entitled to the bag and length limits in effect on any waterbody.

The department received 668 comments supporting adoption of the rule as proposed.

The department received six comments opposing adoption of the proposed amendment to §57.974, concerning reservoir boundaries. None of the commenters provided a reason or rationale for opposing adoption. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 318 comments supporting adoption of the rule as proposed.

The department received 77 comments opposing adoption of the portion of the proposed amendment to §57.981 that eliminates exceptions to statewide harvest regulations on Gibbons Creek Reservoir. The commenters articulated a variety of reasons for opposition and the department disagrees with all of them, re-

sponding as stated in the preamble that public access by land to Gibbons Creek Reservoir is no longer possible; therefore, the only access to the waterbody is via public water upstream or downstream and the resultant decline in angling pressure makes the current harvest rules unnecessary. No changes were made as a result of the comments.

The department received 269 comments supporting adoption of the rule as proposed.

The department received 21 comments opposing adoption of the portion of the proposed amendment to §57.981 that eliminates the slot length limit for largemouth bass on Lake Nasworthy. Of those comments, three provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated the slot length limit should remain and the department should consider raising the lower end of the slot length limit to 15 inches. The commenter also stated that opinions of tournament anglers should not be what drives the regulatory process. The department disagrees with the comment and responds that fisheries data at Lake Nasworthy indicate that no change in largemouth bass abundance, size structure, or growth resulted from the implementation of the slot length limit. Harvest is low and the harvest of additional largemouth bass less than 14 inches is needed to restructure the population. Additionally, angler opinion survey data show that most anglers prefer a return to statewide length and bag limits for largemouth bass. The department also responds that management decisions are based on biological science and not the desires of any particular user group. No changes were made as a result of the comment.

One commenter opposed adoption and stated the lower end of the slot length limit should be reduced to 12 inches. The department disagrees with the comment and responds that fisheries data at Lake Nasworthy indicate that no change in largemouth bass abundance, size structure, or growth resulted from the implementation of the slot length limit. Harvest is low and the harvest of additional largemouth bass less than 14 inches is needed to restructure the population. Reducing the lower end of the slot length limit will not encourage or increase the needed harvest of largemouth bass less than 12 inches. No changes were made as a result of the comment.

One commenter opposed adoption and stated the slot length limit should be broadened. The department disagrees with the comment and responds that, as noted elsewhere in this preamble, the slot length limit on Lake Nasworthy has not been effective. No changes were made as a result of the comment.

The department received 389 comments supporting adoption of the rule as proposed.

The department received 19 comments opposing adoption of the portion of the proposed amendment to §57.981 that implements catch-and-release harvest regulations for Lake Forest Park in Denton County. Of those comments, four articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that catch-and-release provisions should not be imposed on any waterbody. The department disagrees with the comment and responds that catch-and-release restrictions are useful in situations where continued angler enjoyment can be offered while management actions are ongoing. Once a given management action is completed or discontinued, harvest regulations typically revert to either the statewide standard harvest rule for the species or an exception to the statewide standard. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's management goal of creating a self-sustaining quality largemouth bass fishery is impossible because the lake is only 15 acres in size. The department disagrees with the comment and responds that the management goal is reasonable in light of existing examples of a similar nature. No changes were made as a result of the comment.

One commenter opposed adoption and stated that catch-and-release provisions should be based on fish weight. The department disagrees with the comment and responds that imposing weight restrictions would be problematic, as the efficacy of individual measurement devices would be variable and perhaps unreliable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that harvest should be governed by a slot length limit. The department disagrees with the comment and responds that slot length limits function to protect certain age classes or stages of life history in a population, whereas catch-and-release only provisions protect all fish in the population until a viable population structure is established. No changes were made as a result of the comment.

The department received 387 comments supporting adoption of the rule as proposed.

The department received 18 comments opposing adoption of the portion of the proposed amendment to §57.981 that eliminates special catfish harvest regulations on lakes Bellwood (Smith County) and Tankersley (Titus County) and replaces them with the statewide standard harvest regulation. None of the commenters provided a reason or rationale for opposing adoption. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 318 comments supporting adoption of the rule.

The department received 21 comments opposing adoption of the portion of the proposed amendment to §57.981 that prohibits the take of shortfin mako shark. Of those comments, 11 articulated a reason or rationale for opposition. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated that there is no data to suggest that recreational angling exerts any population-level impacts on shortfin mako shark populations and the rule is therefore overreaching. The department disagrees with the comments and responds that apart from the consensus of the scientific community that the data clearly indicate overfishing of shortfin mako sharks is occurring, the intent of the rule is to conform harvest regulations in state waters with those in effect in federal waters for purposes of preventing angler confusion and to enhance compliance, administration, and enforcement. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there are too many sharks in the Gulf of Mexico as a result of federal actions, that mako sharks are not being overfished, and that more sharks are unnecessary. The department disagrees with the comment and responds that the purpose of the rule is to conform harvest regulations in state waters with those in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no evidence of overfishing of shortfin mako sharks. The department disagrees with the comment and responds that apart from the consensus of the scientific community that the data clearly indicate overfishing of shortfin mako sharks is occurring, the purpose of the rule is to conform harvest regulations in state waters with those in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many sharks decimating game fish populations. The department disagrees with the comment and responds that there is no biological evidence to suggest that there are too many sharks or that sharks exert negative population impacts on any other species of fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should not be a boat limit for shortfin mako sharks. The department agrees with the comment and responds that a boat limit was not proposed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that recreational angling should not be regulated. The department disagrees with the comment and responds that the department is required by statute to manage public fisheries resources and that in light of the popularity of fishing and the level of angling pressure, regulation of recreational angling is unquestionably necessary to protect those resources for the enjoyment of present and future generations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a boat limit of one shortfin mako shark per day. The department disagrees with the comment and responds that in addition to the department's reluctance to employ boat limits due to the sometimes problematic nature of boat limits with respect to efficient distribution of individual angling opportunity, implementing a boat limit for shortfin mako sharks is unnecessary because take of shortfin mako sharks is prohibited by the rule. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no valid reason for the proposal because "the federal regulation is not stated." The department disagrees with the comment and responds that there is a valid reason for the rule, namely, and as explained earlier in this preamble as well as in the preamble of the proposed rule, to avoid angler confusion and problematic enforcement scenarios. Additionally, the department considers that verbatim reproduction of federal regulatory language is unnecessary because the proposal preamble clearly stated that federal rules prohibit the take of shortfin mako shark in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the take of shortfin mako sharks should be prohibited for commercial anglers and allowed for recreational anglers. The department disagrees with the comment and responds that the rule is intended to prevent angler confusion; therefore, allowing any harvest of shortfin mako shark - either commercial or recreational - in Texas waters would defeat the purpose of the rule. No changes were made a result of the comment.

One commenter opposed adoption and stated that the rule will cause anglers who catch shortfin mako sharks to cut the line and leave the hook and associated tackle in the shark. The department disagrees with the comment and responds that the rule does not prohibit the catch of shortfin mako sharks, just the retention of shortfin mako sharks, and that the ethical angler will take the necessary steps to maximize the survival potential of all fish that must be released. No changes were made as a result of the comment.

The department received 128 comments supporting adoption of the rule as proposed.

The department received 15 comments opposing adoption of the portion of the proposed amendment to §57.981 that imposed requirements to possess and use descending devices and venting tools. Of those comments, five offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the rule is unnecessary in state waters because those waters are too shallow. The department disagrees with the comment and responds that a recreational saltwater license entitles the holder to fish in federal waters in addition to state waters, and notes that the rule requires the use of descending devices only on fish that exhibit signs of barotrauma. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is stupid because there are too many snapper in the Gulf. The department disagrees with the comment and responds that the rule is intended to reduce hooking mortalities in general and applies to all species of fish showing signs of barotrauma. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the real problem is "foreign commercial fishing boats overfishing the international waters off the Texas Coast" and that international limits should be established that are enforced by all countries. The department neither agrees nor disagrees with the comment and responds that international fishing agreements are not within the authority of the commission to negotiate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that compliance will be low. The department disagrees with the comment and responds that ethical anglers will do their part by complying with the rules. No changes were made as a result of the comment.

The department received 147 comments supporting adoption of the rule as proposed.

The department received 17 comments opposing adoption of the portion of the proposed amendment to §57.981 that affect the personal daily bag limit for cobia.

One commenter opposed adoption and stated that the ability to harvest wildlife resources is becoming more difficult every day. The department neither agrees nor disagrees with the comment and responds that the rule is intended to comport rules in Texas waters with those in federal waters in order to reduce confusion. The department also responds that direct and indirect effects of human population growth over the last century have created circumstances that preclude the exploitation of natural resources without restraint or limitation, which is unsustainable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are plenty of cobia. The department disagrees with the comment and responds that apart from scientific data indicating that overfishing of cobia is occurring, the intent of the rule is to comport rules in Texas waters with those in federal waters in order to reduce confusion to the most practicable extent without compromising individual angling opportunity for all persons aboard a vessel. No changes were made as a result of the comment.

One commenter opposed adoption and stated that recreational fishing is not responsible for cobia declines. The department agrees with the comment and responds that the intent of the rule is to comport rules in Texas waters with those in federal waters in order to reduce confusion. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should apply to "the Houston area" in order "to meet quotas." The department disagrees with the comment and responds that absent extraordinary situations, uniform harvest regulations are preferable because they are easy to understand and comply with, and that there are no "quotas" the department is aware of with respect to cobia harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should allow the harvest of one cobia per person per day. The department agrees with the comment and responds that the rule allows the harvest of one cobia per person per day. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is a knee-jerk reaction and a waste of time. The department disagrees with the comment and responds that apart from scientific data indicating that overfishing of cobia is occurring, the intent of the rule is to comport rules in Texas waters with those in federal waters in order to reduce confusion. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily personal bag limit should be three because "there's enough to go around." The department disagrees with the comment and responds that the data do not support a three-fish daily personal bag limit, which would result in rapid population declines. No changes were made as a result of the comment.

The department received 150 comments supporting adoption of the proposed amendment.

The department received 31 comments opposing adoption of the portion of the proposed amendment to §57.981 that would have imposed a vessel limit for the take of cobia. Of those comments, seven provided a specific reason or rationale for opposition. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that to remove the opportunity for everyone aboard a vessel to catch a cobia is overbearing and unreasonable. The department neither agrees nor disagrees with the comment and responds that after extensive deliberation, the commission was reluctant to employ boat limits due to the sometimes problematic nature of boat limits with respect to efficient distribution of individual angling opportunity; therefore, the proposed vessel limit was not adopted.

One commenter opposed adoption and stated that there should not be a vessel limit for recreational anglers. The department neither agrees nor disagrees with the comment and responds that after extensive deliberation, the commission was reluctant to employ boat limits due to the sometimes problematic nature of boat limits with respect to efficient distribution of individual angling opportunity; therefore, the proposed vessel limit was not adopted.

One commenter opposed adoption and stated that a vessel limit would cause problems on charter vessels. The department agrees with the comment and responds that the vessel limit was not adopted.

One commenter opposed adoption and stated that imposing a boat limit will only confuse the fishermen without having an impact on the species. The department neither agrees nor disagrees with the comment and responds that after extensive deliberation, the commission was reluctant to employ boat limits due to the sometimes problematic nature of boat limits with respect to efficient distribution of individual angling opportunity; therefore, the proposed vessel limit was not adopted.

One commenter opposed adoption and stated that the cobia limit per vessel per day should be four. The department neither agrees nor disagrees with the comment and responds that after extensive deliberation, the commission was reluctant to employ boat limits due to the sometimes problematic nature of boat limits with respect to efficient distribution of individual angling opportunity; therefore, the proposed vessel limit was not adopted.

One commenter opposed adoption and stated that the vessel limit should not apply to recreational anglers, which does not include party boats. The department disagrees with the comment to the extent that anyone fishing under a recreational license is engaged in recreational angling, including persons on chartered vessels, and, for reasons discussed elsewhere in this preamble, the proposed vessel limit was not adopted.

One commenter opposed adoption and stated that vessel limit should only apply to commercial anglers. The department disagrees with the comment and responds that the intent of the proposed rule was to standardize harvest regulation with those in effect in federal waters, which would affect all harvest, both recreational and commercial, but that in any case, the proposed vessel limit was not adopted.

The department received 125 comments supporting adoption of the rule as proposed.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§57.971 - 57.974

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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 June 21, 2023.

TRD-202302237
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: July 11, 2023
Proposal publication date: February 17, 2023
For further information, please call: (512) 389-4775

♦ ♦ ♦

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§57.981. Bag, Possession, and Length Limits.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's residence and is finally processed.

(b) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game and non-game fish except as otherwise provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(4) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document (WRD) from the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code. The properly executed WRD document shall accompany the wildlife resource until it reaches the possessor's residence and is finally processed. The WRD must contain the following information:

(A) the name, signature, address, and fishing license number, as required of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts); and

(D) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 38 inches.

(iii) Maximum length limit: No limit.

(B) Bass:

(i) The daily bag limit for largemouth, smallmouth, spotted, Alabama, and Guadalupe is 5, in any combination.

(ii) Alabama, Guadalupe, and spotted.

(I) No minimum length limit.

(II) No maximum length limit.

(iii) Largemouth and smallmouth.

(I) Minimum length limit: 14 inches.

(II) No maximum length limit.

(iv) Striped and their hybrids.

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(v) White.

(I) Daily bag limit: 25.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(C) Catfish:

(i) channel and blue (including hybrids and subspecies).

(I) Daily bag limit: 25 (in any combination).

(II) No minimum length limit.

(III) No maximum length limit.

(IV) It is unlawful to retain more than 10 channel and blue catfish, in the aggregate, of 20 inches or greater in length.

(ii) flathead.

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(iii) gafftopsail.

(I) No daily bag limit.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(D) Cobia.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 40 inches.

(iii) No maximum length limit.

(E) Crappie, black and white (including hybrids and subspecies).

(i) Daily bag limit: 25.

(ii) Minimum length limit: 10 inches.

(iii) No maximum length limit.

(F) Drum, black.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 14 inches.

(iii) Maximum length limit: 30 inches.

(iv) One black drum over 52 inches may be retained per day as part of the five-fish bag limit.

(G) Drum, red.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20 inches.

(iii) Maximum length limit: 28 inches.

(iv) During a license year, one red drum exceeding the maximum length limit established by this subparagraph may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Angler Red Drum Tag, or with a properly executed Duplicate Exempt Red Drum Tag, and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Angler Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as provided in this section.

(v) A person who lawfully takes a red drum under a digital license issued under the provisions of §53.3(a)(12) this title (relating to Super Combination Hunting and Fishing License Packages) or under a lifetime license with the digital tagging option provided by §53.4(a)(1) of this title (relating to Lifetime Licenses) that exceeds the maximum length limit established by this subparagraph is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use of license tags for that species; however, that person shall immediately upon take ensure that a harvest report is created and submitted via a mobile or web application provided by the department for that purpose. If the absence of data connectivity prevents the receipt of a confirmation number from the department following the report required by this subparagraph, the person who took the red drum is responsible for ensuring that the report required by this subparagraph is uploaded to the department immediately upon the availability of network connectivity.

(vi) It is an offense for any person to possess a red drum exceeding the maximum length established by this subparagraph under a digital license or digital tagging option without being in immediate physical possession of an electronic device that is:

(I) loaded with the mobile or web application designated by the department for harvest reporting under this subsection; and

(II) capable of uploading the harvest report required by this subsection.

(vii) A person who is fishing under a license identified in §53.4(a)(1) of this title and selected the fulfilment of physical tags must comply with the tagging requirements of this chapter that are applicable to the tagging of red drum under a license that is not a digital license.

(H) Flounder: all species (including hybrids and subspecies).

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(iv) During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means. On September 1, 2021, the provisions of this clause cease effect.

(v) Beginning September 1, 2021, the season for flounder is closed from November 1 through December 14 every year.

(I) Gar, alligator.

(i) Daily bag limit: 1.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) During May, no person shall take alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma border in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties.

(v) Any person who takes an alligator gar in the public waters of this state other than Falcon International Reservoir shall report the harvest via the department's website or mobile application within 24 hours of take.

(vi) Between one half-hour after sunset and one half-hour before sunrise, any lawful means other than lawful archery equipment and crossbow may be used to take an alligator gar in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section, except for persons selected for opportunity as provided in §57.972(j) of this title (relating to General Provisions).

(vii) Except for persons selected for opportunity as provided in §57.972(j) of this title, no person in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section may take an alligator gar by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise, or possess an alligator gar taken by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise.

(J) Grouper.

(i) Black.

(I) Daily bag limit: 4.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(ii) Gag.

(I) Daily bag limit: 2.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) Goliath. The take of Goliath grouper is prohibited.

(iv) Nassau. The take of Nassau grouper is prohibited.

(K) Mackerel.

(i) King.

(I) Daily bag limit: 3.

(II) Minimum length limit: 27 inches.

(III) No maximum length limit.

(ii) Spanish.

(I) Daily bag limit: 15.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(L) Marlin.

(i) Blue.

(I) No daily bag limit.

(II) Minimum length limit: 131 inches.

(III) No maximum length limit.

(ii) White.

(I) No daily bag limit.

(II) Minimum length limit: 86 inches.

(III) No maximum length limit.

(M) Mullet: all species (including hybrids and subspecies).

(i) No daily bag limit.

(ii) No minimum length limit.

(iii) From October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.

(N) Sailfish.

(i) No daily bag limit.

(ii) Minimum length limit: 84 inches.

(iii) No maximum length limit.

(O) Seatrout, spotted.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) Maximum length limit: 25 inches.

(iv) Only one spotted seatrout greater than 25 inches may be retained per day. A spotted seatrout retained under this subclause counts as part of the daily bag and possession limit.

(P) Shark: all species (including hybrids and subspecies).

(i) all species other than the species listed in clauses (ii) - (iv) of this subparagraph:

(I) Daily bag limit: 1.

(II) Minimum length limit: 64 inches.

(III) No maximum length limit.

(ii) Atlantic sharpnose, blacktip, and bonnethead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) great, scalloped, and smooth hammerhead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 99 inches.

(III) No maximum length limit.

(iv) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:

(I) Atlantic angel;

(II) Basking;

(III) Bigeye sand tiger;

(IV) Bigeye sixgill;

(V) Bigeye thresher;

(VI) Bignose;

(VII) Caribbean reef;

(VIII) Caribbean sharpnose;

(IX) Dusky;

(X) Galapagos;

(XI) Longfin mako;

(XII) Narrowtooth;

(XIII) Night;

(XIV) Sandbar;

(XV) Sand tiger;

(XVI) Sevengill;

(XVII) Shortfin mako;

(XVIII) Silky;

(XIX) Sixgill;

(XX) Smalltail;

(XXI) Whale; and

(XXII) White.

(v) Except for the species listed in clauses (ii) - (iv) of this subparagraph, sharks may be taken using pole and line, but must be taken by non-offset, non-stainless-steel circle hook when using natural bait.

(Q) Sheepshead.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(R) Snapper.

(i) Lane.

(I) Daily bag limit: None.

(II) Minimum length limit: 8 inches.

(III) No maximum length limit.

(ii) Red.

(I) Daily bag limit: 4.

(II) Minimum length limit: 15 inches.

(III) No maximum length limit.

(IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.

(V) During the period of time when the federal waters in the Exclusive Economic Zone (EEZ) are open for the recreational take of red snapper:

(-a-) the bag limit for red snapper caught in the EEZ is two, and the minimum length limit is 16 inches; and

(-b-) red snapper caught in the EEZ shall count as part of the bag limit established in subclause (I) of this clause.

(iii) Vermilion.

(I) Daily bag limit: None.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(S) Snook.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 24 inches.

(iii) Maximum length limit: 28 inches.

(T) Tarpon.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 85 inches.

(iii) No maximum length limit.

(U) Triggerfish, gray.

(i) Daily bag limit: 20.

(ii) Minimum length limit: 16 inches.

(iii) No maximum length limit.

(V) Tripletail.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 17 inches.

(iii) No maximum length limit.

(W) Trout (rainbow and brown trout, including their hybrids and subspecies).

(i) Daily bag limit: 5 (in any combination).

(ii) No minimum length limit.

(iii) No maximum length limit.

(X) Walleye and Saugeye.

(i) Daily bag limit: 5.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) Two walleye or saugeye of less than 16 inches may be retained.

(d) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(1) Freshwater species.

(A) Bass: largemouth, smallmouth, spotted, and Guadalupe (including their hybrids and subspecies). Devils River (Val Verde County) from State Highway 163 bridge crossing (Bakers Crossing) to the confluence with Big Satan Creek including all tributaries within these boundaries and all waters in the Lost Maples State Natural Area (Bandera County).

(i) Daily bag limit: 0.

(ii) No minimum length limit.

(iii) Catch and release only.

(B) Bass: largemouth and spotted.

(i) Caddo Lake (Marion and Harrison counties).

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 14 - 18 inch slot limit (largemouth bass); no limit for spotted bass.

(III) It is unlawful to retain largemouth bass between 14 and 18 inches. No more than 4 largemouth bass 18 inches or longer may be retained. Possession limit is 10.

(ii) Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 14 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(iii) Sabine River (Newton and Orange counties) from Toledo Bend dam to a line across Sabine Pass between Texas Point and Louisiana Point.

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 12 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(C) Bass: largemouth

(i) Chambers, Hardin, Galveston, Jefferson, Liberty (south of U.S. Highway 90), Newton (excluding Toledo Bend Reservoir), and Orange counties including any public waters that form boundaries with adjacent counties.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 inches.

(ii) Lake Conroe (Montgomery and Walker counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 inches.

(iii) Lakes Bellwood (Smith County), Bois d'Arc (Fannin County), Davy Crockett (Fannin County), Kurth (Angelina County), Mill Creek (Van Zandt County), Moss (Cooke), Nacogdoches (Nacogdoches County), Naconiche (Nacogdoches County), Purtis Creek State Park (Henderson and Van Zandt counties), and Raven (Walker).

(I) Daily bag limit: 5.

(II) Maximum length limit: 16 inches.

(III) It is unlawful to retain largemouth bass of greater than 16 inches in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing but may not be removed from the immediate vicinity of the lake. After weighing the bass must be released imme-

diately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

(iv) Lakes Casa Blanca (Webb County), Fairfield (Freestone County), Gilmer (Upshur County), Marine Creek Reservoir (Tarrant County), Pflugerville (Travis County), and Welsh (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(v) Generations Park (Tarrant County), Buck Lake (Kimble County), Lake Forest Park (Denton County), Lake Kyle (Hays County), and Nelson Park Lake (Taylor County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release only.

(vi) Lakes Alan Henry (Garza County), Grapevine (Denton and Tarrant counties), Jacksonville (Cherokee County), and O.H. Ivie Reservoir (Coleman, Concho, and Runnels counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) It is unlawful to retain more than two bass of less than 18 inches in length.

(vii) Lakes Athens (Henderson County), Bastrop (Bastrop County), Houston County (Houston County), Joe Pool (Dallas, Ellis, and Tarrant counties), Lady Bird (Travis County), Murvaul (Panola County), Pinkston (Shelby County), Timpson (Shelby County), Walter E. Long (Travis County), and Wheeler Branch (Somervell County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 14 - 21 inch slot limit.

(III) It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.

(viii) Lakes Fayette County (Fayette County), Fork (Wood Rains and Hopkins counties), and Monticello (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 - 24 inch slot limit.

(III) It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

(D) Bass: striped and their hybrids.

(i) Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) No more than 2 striped bass 30 inches or greater in length may be retained each day.

(ii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.

(iii) Red River (Grayson County) from Denison Dam downstream to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(III) Striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released.

(iv) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 2 (in any combination).

(II) Minimum length limit: 18 inches.

(E) Bass: white. Lakes Caddo (Harrison and Marion counties), Texoma (Cooke and Grayson counties), and Toledo Bend (Newton Sabine and Shelby counties) and Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge.

(i) Daily bag limit: 25.

(ii) Minimum length limit: No limit.

(F) Carp: common. Lady Bird Lake (Travis County).

(i) Daily bag limit: No limit.

(ii) Minimum length limit: No limit.

(iii) It is unlawful to retain more than one common carp of 33 inches or longer per day.

(G) Catfish: channel and blue catfish, their hybrids and subspecies.

(i) Lake Kyle (Hays County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release and only.

(ii) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.

(iii) Lakes Caddo (Harrison and Marion counties), Livingston (Polk, San Jacinto, Trinity, and Walker counties), Sam Rayburn (Angelina, Jasper, Nacogdoches, Sabine, and San Augustine counties), and Toledo Bend (Newton, Sabine and Shelby counties) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five catfish 30 inches or greater in length may be retained each day.

(IV) Possession limit is 50.

(iv) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 15 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than one blue catfish 30 inches or greater in length may be retained each day.

(v) Lakes Belton (Bell and Coryell counties), Bob Sandlin (Camp, Franklin, and Titus counties), Conroe (Montgomery and Walker counties), Hubbard Creek (Stephens County), Kirby (Taylor County), Lavon (Collin County), Lewisville (Denton County), Palestine (Cherokee, Anderson, Henderson, and Smith counties), Ray Hubbard (Collin, Dallas, Kaufman, and Rockwall counties), Richland-Chambers (Freestone and Navarro counties), Tawakoni (Hunt, Rains, and Van Zandt counties), and Waco (McClennan).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five blue or channel catfish 20 inches or greater may be retained each day, and of these, no more than one can be 30 inches or greater in length.

(vi) Lakes Abilene (Taylor County), Braunig (Bexar County), Calaveras (Bexar County), Choke Canyon (Live Oak and McMullen counties), Fayette County (Fayette County), Proctor (Comanche County), Raven (Walker County), and Sheldon (Harris County).

(I) Daily bag limit: 15 (in any combination).

(II) Minimum length limit: 14 inches.

(H) Catfish: flathead.

(i) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(ii) Lakes Caddo (Harrison and Marion counties) and Toledo Bend (Newton, Sabine, and Shelby) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 10.

(II) Minimum length limit: 18 inches.

(III) Possession limit: 10.

(I) Crappie: black and white crappie their hybrids and subspecies.

(i) Caddo Lake (Harrison and Marion counties), Toledo Bend Reservoir (Newton Sabine and Shelby counties), and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(ii) Lake Fork (Wood, Rains, and Hopkins counties) and Lake O' The Pines (Camp, Harrison, Marion, Morris, and Upshur counties).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 10 inches.

(III) From December 1 through the last day in February there is no minimum length limit. All crappie caught during this period must be retained.

(iii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 37 (in any combination).

(II) Minimum length limit: 10 inches.

(III) Possession limit is 50.

(iv) Lake Nasworthy (Tom Green County).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) Possession limit is 50.

(J) Drum, red. Lakes Braunig and Calaveras (Bexar County).

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20.

(iii) No maximum length limit.

(K) Gar, alligator.

(i) Falcon International Reservoir (Starr and Zapata counties).

(I) Daily bag limit: 5.

(II) No minimum length limit.

(III) No maximum length limit.

(ii) On the Trinity River and all tributary waters from the I-30 bridge in Dallas County downstream through Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Liberty, Madison, Navarro, Polk, San Jacinto, Trinity, and Walker counties to the I-10 bridge in Chambers County, including the East Fork of the Trinity River and all tributaries upstream to the Lake Ray Hubbard dam, the maximum length limit is 48 inches, except for persons selected by a department-administered drawing authorizing the take of a gar in excess of 48 inches in length.

(iii) During May, no person shall take alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma border in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties.

(L) Shad gizzard and threadfin. Trinity River below Lake Livingston (Polk and San Jacinto counties).

(i) Daily bag limit: 500 (in any combination).

(ii) No minimum length limit.

(iii) Possession limit: 1000 (in any combination).

(M) Sunfish: all species. Lake Kyle (Hays County).

(i) Daily bag limit: 0.

(ii) Minimum length limit: No limit.

(iii) Catch and release and only.

(N) Trout: rainbow and brown trout (including hybrids and subspecies).

(i) Guadalupe River (Comal County) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. 306.

(I) Daily bag limit: 1.

(II) Minimum length limit: 18 inches.

(ii) Guadalupe River (Comal County) from the easternmost bridge crossing on F.M. 306 upstream to 800 yards below the Canyon Lake dam.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 - 18 inch slot limit.

(III) It is unlawful to retain trout between 12 and 18 inches in length. No more than one trout 18 inches or greater in length may be retained each day.

(2) Except as specifically provided elsewhere in this subchapter, the daily bag limit on the waterbodies enumerated in this paragraph is 5 fish (all species combined), to include not more than 1 black bass (Micropterus spp.) of 14 inches or greater in length.

(A) All CFLs;

(B) Brushy Creek (Williamson County) from the Brushy Creek Reservoir dam downstream to the Williamson/Milam county line;

(C) Canyon Lake Project #6 (Lubbock County);

(D) Deputy Darren Goforth Park Lake (Harris County);

(E) Elm (Brazos Bend State Park in Fort Bend County);

(F) Pilant (Brazos Bend State Park in Fort Bend County);

(G) Tucker Lake (Stephens and Palo Pinto counties);

(H) North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam; and

(I) South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(3) Saltwater species. There are no exceptions to the provisions established in subsection (c)(5) of this section.

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

Filed with the Office of the Secretary of State on June 21, 2023.

TRD-202302238
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: July 11, 2023
Proposal publication date: February 17, 2023
For further information, please call: (512) 389-4775

♦ ♦ ♦

31 TAC §57.985

The repeal is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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 June 21, 2023.

TRD-202302240
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: July 11, 2023
Proposal publication date: February 17, 2023
For further information, please call: (512) 389-4775

♦ ♦ ♦

DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§57.992. Bag, Possession, and Length Limits.

(a) The possession limit applies to all aquatic animal life in the possession of or stored by any person, but does not apply to aquatic animal life that has been lawfully obtained and for which a person possesses an invoice or sales ticket showing the name and address of the seller or person from whom the aquatic animal life was obtained, the amount of aquatic animal life by number and species, date of the sale, and any other information required on a sales ticket or invoice.

(b) There are no bag, possession, or length limits on game fish, non-game fish, or shellfish, except as otherwise provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game fish, non-game fish, and shellfish, except as provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(4) The statewide daily bag and length limits for commercial fishing shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length: 34 inches.

(iii) Maximum length limit: No limit.

(B) Catfish.

(i) channel and blue (including hybrids and subspecies). The provisions of subclauses (I) - (III) of this clause apply on all waters for which an exception is not provided under subclause (IV) of this clause.

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(IV) Exceptions.

(-a-) Lakes Caddo (Harrison and Marion counties), Livingston (Polk, San Jacinto, Trinity, and Walker counties), Sam Rayburn (Angelina, Jasper, Nacogdoches, Sabine, and San Augustine counties), and Toledo Bend (Newton Sabine, and Shelby counties), and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(-1-) 50 (in any combination).

(-2-) No more than five catfish 30 inches or greater in length may be retained each day.

(-b-) Any lake lying totally within a state park and community fishing lakes: 5 (in any combination).

(-c-) Counties where sale and purchase of catfish taken from public fresh water is allowed under the provisions of Parks and Wildlife Code, §66.111(b)(5): 25 (in any combination).

(ii) Gaffstopsail.

(I) No daily bag limit.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(C) Cobia.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 40 inches.

(iii) No maximum length limit.

(D) Drum, black.

(i) Daily bag limit: None.

(ii) Minimum length limit: 14 inches.

(iii) Maximum length limit: 30 inches.

(E) Flounder: all species (including hybrids and subspecies).

(i) Daily bag limit: 30. Possession limit is equal to the daily bag limit.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(iv) During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means. On September 1, 2021, the provisions of this clause cease effect.

(v) Beginning September 1, 2021, the season for flounder is closed from November 1 through December 14 every year.

(F) Gar, alligator.

(i) Daily bag limit:

(I) On Falcon International Reservoir: 5.

(II) Remainder of the state: 1.

(ii) No minimum length limit.

(iii) No maximum length limit except that on the Trinity River and all tributary waters from the I-30 bridge in Dallas County downstream through Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Liberty, Madison, Navarro, Polk, San Jacinto, Trinity, and Walker counties to the I-10 bridge in Chambers County, including the East Fork of the Trinity River and all tributaries upstream to the Lake Ray Hubbard dam, the maximum length limit is 48 inches.

(iv) During May, no person shall take alligator gar from, or possess alligator gar while on, the Red River (including Lake Texoma) and all tributaries that drain directly or indirectly to the Red River on the Texas/Oklahoma boundary in Cooke, Grayson, Fannin, Lamar, Red River, and Bowie counties.

(v) any person who takes an alligator gar in the public waters of this state other than Falcon International Reservoir shall report the harvest via the department's website or mobile application within 24 hours of take.

(vi) Between one half-hour after sunset and one half-hour before sunrise, any lawful means other than lawful archery equipment and crossbow may be used to take an alligator gar in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section. In the portion of the Trinity River described in §57.981(d)(1)(L)(ii) of this title (relating to Bag, Possession and Length Limits), no person may take an alligator gar by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise, or possess an alligator gar taken by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise.

(G) Grouper.

(i) Black.

(I) Daily bag limit: 4.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(ii) Gag.

(I) Daily bag limit: 2.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) Goliath. The take of Goliath grouper is prohibited.

(iv) Nassau. The take of Nassau grouper is prohibited.

(H) Mackerel.

(i) King.

(I) Daily bag limit: 3.

(II) Minimum length limit: 27 inches.

(III) No maximum length limit.

(ii) Spanish.

(I) Daily bag limit: 15.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(I) Mullet: all species (including hybrids, and subspecies).

(i) No daily bag limit.

(ii) No minimum length limit.

(iii) From October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.

(J) Shark: all species (including hybrids and subspecies).

(i) all species other than the species listed in clauses (ii) - (iv) of this subparagraph:

(I) Daily bag limit: 1.

(II) Minimum length limit: 64 inches.

(III) No maximum length limit.

(ii) Atlantic sharpnose, blacktip, and bonnethead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) great, scalloped, and smooth hammerhead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 99 inches.

(III) No maximum length limit.

(iv) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:

(I) Atlantic angel;

(II) Basking;

(III) Bigeye sand tiger;

(IV) Bigeye sixgill;

(V) Bigeye thresher;

(VI) Bignose;

(VII) Caribbean reef;

(VIII) Caribbean sharpnose;

(IX) Dusky;

(X) Galapagos;

(XI) Longfin mako;

(XII) Narrowtooth;

(XIII) Night;

(XIV) Sandbar;

(XV) Sand tiger;

(XVI) Sevengill;

(XVII) Shortfin mako;

(XVIII) Silky;

(XIX) Sixgill;

(XX) Smalltail;

(XXI) Whale; and

(XXII) White.

(v) Except for the species listed in clause (ii) - (iv) of this subparagraph, sharks may be taken using pole and line, but must be taken by non-offset, non-stainless-steel circle hook when using natural bait.

(K) Sheepshead.

(i) Daily bag limit: No limit.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(L) Snapper.

(i) Lane.

(I) Daily bag limit: None.

(II) Minimum length limit: 8 inches.

(III) No maximum length limit.

(ii) Red.

(I) Daily bag limit: 4.

(II) Minimum length limit: 15 inches.

(III) No maximum length limit.

(IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.

(iii) Vermilion.

(I) Daily bag limit: None.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(M) Triggerfish, gray.

(i) Daily bag limit: 20.

(ii) Minimum length limit: 16 inches.

(iii) No maximum length limit.

(N) Tripletail.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 17 inches.

(iii) No maximum length limit.

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 June 21, 2023.

TRD-202302239
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: July 11, 2023
Proposal publication date: February 17, 2023
For further information, please call: (512) 389-4775

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER C. TEXAS OPIOID ABATEMENT FUND PROGRAM

34 TAC §§16.200 - 16.222

The Comptroller of Public Accounts adopts new §16.200, concerning definitions, §16.201, concerning opioid abatement strategies, §16.202, concerning grant issuance plan, §16.203, concerning notice and applications, §16.204, concerning availability of funds, §16.205, concerning engage in business in Texas, §16.206, concerning peer review panel members, §16.207, concerning authorized officials, §16.208, concerning grant application review, §16.209, concerning amount of grant award, §16.210, concerning financial responsibility, §16.211, concerning allowable costs; disbursement of grant funds, §16.212, concerning grant requirements, §16.213, concerning use of council's grant management system, §16.214, concerning code of ethics, §16.215, concerning reporting, §16.216, concerning grant reduction or termination, §16.217, concerning extensions, §16.218 concerning noncompliance, §16.219, concerning monitoring grant award performance and expenditures, §16.220, concerning records retention; audit, §16.221, concerning forms and other documents, and §16.222, concerning references, with changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1811). The rules will be republished.

These rules will be located in 34 Texas Administrative Code, Chapter 16, new Subchapter C (Texas Opioid Abatement Fund Program). Additionally, the title of Chapter 16 will be changed from "Broadband Development" to "Comptroller Grant Programs" to allow these rules to be included in Chapter 16 along with the broadband development rules.

Section 16.200 provides definitions.

Section 16.201 describes the council's process for determining and approving opioid abatement strategies that are eligible for grant funding, and for categorizing and prioritizing each strategy.

Section 16.202 describes the council's process for adopting a grant issuance plan that allocates grant funds among one or more grant cycles. The council will establish various grant cycles based on the categories established in §16.201 and will describe the details of each cycle. This section also incorporates the regional allocations as provided by the 87th Legislative Session, General Appropriations Act, article IX, §17.18(b).

Section 16.203 requires a notice of funding availability (NOFA) to be published, as necessary, on the *Texas.gov eGrants* website and the comptroller's website, and describes the information that may be included in a NOFA. The section also describes grant application requirements.

Section 16.204 states that grant funding is contingent upon the availability of funds and upon approval of a grant application by the council, and that neither the rules nor a grant agreement create any right to receive a grant award.

Section 16.205 requires grant recipients to be engaged in business in Texas.

Section 16.206 allows the council to select and compensate individuals who live and work outside the state of Texas to serve as peer review panel members for purposes of a peer review analysis for each grant application, unless a special need justifies selecting one or more individuals living and working in Texas. This panel will minimize the potential for conflicts of interest in the peer review of grant applications. This section requires a peer review panel member who has a present relationship with, or has received or will receive any benefit from, a grant applicant to disclose this relationship or benefit. This section also prohibits a member from reviewing a grant application of a grant applicant if such a relationship or benefit exists.

Section 16.207 requires each grant applicant to designate a person to act on behalf of the grant applicant.

Section 16.208 describes the process for reviewing grant applications. Program staff will review the applications during an initial screening to determine compliance with the necessary administrative requirements. Then grant applications will be scored by the peer review panel members. The council will make the final decision on all grant awards based on the council's review and the information provided by peer review panel members.

Section 16.209 establishes the council as the sole entity permitted to set the grant award amount and establishes that the council is not required to fund any grant at the amount the grant applicant requests.

Section 16.210 requires the grant recipient to manage the day-to-day operations and activities of the grant and to maintain a sound financial management system to account for the grant award funds.

Section 16.211 requires costs to be reasonable and necessary for the proper and efficient performance and administration of the grant project and requires grant funds to be disbursed on a reimbursement basis.

Section 16.212 details grant requirements, including compliance with the provisions outlined in the grant agreement and state and federal law. This section also establishes the grant recipient as the entity legally and financially responsible for compliance with the grant agreement and state and federal law, and prohibits grant funds from being used for costs that will be reimbursed by another funding source.

Section 16.213 explains how the grant applicant or grant recipient's use of the electronic grant management system requires certain affirmations, including that the information submitted is true and correct and that the signatures are valid.

Section 16.214 requires all council members, peer review panel members, and program staff members to avoid acts which are improper or give the appearance of impropriety in the disposition of grant funds. This section also requires the council to adopt a

code ethics to provide guidance related to the ethical conduct of the council members, peer review panel members, and program staff. The code of ethics will be distributed to each council member, peer review panel member, and program staff member.

Section 16.215 requires grant recipients to submit periodic reporting in accordance with the grant agreement. This section also authorizes the director, upon reasonable notice, to request any additional information necessary to show that grant funds are being used for the intended purpose and that the grant recipient has complied with the grant agreement.

Section 16.216 allows the council to reduce or terminate a grant award based on circumstances described in this section.

Section 16.217 allows the council to approve no cost time extensions for a grant recipient requesting additional time to complete a grant project.

Section 16.218 allows the council to hold a grant recipient accountable for noncompliance with the grant agreement and any applicable law, and sets forth the penalties for noncompliance.

Section 16.219 requires the council to monitor grant awards to ensure compliance and proper stewardship of grant award funds.

Section 16.220 requires grant recipients to maintain all records regarding the grant project and provides records retention and audit review requirements.

Section 16.221 authorizes the council to prescribe forms or other documents necessary for the implementation of this program and to require these forms or other documents to be submitted electronically.

Section 16.222 specifies which subchapter in Government Code, Chapter 403 applies to this program because Chapter 403 contains two subchapters entitled "Subchapter R."

Comments were received regarding adoption of the amendments from Joe Powell, President/CEO at the Association of Persons Affected by Addiction; Ed Sinclair at SAS; Preston Poole, Policy Coordinator at the Texas Association of Community Health Centers; Elizabeth Henry, Substance Use Disorder (SUD) Workgroup Chair at the Texas Coalition for Healthy Minds; John Henderson, CEO at the Texas Organization of Rural and Community Hospitals; and Katharine Neill Harris, Ph.D., of the Drug Policy Program at the Rice University Baker Institute for Public Policy.

Joe Powell, President/CEO at the Association of Persons Affected by Addiction, states that it appears that the council has not identified allocation strategies to support underserved communities. He recommends that the council consider allocating funding to target communities of color, which most often have higher addiction and overdose rates resulting from low access to services, support, and resources. Mr. Powell proposes two possible options for doing so. First, in cases where larger organizations are funded to serve in those communities, the council could include a provision in the grant opportunity that requires the organization to subcontract with smaller organizations, if available, which are often already providing the same or similar services in underserved communities and are trusted by residents in those communities. Second, the council could include funding opportunities for a consortium of organizations in underserved communities to leverage the strength of the trusted resources that already exist in the community. According to Mr. Powell, by including funding for these organizations around capacity building and sustainability planning, the council would strengthen and equip the community with long term support and resources necessary to address the opioid crisis in underserved communities.

The council thanks Mr. Powell for engaging on this important issue that merits further discussion and consideration as the program is implemented. The council notes that §16.201 requires the council to adopt evidence-based strategies, §16.202 authorizes the council to set parameters for each grant cycle including limitations to geographic areas or strategies based on opioid incidence information, and §16.203 authorizes a NOFA to include criteria such as those suggested by Mr. Powell. Therefore, the council does not believe a change to the proposed rules is necessary based on this comment.

Ed Sinclair at SAS recommends adding language to §16.213 and §16.215 to allow the director of the council, upon reasonable notice, to request, gather and evaluate data from grantees regarding the outcomes and any identified barriers to substance use disorder (SUD) prevention and treatment programs and recovery services in order to determine which populations are not being reached in current interventions as well as which geographic areas of the state have programmatic gaps in addressing SUD. Specifically, Mr. Sinclair proposes adding language to §16.213 stating that by utilizing the council's electronic grant management system, a grant applicant or grant recipient "{a}grees that all requested data and performance metrics will be submitted in the agreed upon, standard format and frequency." He also suggests adding language to §16.215 stating that "{t}his section authorizes the council to develop standardized grant reporting metrics for all grantees to submit data measuring the impact of the opioid crisis at the county level," which could include reporting on outcomes and barriers to substance use disorder prevention and treatment programs and recovery services for the purpose of understanding underserved geographic areas. Mr. Sinclair also provides a sample reporting metric template (OMB1 No. 0930-0391, SAMSHA, Center for Substance Abuse Prevention, Harm Reduction Annual Targets and Quarterly Progress Report).

The council appreciates the comments provided by Mr. Sinclair, but declines to revise the proposed rules in response to the comments because the council already has authority to require grant recipients to provide this information under §16.215(a), which states that "{g}rant recipients must submit to a program staff member designated by the director periodic reports for each funded grant project for the duration of the grant agreement," and further authorizes the program to determine the frequency, format and requirements of the report. The council may also include such requirements in the grant agreement.

Preston Poole, Policy Coordinator at the Texas Association of Community Health Centers, recommends that the council either ensure that a member of the peer review panel has a background from a federally qualified health center (FQHC) or that the peer review panel hold a permanent position for a member from a FQHC, due to the unique offerings of health centers, including use of evidence-based trauma-informed training and practices to successfully work upstream to address opioid use disorders.

The council appreciates the input provided by Mr. Poole, but declines to revise the proposed rules in response to the comments described above because, under §16.206, the council may consider specific experience when selecting peer review panel members, including a person with a FQHC background. Additionally, the council will consider how the specific experi-

ences of the peer review panel affect any ethical issues, specifically recusal and/or ability to apply for grants.

Mr. Poole also recommends that the council consider prioritizing the needs of marginalized communities as one of the defined factors for permanent consideration when selecting applications for award as listed in §16.208(d)(3).

The council notes that §16.202 authorizes the council to set parameters for each grant cycle including limitations to geographic areas or strategies based on opioid incidence information, and §16.203 authorizes a NOFA to include additional criteria. Therefore, the council declines to revise the proposed rules in response to this comment.

Elizabeth Henry, SUD Workgroup Chair at the Texas Coalition for Healthy Minds, recommends realigning the core strategies listed in §16.201(b) with the continuum of care. She proposes placing treatment and recovery into separate strategies because they serve different purposes. According to Ms. Henry, treatment and recovery should be separated into different strategies to ensure that the strategies complement each other rather than compete against each other so that funding is applied in a more equitable manner when the priority ranking of activities has begun. As a result, she proposes changing the strategies to prevention and public safety training, treatment and coordination of care, and recovery support services.

The council appreciates the comments provided by Ms. Henry. In response to the comments described above, the council revises the proposed rules to place treatment and recovery into separate strategies and realign the core strategies by changing the strategies in §16.201(b) to treatment and coordination of care, prevention and public safety, recovery support services, and workforce development and training.

Ms. Henry also recommends that the council prioritize funding for organizations established in Texas by changing the language in §16.205(a) to require organizations to be previously established in Texas for at least two years before being eligible to receive abatement funds, to consider if the funds are the sole source of funding for the organization's program in Texas, and to give preference to organizations and programs already established in the state. According to Ms. Henry, this change would support existing organizations in Texas, which understand the unique culture and needs of Texans, and help build out and support new and existing infrastructure to promote the sustainability of SUD services across the state.

The council declines to revise the proposed rules in response to this comment because the council has authority to include this recommendation in a NOFA under §16.203 to further implement the requirements established under §16.205, and has authority to consider this recommendation when evaluating an applicant's experience under §16.208.

John Henderson, CEO at the Texas Organization of Rural and Community Hospitals, recommends rural stakeholders have a seat at the table throughout the process because of the degree of harmful impact of opioids in their communities. He also recommends that peer review panel members described in §16.206, who may reside outside the state, understand the scale and scope of rural Texas to fairly evaluate grant applications.

The council appreciates the input provided by Mr. Henderson. No revisions to the proposed rules are required at this time in response to the comments described above because the council may consider including a rural stakeholder or a person who understands the scale and scope of rural Texas on the peer review panel when the council selects the peer review panel members or through other evolving community engagement by the council.

Mr. Henderson recommends that the council distribute funds to strategies under §16.202(c) quickly and allow for all of the categories to be considered for funding within the same grant cycle.

In response to this comment, the council revises proposed §16.202 to allow grant awards made each grant cycle to include one or more of the categories listed in §16.201(b), instead of only one category. This revision will assist the council to fund strategies more quickly.

Mr. Henderson recommends that the council prioritize treatment and recovery activities when ranking each strategy in order of priority for grant funding under §16.201(c).

No revisions to the proposed rules are required at this time in response to this comment because this recommendation may be considered when the council ranks each strategy in order of priority for grant funding under §16.201(c) or §16.202 in the grant issuance plan.

Mr. Henderson recommends that the council establish a more definite process before funds are reallocated under Government Code, §403.509, such as a second round look at grant applications. He urges a process to ensure funds are allocated fairly and allow a region to get every opportunity to use its allocation before funds are redistributed to another region.

The council declines to revise the proposed rules in response to these comments because the process for reallocating funds under Government Code, §403.509 was not addressed in the proposed rules. The council may consider addressing this recommendation in a future rulemaking.

Dr. Katharine Neill Harris of the Drug Policy Program at the Rice University Baker Institute for Public Policy states that it is not clear what criteria will be used to prioritize the strategies, though she assumes prioritization will vary with different grant opportunities.

The council appreciates the comments provided by Dr. Harris. No revisions to the proposed rules are required at this time in response to the comment described above. The NOFA will include the requirements of the grant project.

Dr. Harris recommends adding "growth potential for small organizations" to the list of factors that the council may consider in making grant awards under §16.208(d)(3)(B). She states that an organization's potential for growth, particularly in areas with large gaps in available services, should be a factor considered in grant award decisions. Dr. Harris believes that, although this could fall under the "additional factors" umbrella category, it is less likely to be considered if it is not explicitly mentioned. According to Dr, Harris, providing funds to expand the operational potential of organizations in the low-barrier, harm-reduction service space, which are typically small in staff size and budgets, has the strong potential to improve the state's overdose response because they often have an outsized impact on the vulnerable populations they serve.

The council notes that §16.201 requires the council to adopt evidence-based strategies, §16.202 authorizes the council to set parameters for each grant cycle including limitations to geographic areas or strategies based on opioid incidence informa-

tion, and §16.203 authorizes a NOFA to include additional criteria. The council declines to revise the proposed rules in response to these comments because this factor may be considered by the council when the council proposes a NOFA for a grant funding opportunity.

Dr. Harris also provides additional comments related to eligible strategies. First, she recommends that the council closely follow its requirement that eligible strategies be supported with evidence-based data under §16.201(a)(2). Second, she recommends that strategies that do not have a strong evidence base should be categorized as a low priority, if they are categorized at all. Third, Dr. Harris recommends that the council be flexible when reviewing and amending eligible strategies under §16.201(d) because new developments in the overdose crisis, as well as stakeholder experiences and input, will demonstrate the need for different strategies or different strategy prioritization. Fourth, she recommends that the council provide sufficient periods of time between a request for proposals and proposal deadline and provide flexibility or assistance with the application process to increase the ability of smaller, majority volunteer-based organizations, which are less likely to have staff dedicated to applying for grants, to meet all grant requirements.

No revisions to the proposed rules are required at this time in response to these comments. The council will follow the requirements of §16.201(a)(2) and §16.202 and has authority under the rules to consider Dr. Harris's recommendations as they proceed through the grant process.

Although the comptroller submits these amendments as the presiding officer of the council under Government Code, §403.503(b)(6), and pursuant to the comptroller's duty to provide the staff necessary to assist the council in performing its duties under Government Code, §403.503(e), the amendments are adopted by the council under Government Code, §403.511, which authorizes the council to adopt rules to implement Government Code, Chapter 403, Subchapter R, as added by 87th Legislature, 2021, R.S., Chapter 781 (Senate Bill 1827), §1, concerning the statewide opioid settlement agreement.

The amendments implement Government Code, Chapter 403, Subchapter R, as added by 87th Legislature, 2021, R.S., Chapter 781 (Senate Bill 1827), §1, concerning the statewide opioid settlement agreement.

§16.200. Definitions.

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

(1) Authorized official--The individual, including designated alternates, named by a grant applicant or grant recipient, who is authorized to act for the grant applicant or grant recipient in submitting the grant application and executing the grant agreement and associated documents or requests.

(2) Comptroller--The Texas Comptroller of Public Accounts.

(3) Council--The Texas Opioid Abatement Fund Council established by Government Code, §403.503, to manage the distribution of money allocated to the council from the Opioid Abatement Trust Fund, established by Government Code, §403.506 in accordance with a statewide opioid settlement agreement. A reference in this subchapter to the council includes the director and program staff members unless the provision indicates otherwise.

(4) Council member--A member of the council.

(5) Director--The program staff member designated by the comptroller to serve as the director for the council who performs duties as necessary to manage the day-to-day operations of the council.

(6) Grant agreement--A legal agreement executed by a grant recipient and the director, on behalf of the council, setting forth the terms and conditions for a grant award approved by the council.

(7) Grant applicant--A person or entity that has submitted through an authorized official an application for a grant award under this subchapter.

(8) Grant application--A written proposal submitted by a grant applicant to the director in the form required by the council that, if successful, will result in a grant award.

(9) Grant award--Funding awarded by the council pursuant to a grant agreement providing money to the grant recipient to carry out a grant project in accordance with statutes, rules, regulations, and guidance provided by the council.

(10) Grant recipient--A grant applicant that receives a grant award under this subchapter.

(11) NOFA--Notice of funding availability.

(12) Peer review--The review process performed by the peer review panel and used to provide guidance and recommendations to the council in making decisions for grant awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of grant applications, based on the evidence-based opioid abatement strategies developed by the council under Government Code, §403.509, as well as other relevant requirements of the NOFA and the grant application.

(13) Peer review panel--A group of experts in the field of opioid abatement who are selected to conduct peer review of grant applications.

(14) Peer review panel member--A member of the peer review panel.

(15) Program staff member--A member of the comptroller's staff assigned by the comptroller to provide assistance to the council. This term includes the director.

(16) Statewide opioid settlement agreement--A settlement agreement and related documents entered into by this state through the attorney general, political subdivisions that have brought a civil action for an opioid-related harm claim against an opioid manufacturer, distributor, or retailer, and opioid manufacturers, distributors, or retailers relating to illegal conduct in the marketing, promotion, sale, distribution, and dispensation of opioids that provide relief for this state and political subdivisions of this state.

§16.201. Opioid Abatement Strategies.

(a) The council shall determine and approve one or more evidence-based opioid abatement strategies that are eligible for grant funding. To be approved as eligible for funding, a strategy must be:

(1) an opioid abatement strategy provided in the opioid abatement settlement agreements;

(2) supported with evidence-based data; and

(3) in compliance with all applicable state and federal law.

(b) For each strategy approved as an eligible strategy, the council shall categorize the strategy as:

(1) treatment and coordination of care;

(2) prevention and public safety;

(3) recovery support services; or

(4) workforce development and training.

(c) Within each category, the council shall rank each strategy in order of priority for grant funding.

(d) The council may, from time to time, review and amend the list of eligible strategies, the categorization of strategies, or the ranking of strategies within each category.

§16.202. Grant Issuance Plan.

(a) The council shall adopt a grant issuance plan that allocates grant funds among one or more grant cycles.

(b) The grant issuance plan shall include:

(1) the number and order of grant cycles;

(2) the category or categories, and one or more eligible strategies within each category, that will be eligible for grant funding during each grant cycle;

(3) the amount of grant funds allocated to each grant cycle;

(4) the parameters for the regional component of each grant cycle;

(5) the parameters for the targeted intervention component of each grant cycle; and

(6) any other information necessary to implement the grant issuance plan, such as any matching or volunteer requirements, any limitations to the types of eligible applicants, or other requirements.

(c) Grant awards made each grant cycle will include one or more of the categories listed in §16.201(b) of this subchapter.

(d) The council shall designate one or more eligible strategies within each category for each grant cycle in accordance with the priority ranking adopted under §16.201(c) of this subchapter.

(e) Each grant cycle will be divided into two main funding components:

(1) Of the funds allocated to a grant cycle, 75% shall be allocated among the regional healthcare partnership regions using the following regional allocations:

(A) Each region's allocation will be determined using the following regional allocations:

(i) 5.515633% allocated to region 1.

(ii) 7.813739% allocated to region 2.

(iii) 17.455365% allocated to region 3.

(iv) 3.902955% allocated to region 4.

(v) 2.542550% allocated to region 5.

(vi) 9.845317% allocated to region 6.

(vii) 7.285670% allocated to region 7.

(viii) 3.495025% allocated to region 8.

(ix) 9.594819% allocated to region 9.

(x) 9.457202% allocated to region 10.

(xi) 1.372268% allocated to region 11.

(xii) 3.390769% allocated to region 12.

(xiii) 0.749727% allocated to region 13.

(xiv) 1.749546% allocated to region 14.

(xv) 2.596578% allocated to region 15.

(xvi) 1.363928% allocated to region 16.

(xvii) 3.325101% allocated to region 17.

(xviii) 5.741368% allocated to region 18.

(xix) 1.827600% allocated to region 19.

(xx) 0.974842% allocated to region 20.

(B) Within each region and provided there are a sufficient number of eligible grant applicants, no single grant recipient will receive 100% of the funds allocated to a respective region.

(2) Of the funds allocated to a grant cycle, 25% shall be allocated for targeted interventions. The council shall establish parameters for the authorized uses of the targeted intervention component of each grant cycle.

(A) The parameters may include:

(i) a limitation to one or more geographic areas based on opioid incidence information; and

(ii) a limitation to one or more eligible strategies based on opioid incidence information.

(B) The council shall rank the parameters relating to geographic areas and eligible strategies in order of priority for grant funding. For example, if the council limits targeted intervention grants to, in order of priority, locations A, B, C, and D and to, in order of priority, strategies X and Y, the council shall also specify whether a grant application from location A for strategy Y is a higher priority than a grant application from location B for strategy X.

(f) The council may, from time to time, review and amend the grant issuance plan.

§16.203. Notice and Applications.

(a) For each grant cycle in the grant issuance plan adopted under §16.202 of this subchapter, the council shall, as necessary, publish a NOFA on the *Texas.gov eGrants* website and the comptroller's website.

(b) The NOFA may include:

(1) the amount of grant funds available for grant awards for each regional healthcare partnership region under the regional component;

(2) the amount of grant funds available for grant awards and any limitations on the number of grant awards under the targeted intervention component;

(3) the strategy or strategies that are eligible for grant funding and the order of priority for grant funding;

(4) the minimum and maximum amount of grant funds available for each grant application;

(5) limitations on the geographic distribution of grant funds under the regional component and under the targeted intervention component;

(6) eligibility requirements;

(7) grant application requirements;

(8) grant award and evaluation criteria;

(9) the date by which grant applications must be submitted to the council;

(10) the anticipated date of grant awards;

(11) any preferred criteria relevant to the grant application;

(12) parameters for allowable costs reimbursable under the grant awards; and

(13) any other necessary information.

(c) All grant applications submitted under this subchapter must comply with the requirements contained in this subchapter and in the relevant NOFA published by the council.

(d) Grant applicants must apply for a grant award using the procedures, forms, and certifications prescribed by the council.

(e) During the review of a grant application, a program staff member may require a grant applicant to submit additional information necessary to complete the review. Such requests for information do not serve as notice that the council intends to fund a grant application; however, failure to respond to requests for additional information may impact the ability to review and evaluate the grant application.

(f) Grant applications shall:

(1) seek to remediate the opioid crisis in this state by using efficient and cost-effective methods that are directed to regions of this state experiencing opioid-related harms; and

(2) satisfy the requirements set forth in this subchapter; Government Code, Chapter 403, Subchapter R; and the relevant NOFA published by the council.

§16.204. Availability of Funds.

All grant funding is contingent upon the availability of funds and upon approval of a grant application by the council. Neither this subsection nor a grant agreement creates any entitlement or right to grant funds by a grant applicant.

§16.205. Engage in Business in Texas.

(a) Except as addressed by a NOFA, to be eligible to receive a grant award, a grant applicant must engage in business in the state of Texas by:

(1) maintaining employees in the state of Texas;

(2) having a fixed place of business in the state of Texas; or

(3) providing any service in the state of Texas, whether or not the individuals performing the service are residents of the state.

(b) Grant applicants responding to a NOFA may be located outside the state of Texas when the grant application is submitted and reviewed; however, the grant applicant must demonstrate that it engages in business in the state of Texas as a condition of the grant award.

(c) A grant recipient's failure to engage in business in the state of Texas is a violation of these rules for the purpose of §16.218 of this subchapter.

§16.206. Peer Review Panel Members.

(a) To minimize the potential for conflicts of interest in the peer review of grant applications, the council may select and compensate individuals who live and work outside of the state of Texas to serve as peer review panel members, unless a special need justifies selecting one or more individuals living or working in Texas.

(b) If an individual who lives or works in Texas is selected to serve as a peer review panel member, the director must provide an explanation of the special need and how any potential for conflict of interest will be mitigated to the council at the time the peer review panel member is selected.

(c) A peer review panel member shall immediately disclose to the director a present relationship with a grant applicant or any benefit the peer review panel member has received or knows the member will receive from a grant applicant.

(d) A peer review panel member who has a present relationship with a grant applicant, or has received or knows the member will receive any benefit from a grant applicant, may not review that grant application.

§16.207. Authorized Officials.

(a) Each grant applicant must designate an authorized official and must submit to the director:

(1) a resolution from the grant applicant's governing body that, at a minimum, designates an authorized official to act on the grant applicant's behalf and authorizes the authorized official to submit a grant application;

(2) the authorized official's title, mailing address, telephone number, and email address; and

(3) the grant applicant's physical address.

(b) A grant applicant or grant recipient must notify the director as soon as practicable of any change in the information provided under subsection (a) of this section. If there is a change of authorized official, a grant applicant or grant recipient must also submit to the director a new resolution from the grant applicant's governing body that, at a minimum, designates an authorized official to act on the grant applicant's behalf.

§16.208. Grant Application Review.

(a) The grant application review process shall consist of three steps:

(1) initial screening;

(2) peer review; and

(3) council review and approval.

(b) Initial screening.

(1) Program staff members shall review each grant application to determine whether the grant application complies with the requirements contained in this subchapter and the relevant NOFA published by the council. Grant applications that do not meet these requirements will not be eligible for review under this section.

(2) A program staff member shall submit each grant application that meets the requirements described in subsection (b)(1) of this section to the peer review panel for review.

(c) Peer review.

(1) Peer review panel members shall review each grant application that is submitted for review by program staff as described in subsection (b)(2) of this section.

(2) Peer review panel members shall assign a score for the application based on the application's merit and accounting for the criteria in the relevant NOFA published by the council, and shall submit this information to a program staff member.

(3) If a peer review panel member recommends changes to the grant funds amount requested by the grant applicant or to the goals and objectives or timeline for the proposed grant project, the recommended changes and explanation shall be submitted to a program staff member.

(4) The peer review panel's scores, rankings and other information submitted for the council's consideration are recommendations and are advisory only.

(d) Council review and approval.

(1) After receipt of the peer review scores and recommendations described in subsection (c) of this section, program staff members shall compile a list of grant applications reviewed by the peer review panel ranked in order by the final overall evaluation score. The final evaluation score is determined by averaging together the scores assigned by the peer review panel members under subsection (c)(2) of this section.

(2) For each application, a program staff member shall submit to council members:

(A) the grant application's final overall peer review evaluation score;

(B) the grant application's peer review ranking;

(C) a summary of the grant application;

(D) other information submitted by the peer review panel for the council's consideration; and

(E) any other information required for the council's consideration of the grant application.

(3) In making grant award decisions, the council:

(A) shall ensure that grant funds are allocated fairly and spent to remediate the opioid crisis in this state by using efficient and cost-effective methods in accordance with the opioid strategies approved by the council under Government Code, §403.509(a)(1) and §16.201 of this subchapter, and the grant issuance plan adopted by the council under §16.202 of this subchapter; and

(B) may consider factors including:

(i) a grant applicant's experience;

(ii) a grant project's estimated timeline;

(iii) matching funds or sustainability plan, if any;

(iv) cost effectiveness, efficacy and overall impact of the grant project;

(v) geographic location of the grant project;

(vi) community partnerships; and

(vii) any additional factors listed in the relevant NOFA published by the council.

(4) The council shall vote on each grant application in accordance with Government Code, §403.509(c). The council may vote on multiple grant applications at one time.

(5) If the council approves a grant award, the council shall specify the total amount of money approved to fund the grant project.

(6) All grant funding decisions are final and are not subject to appeal.

(7) The approval of a grant award shall not obligate the council to make any additional, supplemental, or other grant award.

§16.209. Amount of Grant Award.

(a) The amount of a grant award is determined solely by the council.

(b) The council is not obligated to fund a grant at the amount requested by the grant applicant.

§16.210. Financial Responsibility.

(a) The grant recipient is responsible for managing the day-to-day operations and activities supported by the grant agreement and is accountable to the council for the performance of the grant agreement, including the appropriate expenditure of grant award funds and all other obligations of the grant recipient.

(b) The grant recipient must maintain a sound financial management system that provides appropriate fiscal controls and accounting procedures to ensure accurate preparation of reports required by the grant agreement and adequate identification of the source and application of grant funds awarded to the grant recipient.

§16.211. Allowable Costs; Disbursement of Grant Funds.

(a) Allowable costs are costs that are reasonable and necessary for the proper and efficient performance and administration of the grant project, and allocable to the grant project.

(b) The council disburses grant funds by reimbursing the grant recipient for allowable costs already expended.

(c) The relevant NOFA published by the council may provide additional information on allowable costs by grant project and a schedule for disbursement of grant funds.

§16.212. Grant Requirements.

(a) Grant recipients must comply with:

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

(2) the requirements of Government Code, Chapter 403, Subchapter R;

(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.

(b) A grant recipient is the entity legally and financially responsible for compliance with the grant agreement, and state and federal laws, rules, regulations, and guidance applicable to the grant award.

(c) Grant funds may not be used for costs that will be reimbursed by another funding source. The director may require a grant applicant or grant recipient to demonstrate through accounting records that funds received from another funding source are not used for costs that will be reimbursed by the council.

§16.213. Use of Council's Grant Management System.

By utilizing the council's electronic grant management system to create, exchange, execute, submit, and verify legally binding grant agreement documents, grant award reports, and other grant information, a grant applicant or grant recipient:

(1) certifies that all information submitted is true and correct;

(2) agrees that the authorized official's electronic signature is the legal equivalent of the authorized official's manual signature;

(3) agrees that the council may rely upon the authorized official's electronic signature as evidence that the grant recipient consents to be legally bound by the terms and conditions of the grant agreement or related form as if the document was manually signed; and

(4) agrees to provide prompt written notification to the director of any changes regarding the status or authority of the individual(s) designated by the grant applicant or grant recipient to be the grant applicant's or grant recipient's authorized official.

§16.214. Code of Ethics.

(a) All council members, peer review panel members, and program staff members shall avoid acts which are improper or give the

appearance of impropriety in the disposition of funds administered by the council.

(b) The council shall adopt a code of ethics to provide guidance related to the ethical conduct required of council members, peer review panel members, and program staff members.

(c) The code of ethics shall be distributed to each council member, peer review panel member, and program staff member.

§16.215. Reporting.

(a) Grant recipients must submit to a program staff member designated by the director periodic reports for each funded grant project for the duration of the grant agreement. The frequency, format and requirements of the reports shall be determined at the discretion of the director at the direction of the council.

(b) At the director's sole discretion and at any time, the director, upon reasonable notice, may request any additional data and reporting information that the director deems necessary 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 grant agreement.

§16.216. Grant Reduction or Termination.

(a) If a grant recipient seeks to terminate any grant award before the termination date listed in the grant agreement, the grant recipient must notify the director in writing immediately.

(b) The council may reduce or terminate any grant award when circumstances require reduction or termination, including when:

(1) the grant recipient is found to be noncompliant under §16.218 of this subchapter;

(2) the grant recipient and the council agree to the reduction or termination of a grant award;

(3) grant funds are no longer available to the council; or

(4) conditions exist that make it unlikely that objectives of the grant award will be accomplished.

(c) If a grant award is reduced or terminated by the council, the director must notify the grant recipient in writing.

§16.217. Extensions.

(a) The director may approve a grant recipient's written request for a no cost time extension of the termination date of the grant agreement to permit the grant recipient additional time to complete the work of the grant project if the grant recipient is in good fiscal and programmatic standing.

(b) A written request for a no cost time extension must include:

(1) a timeline of events beginning on the date of grant award;

(2) a detailed explanation why the grant project is not expected to be completed within the grant term; and

(3) if applicable, supporting documentation demonstrating extenuating circumstances.

(c) The director may approve one or more no cost time extensions. The duration of each no cost time extension may be no longer than six months from the termination date of the grant agreement, unless the director finds that special circumstances justify authorizing additional time to complete the work of the grant project.

(d) Approval of a no cost time extension request must be supported by a finding of good cause and the grant agreement shall be amended to reflect the change.

(e) The director's decision to grant or deny a no cost time extension request is final and is not subject to appeal.

§16.218. Noncompliance.

(a) If the council has reason to believe that a grant recipient has violated any term or condition of the grant recipient's grant agreement or any applicable laws, rules, regulations, or guidance relating to the grant award, the director shall provide written notice of the allegations to the grant recipient and provide the grant recipient with an opportunity to respond to the allegations.

(b) If the council finds that a grant recipient has failed to comply with any term or condition of a grant agreement, or any applicable laws, rules, regulations, or guidance relating to the grant award, the council may:

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

(2) withhold grant award amounts to 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.

(c) A grant recipient shall not be required to forfeit grant funds received if it fails to perform due to acts of war, terrorism, natural disaster declared by the governor of this state, an act of God, force majeure, a catastrophe, or such other occurrence over which the grant recipient has no control.

§16.219. Monitoring Grant Award Performance and Expenditures.

The council shall monitor grant awards to ensure that grant recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over grant award funds. Such terms and conditions include requirements set forth in the grant agreement, and applicable laws, rules, regulations, or guidance relating to the grant award.

§16.220. Records Retention; Audit.

(a) Grant recipients must maintain all financial records, supporting documents, and all other records pertinent to the grant project or grant award for the later of:

(1) five years following the submission of a final report; or

(2) if any litigation, claim, or audit is started, or any open records request is received, before the expiration of the five-year records retention period, one year after the completion of the litigation, claim, audit, or open records request and resolution of all issues which arise from it.

(b) At any time during the grant agreement and during the retention period described in subsection (a) of this section, the director or the director's designee may, upon reasonable notice, request any records from or audit the books and records of a grant recipient or conduct an on-site review at a grant recipient's location to verify that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement, and any applicable laws, rules, regulations, or guidance relating to the grant award.

(c) During an on-site review, a grant recipient must provide the director or the director's designee with access to all records, information, and assets that the director or the director's designee determines are reasonably relevant to the scope of the on-site review.

(d) If the director or the director's designee requests records or information from the grant recipient, the grant recipient must provide the requested records or information to the director or the director's designee not later than 30 days after a written request is made by the director or the director's designee.

§16.221. Forms and Other Documents.

Unless otherwise required by law, the council may prescribe all forms or other documents required to implement this subchapter and may require that the forms or other documents be submitted electronically.

§16.222. References.

All references in this subchapter to statutory provisions in Government Code, Chapter 403, Subchapter R, refer to the provisions added by 87th Legislature, 2021, R.S., Chapter 781 (Senate Bill 1827), §1.

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 June 20, 2023.

TRD-202302214
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: July 10, 2023
Proposal publication date: April 7, 2023
For further information, please call: (512) 475-2220