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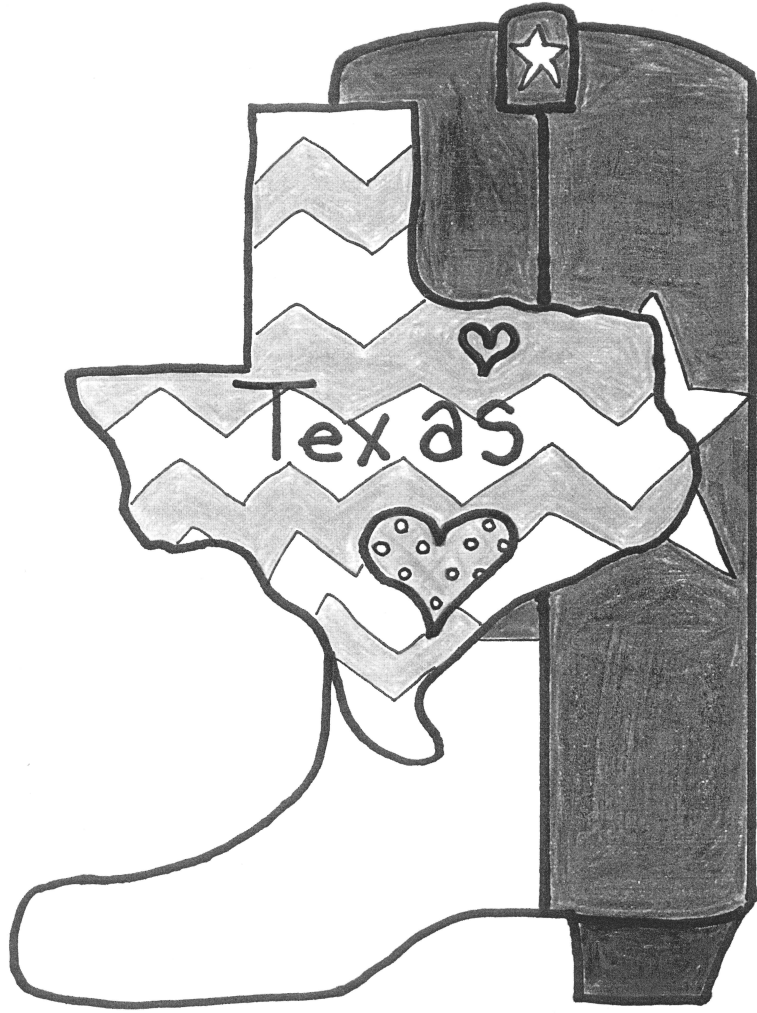
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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 171. REPORTING REQUIREMENTS

1 TAC §171.9, §171.11

The Texas Judicial Council (Council) proposes amendments to 1 Texas Administrative Code §171.9, to comply with HB 1182's amendments to Texas Government Code § 71.035, concerning judicial statistics, enacted during the 88th Regular Session of the Texas Legislature (2023). The Council also proposes new rule §171.11 regarding the new performance measures reporting requirements for the Office of Court Administration (OCA), which is responsive to the amendments made to Texas Government Code § 72.083 by HB 2384. The instructions for complying with the new reporting requirements developed by OCA can be found on OCA's website at <https://txcourts.gov/reporting-to-oca/district-county-court-level-reporting/>.

Although the Council expects to adopt the rules by February of 2024, clerks will not be required to report the data required by the proposed rules until March 1, 2024, which will allow time to implement any required changes to their case management systems.

Background and Justification

HB 1182 requires that the Council gather monthly court activity statistics and case-level information on the amount and character of business transacted by each trial court in the state. For trial courts with counties with a population of at least one million, the Council must gather information including, but not limited to: (1) the number of cases assigned to the court; (2) the case clearance rate for the court; (3) the number of cases disposed of by the court; (4) the number of jury panels empaneled by the court; (5) the number of orders of continuance for an attorney before the court or by the court; (6) the number of pleas accepted by the court; (7) the number of cases tried by the judge of the court or before a jury; and (8) the number of cases tried before a visiting or associate judge of the court. The trial courts must provide the information in the form and manner prescribed by OCA, and OCA must publish the information for each court on OCA's website in a searchable format. For counties in excess of a population of one million, the court official for each court in the county must submit, to the appropriate county official, a copy of each required monthly report for publication on the county's public Internet website within a certain prescribed timeframe and in searchable format. HB 2384 requires that OCA annually report, as performance measures, the following information with respect to each district court, statutory county court, statutory probate court, and county court in Texas: (1) the court's clearance rate;

(2) the average time a case is before the court from filing to disposition; and (3) the age of the court's active pending caseload.

Fiscal Impact on State and Local Government

Jennifer Henry, Chief Financial Officer of OCA, has determined that for each year of the first five-year period the new rules are in effect, there will be no fiscal implications for the state as a result of enforcing or administering the rules as proposed. There may be a cost to local governments to provide the data required by HB 1182 and HB 2384 due to modification of court case management systems or office processing changes needed to provide data by court; however, the fiscal impact cannot be determined because it will vary depending on a county's staff level and the capability of existing technology to process and report the additional data.

Local Employment Impact Statement

Jennifer Henry has determined that the proposed rules will not affect the local economy, so the Council is not required to prepare a local employment impact statement under Texas Government Code § 2001.022.

Public Benefit/Cost Note

Alejandra Pena, Director of Data and Research with OCA, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be: (1) clarity in what is required by law for reporting case activity; and (2) information that more accurately reflects the workloads of each district court, statutory county court, statutory probate court, and county court in Texas that is more useful to state and local officials and other interested parties for judicial administration, policy making, and fiscal planning.

Probable Economic Costs to Persons Required to Comply with Proposal

Jennifer Henry has determined that for each year of the first five-year period the proposed rules are in effect, there may be an indeterminate fiscal impact to counties to comply with the new statutory requirements.

Fiscal Impact on Small Businesses, Micro Businesses, and Rural Communities

There will be no adverse effect on small businesses, micro businesses, or rural communities as a result of the proposed rules. Since the Council has determined that there is no adverse effect, the preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code § 2006.002, is not required.

One-for-one Requirement for Rules with Fiscal Impact

While the proposed rules may fiscally impact local governments, the impact is indeterminate and may vary from county to county.

The proposed rules do not impose a cost on another state agency or special district.

Government Growth Impact Statement

Per Texas Government Code § 2001.0221, the Council provides the following government growth impact statement. For each year of the first five years the proposed rules are in effect, the Council has determined that:

The proposed rules do not create or eliminate a government program.

Implementation of the proposed rules do require the creation of new employee positions for OCA.

Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to OCA.

The proposed rules do not require an increase or decrease in fees paid to the OCA.

The proposed rules do create a new regulation by requiring Texas courts to submit additional reporting data to OCA.

The proposed rules do expand an existing regulation by requiring Texas courts to submit additional reporting data to OCA.

The proposed rules do not increase the number of individuals subject to the rules' applicability because the Council does not regulate individuals.

The proposed rules do not positively or adversely affect the state's economy.

Takings Impact Assessment

The Council has determined that no private real property interests are affected by the proposed rules, and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a takings impact assessment under Texas Government Code § 2001.043.

Environmental Rule Analysis

The Council has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Council asserts the proposed rules are not a "major environmental rule," as defined by Texas Government Code § 2001.0225 and do not require the preparation of an environmental impact analysis.

Public Comment

Comments on the proposed rules and reporting instructions may be submitted to Alejandra Pena, Director of Data and Research, with OCA, at P.O. Box 12066, Austin, Texas 78711-2066 or electronically to Data.division@txcourts.gov.

Statutory Authority and Sections Affected

The proposed rules are proposed pursuant to: (1) Texas Government Code § 71.019, the Council's general rulemaking authority; (2) section 71.031 of the Government Code, the Council's authority to study the procedures and practices, work accomplished, and results of state courts and methods for their improvement; (3) the Council's authority under Texas Government Code § 71.033 to design methods for simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in or improving the administration of justice; and

(4) Texas Government Code § 71.035, the Council's authority to gather judicial statistics. The proposed rules implement the changes to Texas Government Code § 71.035 by HB 1182 and to Texas Government Code § 72.083 by HB 2384.

§171.9. Other Reports Required from the Courts.

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

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

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

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

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

(d) Judicial Bypass. Pursuant to Section 33.003(1-1) of the Family Code, the district clerk or county clerk shall submit a report to OCA on a form prescribed by OCA the information required under Sec. 33.003(1-1) regarding a case in which a minor files an application for a court order authorizing the minor to consent to the performance of an abortion without notification and consent of a parent, managing conservator, or guardian.

(e) Court Security Incident. Pursuant to Article 102.017 of the Code of Criminal Procedure, the sheriff, constable or other law enforcement agency that provides security for a court is required to submit a report to OCA regarding any incident involving court security that occurs in or around a building housing a court for which the sheriff, constable, agency or entity provides security. The report is due no later than three business days after the date the incident occurred.

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

(g) Writ of Attachment. Pursuant to Art. 2.212 of the Code of Criminal Procedure, not later than the 30th day after the court issues a writ of attachment, the clerk of a district, statutory county or county court shall report to OCA on a form prescribed by OCA the following regarding the issued writ of attachment:

(1) the date the attachment was issued;

(2) whether the attachment was issued in connection with a grand jury investigation, criminal trial, or other criminal proceeding;

(3) the names of the persons requesting and the judge issuing the attachment; and

(4) the statutory authority under which the attachment was issued.

(h) Regional Presiding Judges Report. Pursuant to Government Code Sec. 71.038, the presiding judges of the administrative judicial regions shall submit on a form approved by the Council information requested by the Council regarding the business transacted by the judges.

(i) Additional Reporting for Counties with a Population of 1 Million or More. Pursuant to Sec. 71.035 of the Government Code, for the reporting period beginning March 1, 2024, in addition to the other monthly reporting required under this chapter, the district and county clerks in counties with a population of 1 million or more as determined by the decennial census shall report to the OCA, in the form and manner prescribed by OCA, for each of the district and county courts the clerks support, the following:

- (1) the number of cases assigned;
- (2) the case clearance rate;
- (3) the number of cases disposed;
- (4) the number of jury panels empaneled;
- (5) the number of orders of continuance for an attorney before the court or by the court;
- (6) the number of pleas accepted;
- (7) the number of cases tried by the judge of the court or before a jury; and
- (8) the number of cases tried before a visiting or associate judge of the court.

§171.11. Annual Performance Measure Reporting.

(a) Pursuant to Sec. 72.083(b) of the Government Code, the district clerk and county clerk of each county who maintains the records for the district courts and county courts shall annually submit to OCA in the manner required by OCA the following activity for each district court, statutory county court, statutory probate court, and constitutional county court in the county:

- (1) the court's clearance rate defined as the number of cases disposed of by a court divided by the number of cases added to the docket of the court;
- (2) the average time a case is before the court from filing to disposition; and
- (3) the age of the court's active pending caseload.

(b) The reporting time period for the first annual report due to OCA under this section must, at a minimum, include the information collected from March 1, 2024 through August 31, 2024.

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

Filed with the Office of the Secretary of State on November 10, 2023.

TRD-202304192

Maria Elena Ramon

General Counsel

Texas Judicial Council

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 936-7553

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER I. REPORTING

1 TAC §355.7201

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.7201, concerning Novel Coronavirus (COVID-19) Fund Reporting.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with the 2024-25 General Appropriations Act, House Bill (H.B.) 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150), which requires that HHSC develop a report detailing the total value and uses of COVID-19-related Federal Funds, including Provider Relief Funds, provided directly to nursing facilities and hospitals contracting with HHSC since the beginning of the public health emergency.

The COVID-19 related Federal Funds include funds received under the Coronavirus Aid, Relief, and Economic Security Act, 15 U.S.C. §9001 et seq. (CARES Act); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (CAA 2021); and the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (ARPA).

This section was originally adopted to comply with the 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 143) and S.B. 809, 87th Legislature, Regular Session, 2021. The proposed amendment updates language to reflect the new requirements of Rider 150, and deletes language that reflects no-longer-applicable requirements of Rider 143 and S.B. 809. In accordance with Rider 150, the proposed amendment revises the frequency of reporting from monthly to semi-annually, and repeals the reporting requirement for health care institutions other than hospitals and nursing facilities. HHSC must also submit a report to the Office of the Governor, Legislative Budget Board, and any appropriate standing committee of the Legislature on December 1st and June 1st of each fiscal year. Appropriations in Strategy A.2.4, Nursing Facility Payments, for fiscal year 2025 are contingent on the submission of the reports due June 1, 2024. The required reporting for both the providers and HHSC is anticipated to terminate by August 31, 2025.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.7201(a) updates the requirement to collect and compile legislatively-required reports to be on a semi-annual basis rather than on a monthly basis, and specifies that reports are collected from hospitals and nursing facilities.

The proposed amendment to §355.7201(b) adds new terms "authorized representative," "hospital," and "nursing facility." The proposed amendment deletes the term "health care insti-

tution" because nursing facilities and hospitals will be explicitly enumerated in this section as applicable. The paragraphs are renumbered to account for deletion and addition of definitions and punctuation edits are made for clarity.

The proposed amendment deletes current §355.7201(c). Nursing facilities and hospitals are the two remaining provider types that will still be subject to the reporting requirement, and this is reflected throughout this section.

The proposed amendment to current §355.7201(d) renumbers the subsection to subsection (c) and specifies that the reporting requirement applies to hospitals and nursing facilities only.

The proposed amendment to §355.7201 adds new subsection (d) which describes the option to designate an authorized representative for reporting purposes and the process for documenting the designation with HHSC.

The proposed amendment to §355.7201 adds new subsection (e) which provides options for reporting in a consolidated or individual manner for institutions depending on whether the facility did or did not receive funding during the reporting period.

The proposed amendment to current §355.7201(e) renumbers the subsection to subsection (f) and updates the frequency of reporting for health care institutions and the dates reports will be due to HHSC for semi-annual reporting.

The proposed amendment to current §355.7201(f) renumbers the subsection to subsection (g) and updates when HHSC will submit HHSC's legislatively-mandated reports based on the compiled reports submitted by the required institutions.

The proposed amendment to current §355.7201(g) renumbers the subsection to subsection (h) and updates the potential penalties for providers who fail to submit the required reports. The reference to the legislative mandate is updated and examples of other unique identifying numbers are added to paragraph (1). Paragraphs (2), (3) and paragraph (5) are deleted because the penalties described in these paragraphs no longer apply; current paragraph (4) is renumbered to paragraph (2). The subsection is updated to be consistent with other changes in this section.

The proposed amendment to current §355.7201(h) renumbers the subsection to subsection (i) and updates the date when the reporting requirement ends to August 31, 2025, or as specified by HHSC.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;

(6) the proposed rule will not expand, limit, or repeal existing rules;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that the proposal would not have an adverse economic effect on small businesses, micro-businesses, and rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be a continued understanding of the type and amount of COVID-19 federal funds that have flowed to hospitals and nursing facilities, and reduced administrative burden for HHSC and providers due to the updated frequency of reporting from monthly to twice annually.

Trey Wood has also determined that for the first five years the rule is in effect, there would be no anticipated economic costs to persons who are required to comply with the proposed rule. The proposed amendment will require hospitals and nursing facilities to report semi-annually on federal COVID-19 funds received. The Public Health Emergency (PHE) ended in May 2023 so there will be minimal work to complete this reporting and HHSC anticipates there will be minimal funds received (if any) that will be reported.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by email to hhsc_rad_survey@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please

indicate "Comments on Proposed Rule 23R079" in the subject line.

STATUTORY AUTHORITY

The proposed amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; 2024-25 General Appropriations Act, H.B. 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150), which requires HHSC to establish procedures for hospitals and nursing facilities to report required information.

The proposed amendment affects Texas Government Code Chapter 531; Texas Human Resources Code Chapter 32; and 2024-25 General Appropriations Act, H.B. 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150).

§355.7201. Novel Coronavirus (COVID-19) Fund Reporting.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) collects semi-annual [monthly] reports from hospitals and nursing facilities [health care institutions] to compile legislatively-mandated reports. This section outlines the reporting requirements related to novel coronavirus (COVID-19) federal fund reporting. This section also describes the circumstances in which penalties and recoupments will be necessary for certain provider types for failure to submit required semi-annual [monthly] reports.

(b) Definitions. Unless the context clearly indicates otherwise, the following words and terms, when used in this section, are defined as follows.

(1) Authorized representative--An organization or person authorized to report on behalf of a hospital or nursing facility.

~~[(1) Health care institution--As defined by Civil Practice and Remedies Code §74.001.]~~

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

(3) Hospital--A licensed public or private institution as defined in Chapter 241 of the Texas Health and Safety Code or licensed under Chapter 577 of the Texas Health and Safety Code.

(4) Nursing facility--A licensed public or private institution to which Chapter 242, Texas Health and Safety Code, applies.

~~[(e) Institutions required to complete monthly reports: Health care institutions that are required to submit monthly reports include:]~~

~~[(1) an ambulatory surgical center;]~~

~~[(2) an assisted living facility licensed under Texas Health and Safety Code Chapter 247;]~~

~~[(3) an emergency medical services provider;]~~

~~[(4) a health services district created under Texas Health and Safety Code Chapter 287;]~~

~~[(5) a home and community support services agency;]~~

~~[(6) a hospice;]~~

~~[(7) a hospital;]~~

~~[(8) a hospital system;]~~

~~[(9) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with the Social Security Act §1915(e) (42 U.S.C. §1396n); as amended;]~~

~~[(10) a nursing home; and]~~

~~[(11) an end-stage renal disease facility licensed under Texas Health and Safety Code §251.011.]~~

(c) ~~[(d)]~~ Reporting requirements. Hospitals and nursing facilities are [A health care institution is] required to report COVID-19 related Federal Funds [on moneys] received, including funds under the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. §9001 et seq.), the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260), and the American Rescue Plan Act of 2021 (Pub. L. No. 117-2). HHSC may also request additional information related to direct or indirect costs associated with COVID that have impacted the provider's business operation and any other information HHSC deems necessary to appropriately contextualize the moneys received as described in this subsection. HHSC will collect information [and the requested data may vary by provider type] based on legislative direction.

(d) Designation of authorized representative. A hospital or nursing facility may designate an authorized representative to report on behalf of that hospital or nursing facility. A document, which may take the format of a consolidated list such as a spreadsheet, must be submitted to HHSC and must:

(1) identify that the institution has designated the authorized representative;

(2) identify all institutions that have designated the authorized representative to serve in that capacity; and

(3) contain the name of the representative of the institution that designated the authorized representative.

(e) Report submission and consolidation options. An authorized representative for a hospital or nursing facility may submit the required reports to HHSC in the following manner.

(1) For institutions that received no COVID-19 related Federal Funds during the reporting period, the authorized representative must submit a consolidated report for all institutions reflecting \$0 received; or

(2) For institutions that received COVID-19 related Federal Funds during the reporting period, the authorized representative must submit an individual report for each institution that received funding.

(f) ~~[(e)]~~ Frequency of reporting.

(1) Submission of data will be required on a semi-annual [monthly] basis.

(2) The first semi-annual report [Initial reporting will begin on September 1, 2021, and] is due by March 1, 2024, and [October 1, 2021. The initial reporting period] will be for the period of September 1, 2023, through January 31, 2024. [January 31, 2020, through August 31, 2021. HHSC may choose to grant the provider an extension of up to 15 calendar days if the provider notifies HHSC that additional time is required to submit the initial report prior to the due date.]

(3) Subsequent semi-annual [monthly] reports will be due on September 1, 2024, and March 1, 2025. [by the first day of each

month and will cover the time-period two months prior. For example, the report due November 1, 2021, will cover September 1, 2021 through September 30, 2021. HHSC may grant the provider an extension of no more than 15 calendar days if the provider notifies HHSC that more time is needed prior to the due date.]

(g) [(f)] HHSC legislatively-mandated reports. HHSC will compile reports based on submitted data and submit the reports on a semi-annual [quarterly] basis to the Governor, Legislative Budget Board, and any appropriate standing committee in the Legislature. Semi-annual [Quarterly] reports will be submitted June 1, 2024; December 1, 2024; and June 1, 2025. [beginning December 1, 2021, and continue March 1, June 1, and September 1 thereafter. Upon conclusion of the Public Health Emergency, the submission frequency may be reduced to semi-annually on December 1 and June 1 of each fiscal year.]

(h) [(g)] Penalties for failure to report. Specified providers are required to report information as requested on a semi-annual [monthly] basis to HHSC.

(1) A hospital[, hospital system,] or nursing facility that does not report the requested information will be identified by name, including a unique identifying number, such as a National Provider Identification number, Facility Identification Number, or License Number, in HHSC's legislatively-mandated reports.

[(2) Failure to report 2 or more times in a 12-month period will result in notification to the appropriate licensing authority who may take disciplinary action against a health care institution that violates this chapter as if the institution violated an applicable licensing law.]

[(3) Failure to report will result in the issuance of a vendor hold on future payments to the identified provider after 30 days following the due date of the required report. The vendor hold will be released after the health care institution has submitted all delinquent reports to HHSC.]

(2) [(4)] Appropriations in the 2024-25 General Appropriations Act, House Bill 1, 88th Legislature, Regular Session, 2023 (Article II, HHSC, Rider 150), Strategy A.2.4, Nursing Facility Payments, for fiscal year 2025 [2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC) Strategy A.2.4, Nursing Facility Payments, for fiscal year 2023] are contingent on the submission of the report [reports] due June 1, 2024 [December 1, 2021, and June 1, 2022]. If HHSC is unable to utilize appropriations for nursing facilities from Strategy A.2.4 as a result of insufficient reporting from nursing facilities, HHSC will suspend all payments to nursing facilities until such a time as HHSC is authorized to continue making expenditures under Strategy A.2.4.

[(5) HHSC will offer a grace period until November 30, 2021, for a provider to submit the required reports. While the deadlines to report will not change, during that period HHSC will not take an action described in paragraphs (2) or (3) of this subsection as long as the provider has submitted all reports required under this section no later than December 1, 2021. A provider's failure to submit a report during that period will not be considered in a subsequent reporting period as long as the provider has completed all reports required under this section no later than December 1, 2021.]

(i) [(h)] Duration. This reporting requirement ends on August 31, 2025, [August 31, 2023] or as specified by HHSC.

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

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304129

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 424-6637

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.7

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.7 Appeals Process.

The purpose of the proposed repeal is to replace the current rule with a new, clarified rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to existing guidance for program subrecipients.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand, limit, or repeal an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and clarified rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 24, 2023, to December 26, 2023, to receive input on the proposed action. Written comments may be submitted by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 26, 2023.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repeal affects no other code, article, or statute.

§1.7. Appeals Process.

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

Filed with the Office of the Secretary of State on November 11, 2023.

TRD-202304183

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 475-3959



10 TAC §1.7

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A General Policies and Procedures, §1.7 Appeals Process.

The purpose of the proposed rule is to make changes to provide greater clarity on the circumstances in which appeals may be filed.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relate to changes to existing regulations applicable to Department subrecipients.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section is not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new section will not expand, limit, or repeal an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the proposed new section and determined that the proposed action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the proposed new section would be in effect there

would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new sections would be an updated and clarified rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 24, 2023, to December 26, 2023, to receive input on the proposed action. Comments may be submitted by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, December 26, 2023.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

§1.7. Appeals Process.

(a) Purpose. The purpose of this rule is to provide the procedural steps by which an appeal can be filed relating to Department decisions as authorized by Tex. Gov't Code §2306.0321 and §2306.0504 which together require an appeals process be adopted by rule for the handling of appeals relating to Department decisions and debarment. Appeals relating to competitive low income housing tax credits, or when multifamily loans are contemporaneously layered with competitive low income housing tax credits, and the associated underwriting, are governed by a separate appeals process provided at §11.902 of this title (relating to Appeals Process) (§2306.0321; §2306.6715).

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. If not defined in this section, capitalized terms used in this section have the meaning in the rules that govern the applicable program under which the appeal is being filed.

(1) Affiliated Party--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(2) Appeal--An Appealing Party's notice to the Department to challenge a decision or decisions made by staff and/or the Executive Director regarding an Application, Commitment, Contract, Loan Agreement, Debarment, Underwriting Report, or LURA as governed by this section.

(3) Appeal File--The written record of an Appeal that contains the applicant's Appeal; the correspondence, if any, between Department staff (or the Executive Director) and the Appealing Party; and the final Appeal decision response provided to the Appealing Party.

(4) Appealing Party--The Administrator, Affiliated Party, Applicant, Person, or Responsible Party under Subchapter D, §2.102

of this title (relating to Enforcement Definitions) who files, intends to file, or has filed on their behalf, an Appeal before the Department.

(c) Persons Eligible to Appeal. An Appeal may be filed by any Administrator, Applicant, Person, or Responsible Party as provided for in Subchapter D, §2.102 of this title, or Affiliated Party of the Administrator, Applicant, Person or Responsible Party who has filed an Application for funds or reservation with the Department, or has received funds or a reservation from the Department to administer.

(d) Grounds to Appeal Staff Decision. Appeals may be filed using this process on the following grounds:

(1) Relating to applying for funds or requesting to be approved for reservation authority an Appealing Party may appeal if there is:

(A) Disagreement with the determination of staff regarding the sufficiency or appropriateness of documents submitted to satisfy evidence of a given threshold or scoring criteria, including the calculation of any scoring based items;

(B) Disagreement with the termination of an application;

(C) Disagreement with the denial of an award or reservation request;

(D) Disagreement with the amount of the award recommended by the Department, unless that amount is the amount requested by the Applicant;

(E) Disagreement with one or more conditions placed on the award or reservation; or

(F) Concern that the documents submitted were not processed by Department staff in accordance with the Application and program rules in effect.

(2) Relating to issues that arise after the award or reservation determination by the Board, an Appealing Party may appeal if there is disagreement with a denial by the Department of a Contract, payment, Commitment, Loan Agreement, or LURA amendment that was requested in writing.

(3) When grounds for appeal are not evidenced or stated in conformance with this Section, the Board or the Executive Director may determine in their discretion that there is good cause for an Appeal because due process interests are sufficiently implicated.

(4) Relating to debarment, a Responsible Party may appeal a determination of debarment, as further provided for in §2.401(k) of this title (relating to General).

(5) Affiliated Party Appeals. An Affiliated Party has the ability to appeal only those decisions that directly impact the Affiliated Party, not the underlying agreements. An Affiliated Party may appeal a finding of failure to adequately perform under an Administrator's Contract, resulting in a "Debarment" or a similar action, as further described Chapter 2, Subchapter D, Debarment from Participation in Programs Administered by the Department, of this title.

(e) Process for Filing an Appeal of Staff Decision to the Executive Director.

(1) An Appealing Party must file a written Appeal of a staff decision with the Executive Director not later than the seventh calendar day after notice has been provided to the Appealing Party. For purposes of this section, the date of notice will be considered the date of an Application-specific written communication from the Department to the Applicant; in cases in which no Application-specific written communication is provided, the date of notice will be the date that logs are

published on the Department's website when such logs are identified as such in the application including but not limited to a Request for Proposals or Notice of Funding Opportunity, or in the rules for the applicable program as a public notification mechanism.

(2) The written appeal must include specific information relating to the disposition of the Application or written request for change to the Contract, Commitment, Loan Agreement, and/or LURA. The Appealing Party must specifically identify the grounds for the Appeal based on the disposition of underlying documents.

(3) Upon receipt of an Appeal, Department staff shall prepare an Appeal File for the Executive Director. The Executive Director shall respond in writing to the Appealing Party not later than the fourteenth calendar day after the date of receipt of the Appeal. The Executive Director may take one of the following actions:

(A) Concur with the Appeal and make the appropriate adjustments to the staff's decision;

(B) Disagree with the Appeal, in concurrence with staff's original determination, and provide the basis for rejecting the Appeal to the Appealing Party; or

(C) In the case of appeals in exigent circumstances (such as conflict with a statutory deadline) or with the consent of the appellant, for appeals received five calendar days or less of the next scheduled Board meeting, the Executive Director may decline to make a decision and have the appeal deferred to the Board per the process outlined in subsection (f)(2) of this section, for final action.

(f) Process for Filing an Appeal of the Executive Director's Decision to the Board.

(1) If the Appealing Party is not satisfied with the Executive Director's response to the Appeal provided in subsection (e)(3) of this section, they may appeal in writing directly to the Board within seven calendar days after the date of the Executive Director's response.

(2) In order to be placed on the agenda of the next scheduled meeting of the Department's Board, the Appeal must be received by the Department at least fourteen days prior to the next scheduled Board meeting. Appeals requested under this section received after the fourteenth calendar day prior to the Board meeting will generally be scheduled at the next subsequent Board meeting. However, the Department reserves the right to place the Appeal on a Board meeting agenda if an Appeal that is timely filed under paragraph (1) of this subsection is received fewer than fourteen calendar days prior to the next scheduled Board meeting. The Executive Director shall prepare Appeal materials for the Board's review based on the information provided.

(3) If the Appealing Party receives additional information after the Executive Director has denied the Appeal, but prior to the posting of the Appeal for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the Applicant after the written Appeal. New information will cause the deadlines in this subsection to begin again. The Board will review the Appeal de novo and may consider any information properly considered by the Department in making its prior decision(s).

(4) Public Comment on an Appeal Presented to the Board. The Board will hear public comment on the Appeal under its Public Comment Procedures in §1.10 of this subchapter (relating to Public Comment Procedures). While public comment will be heard, persons making public comment are not parties to the Appeal, and no rights accrue to them under this section or any other Appeal process. Nothing in this section provides a right to Appeal any decision made on an Application, Commitment, Contract, Loan Commitment, or LURA if

the Appealing Party does not have grounds to appeal as described in subsection (d) of this section.

(5) In the case of possible actions by the Board regarding Appeals, the Board may:

(A) Concur with the Appealing Party and grant the Appeal; or

(B) Disagree with the Appealing Party, in concurrence with the Executive Director's original determination, and provide the basis for rejecting the Appeal.

(C) In instances in which the Appeal, if granted by the Board would have resulted in an award to the Applicant, the Application shall be evaluated for an award as it relates to the availability of funds and staff will recommend an action to the Board in the meeting at which the Appeal is heard, or a subsequent meeting. If no funds are available in the current year's funding cycle, then the Appealing Party may be awarded funds from a pool of deobligated funds or other source, if available.

(D) In the case of actions regarding all other Appeals, the Board shall direct staff on what specific remedy is to be provided, allowable under current laws and rules.

(g) Board Decision. Appeals not submitted in accordance with this section will not be considered, unless the Executive Director or Board, in the exercise of its discretion, determines there is good cause to consider the appeal. The decision of the Board is final.

(h) Limited Scope. The appeals process provided in this rule is of general application. Any statutory or specific rule with a different appeal process, including the limitations expressed in subsection (a) of this section, will be governed by the more specific statute or rule. Except as provided for in §2.401 of this title, this section does not apply to matters involving a Contested Case Proceeding under §1.13 of this subchapter (relating to Contested Case Hearing Procedure).

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

Filed with the Office of the Secretary of State on November 10, 2023.

TRD-202304184

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 475-3959



CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.401 - 10.406

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10, Subchapter E, §10.401 Housing Tax Credit and Tax Exempt Bond Developments; §10.402 Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants; §10.403 Review of

Annual HOME, HOME-ARP, HOME Match, NSP, TCAP-RF, and National Housing Trust Fund Rents; §10.404 Reserve Accounts; §10.405 Amendments and Extensions; and §10.406 Ownership Transfers (§2306.6713). The purpose of the proposed amendments is to make corrections to gain consistency across other sections of rule, correct references, clarify existing language and processes that will ensure accurate processing of post award activities, and to communicate more effectively with multifamily Development Owners regarding their responsibilities after funding or award by the Department.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed amendments would be in effect, the amendments do not create or eliminate a government program, but relate to changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LI-HTC) and other Department-funded multifamily Developments.

2. The proposed amendments do not require a change in work that would require the creation of new employee positions, nor are the proposed amendments significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed amendments do not require additional future legislative appropriations.

4. The proposed amendments do not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.

5. The proposed amendments are not creating a new regulation, but proposes revisions to provide additional clarification. The purpose of the amendment to §10.401(d)(2) is to make changes that result from passage of H.B. 4550 (88th Regular Legislature) passed by the House on May 2, 2023, and effective September 1, 2023, which requires that IRS Form(s) 8609 be issued no later than the 120th day following the date on which the Department received a complete cost certification package and the Development Owner has fulfilled any requests for information.

6. The proposed amendments will not repeal an existing regulation.

7. The proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed amendments will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for the handling of post award and asset management activities of multifamily developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. **TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The proposed amendments do not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there will be no economic effect on local employment, because this rule only provides for administrative processes required of properties in the Department's portfolio. No program funds are channeled through this rule, so no activities under this rule would support additional local employment opportunities. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the proposed amendments are in effect, the benefit anticipated as a result of the amended sections would be increased clarity and consistency across rule sections. There will not be economic costs to individuals required to comply with the amendment.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 24, 2023, to December 22, 2023, to receive input on the proposed amended sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Lee Ann Chance, Asset Management Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to leeann.chance@tdhca.state.tx.us. ALL COM-

MENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time December 22, 2023.

STATUTORY AUTHORITY. The proposed amendments are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amendments affect no other code, article, or statute.

§10.401. Housing Tax Credit and Tax Exempt Bond Developments.

(a) 10% Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10% of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code and Treasury Regulations, 26 CFR §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (7) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10% Test will be contingent upon the submission of the items described in paragraphs (1) - (7) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this subchapter and §11.2 of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) [~~§11.9(g)~~] of this title. Documentation to be submitted for the 10% Test includes:

(1) An Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) Any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) Evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site and a current title policy. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10% Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions);

(4) A current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that a controlling Principal in the Development Owner structure and an on-site or regional property manager attended and passed at least five hours of Fair Housing training. For architects and engineers, training certificate(s) from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. Certifications required under this paragraph must not be older than two years from the date of submission of the 10% Test Documentation, and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates; and

(7) A Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment may be required in accordance with §10.405 of this subchapter (relating to Amendments and Extensions), and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(8) Evidence of submission of the CMTS Filing Agreement pursuant to §10.607(a) of this title (relating to Reporting Requirements).

(b) Construction Status Report (All Multifamily Developments). All multifamily Developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire Development is complete as evidenced by one of the following: Certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704 or equivalent form) for the entire Development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report due [must be submitted no later than] October 10th following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report is due by the 90th [~~must be submitted 90~~] calendar day [~~days~~] after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation and is due by the 60th [~~no later than~~] calendar day [~~days~~] following closing on the bonds. A Construction Status Report not submitted by the due date will incur an extension fee in accordance with §11.901 of this title (relating to Fee Schedule). The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) - (6) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in paragraphs (4) - (6) of this paragraph and must include any changes or amendments to items in paragraphs (1) - (3) if applicable:

(1) The executed partnership agreement with the investor or, for Developments receiving an award only from the Department's Direct Loan Program, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amend-

ment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(2) The executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(3) The construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(4) The most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(5) All Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department. Third Party construction inspection reports must include, at a minimum, the date construction started (initial submission only), a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date; and

(6) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as required and further described in Tex. Gov't Code §2306.6734.

(c) LURA Origination.

(1) The Development Owner must request origination of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. A copy of the fully executed, recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives a copy of the fully executed, recorded LURA.

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

(d) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Chapter 11, Subchapter D of this title (relating to Underwriting

and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. For Non-Competitive HTC Developments, the amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 120% of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 120% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director or designee. All credit increases are subject to the Tax-Exempt Bond Credit Increase Request Fee as described in Chapter 11, Subchapter E of this Part (relating to Fee Schedule, Appeals, and other Provisions). The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) For Competitive HTC Developments, Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code. For Tax-Exempt Bond Developments, Development Owners must file cost certification documentation no later than May 15 following the first year of the Credit Period.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator. In accordance with Tex. Gov't Code §2306.6724(g), IRS Form(s) 8609 will be issued no later than the 120th day following the date on which the Department receives a complete cost certification package, and the Development Owner has fulfilled any requests for information.

(3) The cost certification package must meet [IRS Form(s) 8609 will not be issued until] the conditions as stated in subparagraphs (A) - (G) of this paragraph [have been met]. The Development Owner has:

(A) Provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) Provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxiv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Requirements include:

(i) Owner's signed and notarized Statement of Certification verifying the CPA firm's licenses and validity, including any restrictions;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) Certification and evidence of Historically Underutilized Business (HUB) Participation;

(v) Development Team List;

(vi) Development Summary with Architect's Certification;

(vii) Development Change Documentation;

(viii) As Built Survey;

(ix) A copy of the fully executed Closing Statement for each parcel of land and/or buildings purchased and included in the Development;

(x) Development Owner's Title Policy for the Development;

(xi) Title Policy Update;

(xii) Placement in Service;

(xiii) Evidence of Placement in Service;

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy (for Developments located in areas where Certificates of Occupancy (COs) are not issued by a local government or rehabilitation Developments that cannot provide COs);

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;

(xvi) Independent Auditor's Report;

(xvii) Independent Auditor's Report of Bond Financing;

(xviii) Development Cost Schedule;

(xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors;

(xx) Additional Documentation of Offsite Costs;

(xxi) Rent Schedule;

(xxii) Utility Allowances;

(xxiii) Annual Operating Expenses;

(xxiv) 30 Year Rental Housing Operating Pro Forma;

(xxv) Current Operating Statement in the form of a trailing twelve month statement;

(xxvi) Current Rent Roll;

(xxvii) Summary of Sources and Uses of Funds;

(xxviii) Final Limited Partnership Agreement with all amendments and exhibits;

(xxix) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

(xxx) Architect's Certification of Accessibility Requirements;

(xxxi) Development Owner Assignment of Individual to Compliance Training;

(xxxii) TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);

(xxxiii) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division (IRS Form(s) 8609 will not be issued without a TDHCA Final Inspection Clearance Letter); and

(xxxiv) Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) Informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this subchapter (relating to Amendments and Extensions) and §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(D) Paid all applicable Department fees, including any past due fees;

(E) Met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Director or designee; and

(G) Completed an updated underwriting evaluation in accordance with Chapter 11, Subchapter D of this Part based on the most current information at the time of the review.

§10.402. Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants.

(a) Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants or HUD Riders to Restrictive Covenants from the Department must be reviewed and approved by the Department's Asset Management Division and Legal Division prior to execution. The Development Owner must demonstrate that the Development will remain feasible with the proposed new debt. For HTC Developments seeking to refinance within two years from the issuance of the IRS Form(s) 8609, a review of the Development's cost certification will be conducted to determine if the change in the financing structure would have affected the credit award. If it is determined that the change to the financing structure, net of additional costs associated with the refinance, would have resulted in over sourcing the Development, thereby resulting in an adjustment to the credit award, the Development Owner may be required to fund a Special Reserve Account in accordance with §10.404 of this subchapter (relating to Reserve Accounts) [and in an amount as allowed under §11.302(e)(12) of Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy)]. Approval from the Board will be required for loan amounts that would cause the Developments to be over-sourced after accounting for the additional costs associated with the refinance and the deposit into the Special Reserve Account. Subordinations or re-subordinations of Developments with Direct Loans from the Department are also subject to the requirements under §13.13(c)(2) of this title (relating to Multifamily Direct Loan Rule) and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy), including but not limited to §11.302(g)(4).

(b) All requests must include:

(1) Requested document on Department approved template, if available, and completed with the Development specific information;

(2) Documentation such as a loan commitment or application that identifies the proposed loan amount and terms;

(3) If the proposed legal description is different from the legal description in the Department's regulatory agreement, a survey, title commitment, or recorded plat that agrees with the legal description in the requested document. Changes to the Development Site may be subject to further review and approval under §10.405 of this subchapter (relating to Amendments and Extensions); and

(4) Development's most recent 12-month trailing operating statement. If the financial statement indicates that the proposed new debt cannot be supported by the Development, the Development Owner must submit an operating pro forma and a written explanation for the differences from the actual performance of the Development.

§10.403. Review of Annual HOME, HOME-ARP, HOME Match, NSP, TCAP-RF, and National Housing Trust Fund Rents.

(a) **Applicability.** For participants of the Department's Multifamily HOME, HOME American Rescue Plan (HOME-ARP), and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all National Housing Trust Fund (NHTF) recipients by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/HOME-ARP/NSP/NHTF rents on an annual basis. The Department is also required by 24 CFR §92.219 and §92.252(d)(2) to approve rents for HOME Match units [~~where Multifamily Direct Loan funds (including TCAP-RF) are used as HOME match~~]. Development Owners must submit documentation for the review of HOME/HOME-ARP/HOME Match/NSP/NHTF/TCAP-RF rents by no later than August 1st of each year as further described in the Post Award Activities Manual.

(b) **Documentation for Review.** The Department will furnish a rent approval request packet for this purpose that will include a request for Development information and an Owner's proposed rent schedule and will require submission of a current rent roll, the most recent 12-month operating statement for the Development, and utility allowance information. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

(c) **Review Process.** Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

(d) **Compliance.** Development Owners for whom this section is applicable are subject to compliance under §10.622 of this chapter (relating to Special Rules Regarding Rents and Limit Violations) and may be subject to penalties under §10.625 of this chapter (relating to Events of Noncompliance). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

§10.404. Reserve Accounts.

(a) **Replacement Reserve Account (§2306.186).** The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3) - (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental Units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter and the Development does not have an existing replacement reserve account or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a third party Physical Needs Assessment (PNA), the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of Units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PNA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) Date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90% occupied; or

(B) The date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) Date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) Date on which the Development is demolished;

(C) Date on which the Development ceases to be used as a multifamily rental property; or

(D) End of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection as follows:

(A) For New Construction and Reconstruction Developments, not less than \$250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations, or demonstrated financial hardship (but not for the construction standards required by the NOFA or program regulations); or

(B) For Adaptive Reuse and Rehabilitation Developments, the greater of the amount per Unit per year either established by the information presented in a Scope and Cost Review in conformance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) or \$300 per Unit per year.

(4) For all Developments, a PNA must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PNA, a PNA must be conducted at least once during each five-year period beginning with the 11th year after the awarding of any financial assistance from the Department. PNAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the 11th year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) The reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) Compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) If the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) Whether a PNA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with 30 days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated in this paragraph, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to \$200 per dwelling Unit in the Development and/or character-

ization of the Development as being in default with this requirement, may be imposed. Causes include:

(A) A Reserve Account, as described in this section, has not been established for the Development;

(B) The Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) Money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party PNA as required under this section or submit a copy of a PNA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party PNA or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted PNA or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. In the event the circumstances identified in subparagraphs (A) or (B) of this paragraph occur, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred Developer Fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred Developer Fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(10) In the event of paragraph (7) or (8) of this subsection occurring, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new

Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two to six months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed 12 months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, except as allowed by §11.302(g)(4) of this title (relating to Underwriting Rules and Guidelines), or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department. [Deposits to a Special Reserve at cost certification will be limited in accordance with §11.302(e)(12) of

this title (relating to Underwriting Rules and Guidelines).] The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department and the Development Owner.

(4) The Development Owner must make reasonable efforts to notify tenants of the existence of the Special Reserve Account and how to submit an application to access funds from the Special Reserve. Documentation of such efforts must be kept onsite and made available to the Department upon request.

(e) Other Reserve Accounts. At cost certification, reserves may not include capitalized asset management fees, guaranty reserves, tenant services reserves, working capital reserves, or other similar costs. [Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.]

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department and include:

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to,

relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under paragraph (4) of this subsection;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) with no new Principals (who were not previously checked by Previous Participation review that retain the natural person(s) used to meet the experience requirement in Chapter 11 of this title (relating to Qualified Allocation Plan)); and

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

~~{(B) Changes in the natural person(s) used to meet the experience requirement in Chapter 11, §11.204(6) of this title provided that an appropriate substitute has been approved by the Multifamily Division prior to receipt of the amendment request (relating to Required Documentation for Application Submission);}~~

~~(B) [(C)]~~ Changes in Developers or Guarantors (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title; and

~~(C) [(D)]~~ For Exchange Developments only, requests to change elections made on line 8(b) of the IRS Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. The change to the election may only be made once during the Compliance Period.

(4) Material amendments. Amendments considered material pursuant to this paragraph must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of

the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) A significant modification of the site plan;

(B) A modification of the number of Units or bedroom mix of Units;

(C) A substantive modification of the scope of tenant services;

(D) A reduction of 3% or more in the square footage of the Units or common areas;

(E) A significant modification of the architectural design of the Development;

(F) A modification of the residential density of at least 5%;

(G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;

(H) Exclusion of any requirements as identified in Chapter 11, Subchapter B of this title (relating to Site and Development Requirements and Restrictions) and Chapter 11, Subchapter C of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment:

(i) In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Form(s) 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department and all lenders and the syndicator must submit written acknowledgement that they are aware of the changes

being requested and confirm any changes in terms as a result of the new election; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Form(s) 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the Development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of non-compliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of IRS Form(s) 8609 and requires that the Department find that:

(i) The HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter;

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division;

(C) A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;

(D) Where the Board has approved a de minimis modification of the Unit Mix or bedroom mix of Units to increase the Development's accessibility;

(E) In accordance with HOMEfires, Vol. 17 No. 1 (January 2023, as may be amended from time to time) bifurcation of the term of a HOME or NSP LURA with the Department that requires a longer affordability period than the minimum federal requirement, into a federal and state affordability period; or

(F) [~~E~~] A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). The Board must consider the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions;

(C) Changes to the Target Population;

(D) The removal of material participation by a Non-profit Organization as further described in §10.406 of this subchapter;

(E) The removal of material participation by a HUB prior to filing of IRS Form(s) 8609;

(F) Any amendment that affects a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide reasonable notice and hold a public hearing regarding the requested amendment(s) at least 20 business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If a LURA amendment is requested prior to issuance of IRS Form(s) 8609

by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph. Notifications include:

- (A) Each tenant of the Development;
- (B) The current lender(s) and investor(s);
- (C) The State Senator and State Representative of the districts whose boundaries include the Development Site;
- (D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and
- (E) The county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph:

- (A) The Development Owner's name, address and an individual contact name and phone number;
- (B) The Development's name, address, and city;
- (C) The change(s) requested; and
- (D) The date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §11.901 of this title. Any extension request submitted fewer than 30 days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) [~~§11.9(g)~~] of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. *Ownership Transfers* (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The exceptions to the ownership transfer process in this subsection are applicable.

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(5) Changes resulting from a deed-in-lieu of foreclosure do not require Executive Director approval. However, advance notification must be provided to both the Department and to the tenants at least 30 days prior to finalizing the transfer. This notification must include information regarding the applicable rent/income requirements post deed in lieu of foreclosure.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this Subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be

subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(5) Any initial operating, capitalized operating, or replacement reserves funded with an allocation from the HOME American Rescue Plan (HOME-ARP) and Special Reserves required by the Department must remain with the Development.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs), an Applicant may request a change [an amendment] to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this Chapter (relating to Material LURA Amendments).

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(12)(B) [~~§11.204(13)(B)~~] of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(12)(C) [~~§11.204(13)(C)~~] of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30-day period has expired; and

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS or NSPIRE violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

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

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

The Texas State Library and Archives Commission (commission) proposes amendments to §2.1, Definitions; §2.2, Responsibilities of Commission and the Director and Librarian; §2.3, Procedures of Commission; §2.5, Advisory Committees; §2.7, Library Systems Act Advisory Board (LSA Board); §2.8, Texas Historical Records Advisory Board (THRAB); §2.9, TexShare Library Consortium Advisory Board (TexShare Advisory Board); §2.46, Negotiated Rule-making; §2.48, Petition for Adoption of Rules; §2.53, Service Complaints; §2.55, Protest Procedure; §2.56, Training and Education of Staff; §2.60, Friends Groups; §2.70, Vehicle Fleet Management; §2.77, Contract Approval Authority and Responsibilities; §2.111, General Selection Criteria; §2.112, Eligible and Ineligible Expenses; §2.113, Peer Review; §2.114, Funding Decisions; and §2.120, Applicant Eligibility; and new §2.54, HUB Program; §2.110 Scope of Subchapter and Standards; and §2.115, Grant Recommendation and Award Process.

BACKGROUND. The Texas State Library and Archives Commission (TSLAC) recently concluded its quadrennial review of the rules located at 13 TAC Chapter 2, General Policies and Procedures, as required by Government Code, §2001.039. As a result of this review, TSLAC identified numerous needed changes to improve, update, and clarify the rules. TSLAC also identified several rules that are not necessary as administrative rules and proposes the repeals of those sections in this same issue of the *Texas Register*.

SECTION BY SECTION ANALYSIS. Proposed amendments to §2.1 modify the definition of "commission" to mean the seven-member governing body of the Texas State Library and Archives Commission and add a definition of "agency" to mean the Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, programs, and property of the Texas State Library and Archives Commission. TSLAC has been implementing this clarifying change throughout its rules as opportunities for amendment have occurred. TSLAC also proposes the deletion of several defined terms that are either not used in the chapter or for which a definition is not necessary.

Proposed amendments to §2.2 change "commission" to "agency" as necessary and change "chairman" to "chair."

Proposed amendments to §2.3 change "chairman" and "vice chairman" to "chair" and "vice-chair" and change "commission" to "agency" as necessary. An additional proposed amendment deletes unnecessary language.

Proposed amendments to §2.5 change "commission" to "agency" as necessary. Additional proposed amendments update language regarding reporting by advisory committees to the commission and the commission's evaluation of advisory committees.

Proposed amendments to §§2.7, 2.8, and 2.9 continue the commission's advisory committees for another four years.

Proposed amendments to §2.46 and §2.48 change "commission" to "agency" as necessary and make minor wording adjustments to improve the language.

Proposed amendments to §2.53 update and simplify the agency's process for receiving, reviewing, and responding to complaints. The existing rule mirrored the agency's protest procedures, which are not necessary for responding to general complaints regarding agency services.

Proposed new §2.54 updates the commission's HUB Program rule to reference the correct citations.

Proposed amendments to §2.55 change "commission" to "agency" and "chairman" to "chair" as necessary.

Proposed amendments to §2.56 change "commission" to "agency" as necessary and change the person responsible for approving employee training to the director and librarian or designee.

Proposed amendments to §2.60 and §2.70 change "commission" to "agency" as necessary.

Proposed amendments to §2.77 delete the definitions of "commission" and "agency" as they are no longer necessary for this rule due to the proposed definitional changes for the entire chapter.

In general, proposed changes to sections within Subchapter C, Division 1, General Grant Guidelines, consolidate rules that relate to the same topic or are repetitive, update and improve language for clarity regarding the commission's general grant requirements, reorder the rules for a more logical progression, and delete outdated and unnecessary requirements.

Proposed new §2.110 updates the chapter's scope to establish guidelines applicable to the awarding of grants and other rules necessary to the administration of TSLAC's grant programs. An amendment to this section also adopts the Uniform Grant Management Standards and the Texas Grant Management Standards as published by the Texas Comptroller of Public Accounts. This provision was previously a stand-alone section, §2.116 (relating to Texas Grant Management Standards).

Proposed amendments to §2.111 make minor wording improvements to the section.

Proposed amendments to §2.112 update the list of items that are generally ineligible for funding through competitive grants to mirror the requirements as stated in TSLAC's Notices of Funding Opportunities, which are written in compliance with federal and state guidelines. An additional proposed amendment updates a citation as necessitated by the proposed amendments.

Proposed amendments to §2.113 update the title of the section from Peer Review to Selection Process, and fold in the requirements of §2.117 (relating to Grant Review and Award Process) to the existing rule. Additional amendments update and clarify the language. As amended, §2.113 would outline TSLAC staff's review of grant applications and the process for staff in working with grant applicants on their applications; authorizes and

explains the process for peer review panels; and outlines the process for the scoring of applications.

Proposed amendments to §2.114 make minor language updates and move the language previously codified at §2.115 (relating to Awarding of Grants) to proposed new subsection (e).

Proposed new §2.115 is titled Grant Recommendation and Award Process and consists of the language formerly codified at §2.118 (relating to Decision Making Process).

Proposed amendments to §2.120 make a minor wording update.

Additional proposed amendments throughout this rulemaking make grammatical updates and conform the language to Texas Register preferences.

FISCAL IMPACT. Donna Osborne, Chief Operations and Fiscal Officer, has determined that for each of the first five years the proposed amendments and new rules are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the new or amended rules, as proposed.

PUBLIC BENEFIT AND COSTS. Gloria Meraz, Director and Librarian, has determined that for each of the first five years the proposed amendments and new rules are in effect, the anticipated public benefit will be consistency and clarity in the rules governing general agency procedures and in the agency's rules regarding general grant guidelines. There are no anticipated economic costs to persons required to comply with the proposed new rules or amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendments and new rules do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Gov't Code §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendments and new rules will be in effect, the commission has determined the following:

1. The proposed amendments and new rules will not create or eliminate a government program;
2. Implementation of the proposed amendments and new rules will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed amendments and new rules will not require an increase or decrease in future legislative appropriations to the commission;
4. The proposed amendments and new rules will not require an increase or decrease in fees paid to the commission;

5. The proposal will create new regulations to replace rules proposed for repeal;
6. The proposal will repeal existing regulations but will not otherwise expand or limit existing regulations;
7. The proposed amendments and new rules will not increase the number of individuals subject to the proposed amendments' and new rules' applicability; and
8. The proposed amendments and new rules will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed amendments and new rules do not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rule may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §§2.1 - 2.3, 2.5, 2.7 - 2.9, 2.46, 2.48, 2.53 - 2.56, 2.60, 2.70, 2.77

STATUTORY AUTHORITY. The amendments and new rules are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.006, General Powers and Duties, which directs the commission to govern the state library; and §441.0065, Advisory Committees, which directs the commission to adopt rules regarding advisory committees.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.1. Definitions.

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

(1) Agency--means the Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, programs, and property of the Texas State Library and Archives Commission.

(2) [(4)] Commission--means the seven-member governing body of the Texas State Library and Archives Commission. [The Texas State Library and Archives Commission.]

(3) [(2)] Competitive grant--Any grant awarded by the Texas State Library and Archives Commission based on competition among eligible entities for available grant funds.

(4) [(3)] Director and librarian--Chief executive and administrative officer of the Texas State Library and Archives Commission.

[(4)] Loan period--A period of time beginning with the date the Texas State Library delivers or mails an item to a customer and ending with the date that the customer returns it to the library.]

[(5)] Over-size paper copy--Any printed impression on paper larger than 8 1/2 inches by 14 inches. Each side of a piece of paper is counted as a single copy. A piece of paper that is printed on both sides is counted as two copies.]

(5) [(6)] State Archives--A non-circulating collection of Texas state and local government records, private papers, maps, photographs, newspapers, and published materials that documents the history of the State of Texas and the growth and actions of its government.

[(7)] Texas State Library--The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.]

[(8)] Friends group--An affiliated nonprofit organization whose purpose is to raise funds for or provide services or other benefits to the Texas State Library and Archives Commission and that has been so designated by the commission.]

§2.2. Responsibilities of Commission and the Director and Librarian.

(a) General Powers and Responsibilities. The commission is a seven-member [seven member] citizen board appointed by the governor with the advice and consent of the senate. The [commission is an] agency is within the executive branch, but functions independently within its statutory authority to serve the long-term public interest.

(b) Powers and Responsibilities of the Commission. The commission is responsible for establishing the policy framework through which the Texas State Library carries out its statutory responsibilities. The commission governs the library through the director and librarian. The staff of the library receive direction from the commission through the director and librarian. Specifically, the commission:

(1) adopts administrative rules that guide the staff in administering library programs;

(2) approves strategic and operating plans and requests for appropriations;

(3) approves all contracts as specified in §2.77 of this subchapter (relating to Contract Approval Authority and Responsibilities);

(4) approves all competitive grants, and all other grants of \$100,000 or more, made by the library;

(5) acknowledges acceptance of gifts, grants, or donations of \$500 or more that are in accord with the mission and purposes of the library;

(6) oversees operations of the library for integrity, effectiveness, and efficiency;

(7) acts as a final board of appeals for staff decisions or advisory board recommendations on grants, accreditation of libraries, certification of librarians, or other issues of concern to the public;

(8) selects the director and librarian and approves the selection of the assistant state librarian; and

(9) conducts a periodic performance review of the director and librarian.

(c) Powers and Responsibilities of the Director and Librarian. The director and librarian is responsible for the effective and efficient administration of the policies established by the commission. Specifically, the director and librarian:

(1) selects, organizes, and directs the staff of the library;

(2) establishes the operating budget for the library and allocates funds among strategies, programs, and projects within the limits

of statutory authority and as set forth in the General Appropriations Acts of the legislature;

(3) approves expenditures of funds in accordance with law;

(4) represents the commission and reports on behalf of the commission to the governor, the legislature, the public, or other organized groups as required;

(5) reports in a timely manner all relevant information first to the chair [chairman] and subsequently to all members of the commission, endeavoring to report to members of the commission in such a manner that the members are equally well informed on matters that concern the commission; and

(6) delegates his/her responsibilities to the assistant state librarian or other agency staff as appropriate.

§2.3. *Procedures of Commission.*

(a) Election of Officers. In accordance with statute, the chair [chairman] of the commission is designated by the governor. The vice-chair [vice-chairman] is elected by the members of the commission at the first meeting in even numbered years.

(b) Powers of the Chair [chairman]. The chair [chairman] shall call meetings of the commission, set the agenda for meetings of the commission, preside at meetings of the commission, and authenticate actions of the commission as necessary.

(c) Vice-Chair [Vice-Chairman]. The vice chair [vice-chairman] of the commission exercises the powers and authority of the chair [chairman] in the event of a vacancy, absence, or incapacity of the chair [chairman], including the authority to call a meeting, set the agenda, and act on behalf of the chair [chairman].

(d) Committees. The chair [chairman] shall appoint an audit committee, consisting of three members of the commission, one to serve as chair [chairman]. The audit committee will receive plans and reports from internal and external auditors, review and revise such plans and reports as needed, and recommend them to the commission for adoption and approval. The chair [chairman] shall appoint such other committees of the commission as may be deemed necessary.

(e) Meetings. The commission shall have regularly scheduled meetings five times per year. The chair [chairman] may call additional meetings of the commission as may be necessary, provided that adequate notice of such meetings shall be given in accordance with the Open Meetings Act (Government Code, Chapter 551). The chair [chairman] shall call a special meeting of the commission upon written request by a majority of the members of the commission. Any regularly scheduled meeting of the commission may be canceled by the chair [chairman], provided that ten days notification is given to the members of the commission.

(f) Agenda. The chair [chairman] shall establish the agenda for meetings of the commission with advice from other members and the director and librarian. Any person may request that an item be placed on the agenda of the next meeting of the commission by writing to the chair [chairman], with a copy to the director and librarian. Such item will be added to the agenda at the discretion of the chair [chairman], except that the chair [chairman] will place on the agenda any item requested by a majority of the members of the commission. Notice and agenda of commission meetings shall be posted by the director and librarian in accordance with the Open Meetings Act.

(g) Transaction of Business. As defined in the Open Meetings Act, a majority of the members of the commission, or four members, shall constitute a quorum. Meetings of the commission are conducted in a manner that welcomes public participation and complies with the spirit of the Open Meetings Act. At each meeting of the commission the

agenda shall include a period for public comment of up to five minutes per individual. Actions of the commission are approved by a majority of the members present and voting. Proxies are not allowed.

(h) Minutes of Meetings. The director and librarian shall prepare minutes of commission meetings and file copies with members of the commission, the Legislative Reference Library, and the state publications program of the Texas State Library. Any changes or subsequent corrections of minutes at a commission meeting shall be filed in the same manner.

(i) Establishing, Amending, or Rescinding Existing Policy. The commission fosters an open administrative process with full public participation in rule making through advance publication of all proposed rules in the *Texas Register*. [~~as well as in appropriate library newsletters. The commission intends to comply in spirit as well as technically with the Administrative Procedure Act (Government Code, Chapter 2001).~~]

(j) Travel of Commission Members. Members of the commission are entitled to reimbursement for actual expenses incurred to attend meetings of the commission subject to any applicable limitation on reimbursement provided by the General Appropriations Act or other act of the legislature. The chair [chairman] shall review and approve any claim for reimbursement of actual expenses reasonably incurred in connection with the performance of other services as a commission member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act or other act of the legislature.

(k) Grants. The commission delegates to the director and librarian its authority to approve all grants that are less than \$100,000, except competitive grants.

(l) Gifts and Donations. The commission delegates to the director and librarian its authority to accept gifts, grants and donations of less than \$500 that are in accord with the mission and purposes of the commission. Any such gifts, grants or donations will be managed in accordance with principles of sound financial management and will be used for the purposes for which they are given.

(m) Advisory Committees. The chair [chairman] may establish and appoint committees to assist the commission in their deliberations as needed and for the period required.

(n) Code of Conduct. Members of the commission [~~and~~] and officers and employees of the agency [~~commission~~] will not solicit or accept any gift, favor, service, or thing of value that might reasonably tend to influence the member, officer, or employee in the discharge of official duties, or that the member, officer, or employee knows or should know is being offered with the intent of influencing the member's, officer's, or employee's official conduct. Members, officers, and employees of the commission will not accept employment, engage in a business or professional activity, or accept compensation that would:

(1) require or induce them to disclose confidential information acquired by virtue of official position;

(2) impair their independence of judgment in the performance of official duties; or

(3) create a conflict between their private interest and the public interest.

§2.5. *Advisory Committees; General Requirements.*

(a) Purpose and scope. This section governs procedures for the creation and operation of advisory committees, except as otherwise provided by law or commission rule. The purpose of an advisory committee is to make recommendations to the commission on programs, rules, and policies affecting the delivery of information services in the state. An advisory committee's sole role is to advise the commission.

An advisory committee has no executive or administrative powers or duties with respect to the operation of the commission, and all such powers and duties rest solely with the commission.

(b) Creation and duration of advisory committees. The commission shall create advisory committees by commission order. An advisory committee is abolished on the fourth anniversary of the date of its creation unless the commission designates a different expiration date for an advisory committee or an advisory committee has a specific duration prescribed by law.

(c) Appointment procedures. The commission will appoint members to an advisory committee based on advice and input from the director and librarian. Each advisory committee will elect from its members a presiding officer, who will report the advisory committee's recommendations to the commission.

(d) Size and quorum requirement. An advisory committee must be composed of a reasonable number of members not to exceed 24. A majority of advisory committee membership will constitute a quorum. An advisory committee may act only by majority vote of the members present at the meeting.

(e) Membership terms. Advisory committee members:

(1) may serve two- or four-year staggered terms, as ordered by the commission; and

(2) are appointed by and serve at the pleasure of the commission. If a member resigns, dies, becomes incapacitated, is removed by the commission, otherwise vacates the position, or becomes ineligible prior to the end of the member's term, the commission will appoint a replacement to serve the remainder of the unexpired term.

(f) Conditions of membership.

(1) Qualifications. To be eligible to serve as a member of an advisory committee, a person must have knowledge about and interests in the specific purpose and tasks of an advisory committee as established by commission order.

(2) Conflict of interest. Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees.

(3) Training requirements. Each member of an advisory committee must complete training regarding the Open Meetings Act, Chapter 551 of the Government Code, and the Public Information Act, Chapter 552 of the Government Code.

(g) Administrative support. For each advisory committee, the director and librarian will designate a division of the agency [~~commission~~] that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(h) Meetings.

(1) Meeting requirements. The division designated for an advisory committee under subsection (g) of this section shall submit to the Secretary of State notice of a meeting of the advisory committee. The notice must provide the date, time, place, and subject of the meeting. All advisory committee meetings shall be open to the public.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the division designated under subsection (g) of this section.

(3) Attendance. A record of attendance at each meeting of an advisory committee will be made. Unless otherwise provided by law, if a member of an advisory committee misses three consecutive advisory committee meetings, the member automatically vacates the

position and the commission will appoint a new member to fill the remainder of the unexpired term created by the vacancy.

(i) Record. Agency [~~Commission~~] staff shall maintain minutes of each advisory committee meeting and distribute copies of approved minutes and other advisory committee documents to the commission and advisory committee members.

(j) Reporting recommendations. The agency shall report an [~~An~~] advisory committee's [~~committee shall report its~~] recommendations to the commission [~~in writing~~]. The presiding officer of an advisory committee or designee may appear before the commission to present the committee's recommendations.

(k) Reimbursement. Members of an advisory committee shall not be reimbursed for expenses unless reimbursement is authorized by law and approved by the director and librarian.

(l) Review of advisory committees. The agency [~~commission~~] shall monitor the composition and activities of advisory committees. To enable the commission to evaluate the continuing need for an advisory committee, the agency shall report on the advisory committee's work, usefulness, and costs, including the cost of agency staff time spent in support of the committee's activities, at least annually. [~~an advisory committee shall report in writing to the commission a minimum of once per year. The report provided by the advisory committee shall be sufficient to allow the commission to properly evaluate the committee's work and usefulness.~~]

(m) Compliance with the Open Meetings Act. An advisory committee shall comply with the Open Meetings Act, Government Code, Chapter 551.

(n) Rules. For each advisory committee appointed, the commission shall adopt rules that address the purpose of the advisory committee. The rules may address additional items, including membership qualifications, terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this subchapter.

§2.7. *Library Systems Act Advisory Board (LSA Board).*

(a) The LSA Board is created to advise the commission on matters relating to the Library Systems Act. The LSA Board's tasks include reviewing and making recommendations regarding the minimum standards for accreditation of libraries in the state library system, reviewing and making recommendations regarding the application of the standards to local libraries, reviewing and making recommendations regarding the future development of the Library Systems Act, reviewing and making recommendations regarding grant programs for local libraries, and reviewing and making recommendations regarding agency programs that affect local libraries.

(b) The LSA Board reports to the commission through its meetings and meeting minutes, and/or reports or letters to the Director and Librarian.

(c) The LSA Board membership consists of five librarians qualified by training, experience, and interest to advise the commission on the policy to be followed in applying Government Code, Chapter 441, Subchapter I, Library Systems. The term of office for each LSA Board member is three years.

(d) The LSA Board shall expire on February 20, 2028 [2024].

§2.8. *Texas Historical Records Advisory Board (THRAB).*

(a) The THRAB is created to serve as the central advisory body for historical records planning and projects funded by the National Historical Publications and Records Commission that are developed and implemented in this state and advise the Texas State Library

and Archives Commission on matters related to historical records in the state. The advisory board's tasks include those enumerated in Government Code §441.242.

(b) The advisory board reports to the commission through its meetings and meeting minutes, and/or reports or letters to the Director and Librarian.

(c) The THRAB is composed of:

(1) the state archivist, who shall be appointed as the historical records coordinator by the governor and who serves as presiding officer of the THRAB;

(2) two public members, appointed by the governor; and

(3) six members, appointed by the director and librarian, who must have recognized experience in the administration of government records, historical records, or archives.

(d) The terms of office for the members of the THRAB are as follows:

(1) The historical records coordinator serves a four-year [~~four year~~] term;

(2) The two public members appointed by the governor serve staggered terms of three years with the terms of the members expiring on February 1 of different years; and

(3) The six members appointed by the director and librarian serve staggered terms of three years with the terms of one-third of the members expiring on February 1 of each year.

(e) The THRAB shall expire on February 20, 2028 [~~2024~~].

§2.9. *TexShare Library Consortium Advisory Board (TexShare Advisory Board).*

(a) The TexShare Advisory Board is created to advise the commission on matters relating to the consortium.

(b) The TexShare Advisory Board membership shall represent the various types of libraries comprising the membership of the consortium, with at least two members representing the general public. Members must be qualified by training and experience to advise the commission on policy to be followed in applying Government Code, Chapter 441, Subchapter M, TexShare Library Consortium. TexShare Advisory Board members serve three-year terms beginning September 1.

(c) The TexShare Advisory Board shall expire on February 20, 2028 [~~2024~~].

§2.46. *Negotiated Rulemaking.*

(a) It is the commission's policy to engage in negotiated rulemaking procedures under Government Code, Chapter 2008, when appropriate. When the agency [~~commission~~] finds that proposed rules are likely to be complex or controversial, or to affect disparate groups, negotiated rulemaking may be proposed.

(b) When negotiated rulemaking is proposed, the director and librarian will appoint a convenor to assist in determining whether it is advisable to proceed. The convenor shall perform the duties and responsibilities contained in Government Code, Chapter 2008.

(c) If the convenor recommends proceeding with negotiated rulemaking and the commission adopts the recommendation, the commission shall initiate negotiated rulemaking according to the provisions of Government Code, Chapter 2008.

§2.48. *Petition for Adoption of Rules.*

(a) Any interested person may petition the agency [~~commission~~] requesting the adoption of a rule.

(b) At a minimum, a petition under this section must be in writing directed to the director and librarian and contain the following:

(1) A clear and concise statement of the substance of the proposed rule, together with a brief explanation of the purpose to be accomplished through such adoption;

(2) The petitioner's full name, Texas address, telephone number, and signature; and

(3) The chapter and subchapter in which, in the petitioner's opinion, the rule belongs, and the proposed rule text of a new rule or the text of the proposed rule change prepared in a manner to indicate the words to be added or deleted from the current text, if any.

(c) Within 60 days after receipt, the agency [~~commission~~] will either deny the petition in writing, stating its reasons therefore, or will initiate rulemaking proceedings in accordance with the Administrative Procedure Act (Government Code, Chapter 2001, Subchapter B).

(d) If rulemaking procedures are initiated under this section, the version of the rule [~~which~~] the agency [~~commission staff~~] proposes may differ from the version proposed by the petitioner.

§2.53. *Service Complaints.*

(a) Complaints regarding agency services [~~For the purpose of improving services to the public and resolving complaints about services of the Texas State Library, state publications of the library as defined in §3-1 of this title (relating to State Publications Depository Program) shall include a notice that complaints may be made~~] must be submitted in writing to the director and librarian [with the director's mailing address and telephone number. Such notice shall also be posted in all public service areas and public access computer systems]. Complaints may be mailed to Director and Librarian, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711-2927; hand-delivered at 1201 Brazos Street, Austin, Texas, 78701, or sent by email to dir.lib@tsl.texas.gov. The agency will review, investigate, and respond to complaints within 10 business days from the date the complaint is received. The agency will notify the complainant if additional time is necessary to investigate a complaint.

~~[(b) Complaints regarding service delivery, grants and the administration of grants will be processed promptly and efficiently in accordance with the procedures outlined in §2.55 of this title (relating to Protest Procedure).]~~

~~(b) [(e)]~~ The agency [~~commission~~] will maintain a record of complaints filed. This will include information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

~~(c) [(d)]~~ The agency [~~commission~~] will make information available describing its procedures for complaint investigation and resolution. [~~The commission will periodically notify the complaint parties of the status of the complaint until final disposition.~~]

§2.54. *HUB Program.*

The commission adopts the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business (HUB) Program at 34 TAC, Part 1, Chapter 20, Subchapter D, Division 1.

§2.55. *Protest Procedure.*

(a) An aggrieved person who is not satisfied with a decision, procedure, or service received from agency [~~the~~] staff of the commission or who is an actual or prospective bidder, grantee, or contractor aggrieved in connection with a solicitation, evaluation, or award may file a protest with the director and librarian in accordance with this rule.

(b) A protest must be submitted to the director and librarian within 21 days after the person knows or should have known of the

matter that is protested. The director and librarian has the discretion to allow a protest filed after 21 days if the protestant shows good cause for the late filing or if the protest raises an issue significant to the general policies and procedures of the commission.

(c) The protestant shall mail or deliver a copy of the protest to all interested persons. The director and librarian will furnish a list of interested persons to a protestant. For protests of a competitive selection (bid, contract, or grant), interested persons shall include all persons who have submitted a bid, proposal, or application.

(d) A protest must be in writing and identified as a protest under commission rule 13 TAC §2.55 and contain the following:

(1) a description of the protestant's interest in the matter;

(2) the issue(s) to be resolved and remedy(s) requested;

(3) the protestant's argument supporting the protest, including a statement of relevant facts and applicable law, specifying the statutes, rules, or other legal authority alleged to have been violated;

(4) the protestant's affirmation that facts set forth in the protest are true; and

(5) a certification that a copy of the protest has been mailed or delivered to all interested persons.

(e) Upon receipt of a protest conforming to the requirements of this section, the agency [~~commission~~] shall not proceed with the solicitation, award, or contract until the protest is resolved, unless the director and librarian makes a written determination that delay would harm the substantial interests of the state.

(f) The director and librarian has the authority to decide, settle, or resolve the protest and will make a written determination. The director and librarian may solicit written responses to the protest from other parties. The director and librarian shall inform the protesting party and other interested parties by letter of his determination, how to appeal the determination to the commission, and how to respond to any appeal that is filed.

(g) An interested party may appeal the determination of the director and librarian. An appeal must be in writing and conform to paragraphs (1)-(3) of this subsection:

(1) the appeal must be received in the office of the director and librarian no later than 15 days after the date the determination is mailed to interested parties;

(2) a copy of the appeal must be mailed or delivered by the appealing party to all interested parties and contain a certification of mailing or delivery;

(3) the appealing party must state whether or not an opportunity is requested to make an oral presentation to the commission in open meeting.

(h) The director and librarian shall refer the matter to the commission for their consideration at an open meeting.

(i) The chair [~~chairman~~] of the commission has the discretion to allow an appeal filed more than 15 days after the director and librarian's determination if the appealing party shows good cause for the late filing or if the appeal raises an issue significant to the general policies or procedures of the commission.

(j) An interested party may file a response to an appeal of the determination of the director and librarian no later than 15 days after the appeal is mailed or delivered. The chair [~~chairman~~] of the commission has the discretion to allow a response filed more than 15 days after the appeal of the determination by the director and librarian if the

interested party shows good cause for the late filing or if the response raises an issue significant to the general policies or procedures of the commission.

(k) Copies of the appeal and responses of interested parties, if any, shall be mailed to the commission by the director and librarian.

(l) The chair [~~chairman~~] of the commission has the discretion to decide whether or not a request for oral presentations will be granted and will set the order and amount of time for oral presentations that are allowed. The chair [~~chairman~~] also has the discretion to decide whether presentations and written documents presented by agency [~~commission~~] staff and interested parties will be allowed.

(m) The commission will determine properly filed appeals and make its decision in open meeting. The commission shall vote to uphold or reverse the decision of the director and librarian. Failing a majority vote of the commission to reverse, the director and librarian's decision is upheld. The commission's decision is final and not subject to judicial review under the statutes governing the commission.

(n) A decision issued either by the commission in open meeting or in writing by the director and librarian shall be the final administrative action of the commission.

(o) Documentation concerning a protest of a competitive selection is part of the agency's [~~commission's~~] records series for that selection and is retained in accordance with the agency's [~~commission's~~] approved records retention schedule.

§2.56. *Training and Education of Staff.*

(a) The purposes of the agency's [~~commission's~~] training program are all work-related, and include meeting technological or legal requirements, developing additional work skill capabilities, or increasing competence or performance. The agency's [~~commission's~~] training program includes all education, workshops, seminars, and similar instruction.

(b) The agency [~~commission~~] may provide training to any of its employees to enable them to perform their current duties more effectively. The agency [~~commission~~] may also provide training to selected employees to enable them to perform prospective duties needed by the agency.

(c) The agency [~~commission~~] may require an employee to attend any necessary training program.

(d) Employee training must be recommended by the division director and approved by the director and [~~assistant state~~] librarian or designee.

(e) When training is approved, the agency [~~commission~~] will either pay the training costs[;] or allow the employee's schedule to accommodate the training (by rearranging work hours[;] or allowing the training to be taken as work time), or both.

(f) After attending training, an employee must submit a report of the training to the Human Resources Office of the agency [~~commission~~] within three working days. The employee must make an oral or written presentation to other employees, if requested.

(g) An employee who fails to complete the training must reimburse the agency [~~commission~~] for the cost of the training, except for reasons beyond the employee's control.

(h) In this section, "special training" means instruction, teaching, or other education received by a state employee that is not normally received by other state employees and that is designed to enhance the ability of the employee to perform the employee's job. Special training does not include training required by either state or federal law or that is determined necessary by the agency [~~commission~~] and offered

to all employees performing similar jobs. Special training does include a course of study at an institution of higher education.

(i) The agency [~~commission~~] may provide special training to selected employees to enhance their ability to perform their current or prospective duties.

(j) Employees must be recommended by their division director and approved by the assistant state librarian for special training.

(k) If an employee is to receive special training that will be paid by the agency [~~commission~~], and during the training period the employee will not perform regular duties for three or more months as a result of the training, the employee must agree in writing to the requirements of Government Code §656.103 and §656.104.

(l) An employee may be released from these requirements if the commission in open meeting finds that such action is in the best interest of the agency, or because an extreme personal hardship would be suffered by the employee.

§2.60. *Friends Groups.*

(a) The commission may designate nonprofit organizations that are organized to raise funds and provide services and other benefits to the agency [~~commission~~] as a "friend" of the commission. A friends group must submit copies of its charter and bylaws or other organizational documents to the commission for review and approval. Upon designation as a friend of the commission and for so long as such designation exists, the commission may recognize a friends group. Designation as a "friend" shall be reviewed periodically but not less than once every five years.

(b) Funds accepted by friends groups for the benefit of the commission to support the purposes and programs of the commission are to be managed as reasonably prudent persons would manage funds if acting on their own behalf. Such funds are to be accounted for according to generally accepted accounting principles. A financial report shall be prepared at least annually and made available to the public upon request.

(c) The commission may authorize reasonable use of agency [~~commission~~] employees, equipment, or property by recognized friends groups in order to further or support the purposes or programs of the commission, provided such usage is commensurate with the benefit received or to be received by the commission. Agency [~~Commission~~] employees shall receive no compensation from the friends groups for such service.

(d) A commission member or agency employee [~~of the commission~~] may not serve as an officer or director of a friends group. The commission will designate not more than one of its members to serve as liaison to each friends group.

(e) Nothing in this section shall supersede any rule or statute regulating the conduct of an employee of a state agency or the procedures of a state agency. To the extent of any conflict, the other rule or statute shall prevail.

§2.70. *Vehicle Fleet Management.*

(a) To the extent applicable, the commission adopts the Texas State Vehicle Fleet Management Plan developed by the Office of Vehicle Fleet Management, Statewide Procurement Division of the Texas Comptroller of Public Accounts.

(b) The director and librarian will designate a vehicle fleet manager for the agency [~~commission~~].

(c) The vehicle fleet manager, with executive approval, is responsible for:

(1) managing the agency's [~~commission's~~] vehicle fleet in accordance with the State Vehicle Fleet Management Plan;

(2) observing and enforcing statewide fleet management policies and procedures at the agency level; and

(3) developing written policies and procedures for managing commission vehicles that implement, to the extent feasible, the Best Practices guidelines of the State Vehicle Fleet Management Plan.

(d) Each agency [~~commission~~] vehicle is assigned to the agency [~~commission~~] motor pool and is available for checkout for official business by employees who are authorized to drive agency vehicles, with the advance approval of the executive or the vehicle fleet manager.

(e) The agency [~~commission~~] may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the agency [~~commission~~] makes a written documented finding that the assignment is critical to the needs and mission of the agency [~~commission~~].

§2.77. *Contract Approval Authority and Responsibilities.*

(a) Purpose. The purpose of this rule is to establish the approval authority and responsibilities for executing contracts required by the agency.

(b) Applicability. This rule applies to all contracts entered into by the agency.

(c) Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) [~~Agency--means Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, programs, and property of the Texas State Library and Archives Commission.~~]

[(2) ~~Commission--means the seven-member governing body of the Texas State Library and Archives Commission.~~]

[(3) ~~] Contract--means a written agreement between the agency and a contractor for goods or services. As used in this section, "contract" includes the following: interagency contracts with other government entities; interlocal agreements with other government entities; and other documents in which funds or services allocated to the agency are exchanged for the delivery of other goods or services.~~]

(2) [(4)] Value--means the estimated dollar amount the agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions, and renewals of the contract. The agency shall base its determination of the proposed length of and compensation during the original term and renewal periods of the contract on best business practices, state fiscal standards, and applicable law, procedures, and regulations. The agency's determination of contract value reflects the definition set forth in the State of Texas Contract Management Guide as developed by the comptroller under Government Code, §2262.051.

(d) Approval Authority.

(1) Commission Approval. The director and librarian or designee shall present certain contracts to the commission for approval. The commission shall consider for approval:

(A) any contract or amendment with a value expected to exceed \$1 million;

(B) any amendment to a contract that results in the contract value exceeding \$1 million;

(C) any contract or amendment to a contract that relates to the TexShare Library Consortium regardless of overall contract value; and

(D) any other contract deemed appropriate for commission approval as determined by the director and librarian in consultation with the chair of the commission.

(2) Agency Approval.

(A) The commission delegates authority to the director and librarian or designee to approve all contracts not listed in paragraph (1) of this subsection;

(B) The commission delegates authority to the director and librarian or designee to approve contracts with an overall contract value that exceeds \$1 million as approved by commission order; and

(C) The commission delegates authority to the director and librarian to approve a purchase request or contract listed in paragraph (1) of this subsection for an emergency as defined in 34 TAC §20.25 (relating to Definitions), or to avoid undue material additional cost to the state. The director and librarian shall report any purchase requests or contracts executed by the director and librarian under this authority to the commission chair prior to execution of any such purchase requests or contracts.

(e) Authority to Execute Contracts. The commission delegates authority to the director and librarian to execute all contracts for the agency. This authority may be delegated by the director and librarian to the assistant state librarian or other designee.

(f) Contract Planning. The agency will present to the commission for information a contract plan for the next fiscal year that outlines the agency's anticipated contracting actions that exceed \$500,000. The director and librarian or designee will present updates to the contract plan to the commission for information periodically throughout the fiscal year.

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

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Sarah Swanson

General Counsel

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5460



SUBCHAPTER C. GRANT POLICIES
DIVISION 1. GENERAL GRANT GUIDELINES
13 TAC §§2.110 - 2.115, 2.120

STATUTORY AUTHORITY. The amendments and new rules are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.0091, Grant Program for Local Libraries, which authorizes the commission to adopt by rule guidelines for awarding grants; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which

directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.110. *Scope of Subchapter.*

(a) Texas Government Code, Chapter 441, authorizes the commission to establish a program of grants using state, federal, or other funds. This subchapter establishes the guidelines for awarding grants and other rules necessary to the administration of these grant programs. [The agency operates a variety of grant programs including negotiated, competitive, and formula grants. This subchapter applies to all types of grant programs. However, §§2.112, 2.113, 2.117, 2.118, and 2.119 of this title (relating to Eligible and Ineligible Expenses, Peer Review, Grant Review and Award Process, Decision Making Process, and Multiple Applications) apply only to competitive grant programs. Formula grant guidelines are also specified in §2.810 et al (relating to Loan Star Libraries grants), and §1.41 et al (relating to Library Systems grants).]

(b) The agency adopts by reference the Uniform Grant Management Standards and the Texas Grant Management Standards as published by the Texas Comptroller of Public Accounts.

§2.111. *General Selection Criteria.*

(a) Grants shall be awarded based on guidelines that reflect applicable state or federal priorities and mandates. The grant guidelines issued by the agency will specify the timetable, forms, procedures, and any supplemental criteria or requirements applicable to a particular grant for that year. Grant guidelines include the goals describing the purpose of the grant program, applicant eligibility requirements, description of the services to be provided, applicable priorities and restrictions, [and] the selection criteria, and the process to evaluate grant applications and select awards. [Selection criteria and requirements are designed to select applications that provide the best overall value to the state.]

(b) The general selection criteria include:

- (1) applicant eligibility;
- (2) relevance to goals;
- (3) program impact;
- (4) program scope and quality;
- (5) the cost of proposed service;
- (6) measurability of service impact; and
- (7) compliance with requirements.

(c) The agency [commission] may consider additional factors in the selection process [determining best value], including:

- (1) financial ability to perform services;
- (2) state and regional service needs and priorities;
- (3) improved access for underserved [poorly served] areas and populations;
- (4) improved access to funding for libraries that have not received grants from the agency within a specified time frame to be determined by the agency or that have limited resources;
- (5) ability to continue services after grant period; and
- (6) past performance and compliance.

§2.112. *Eligible and Ineligible Expenses.*

(a) Except as provided in grant guidelines, competitive grants may fund costs for staff, equipment, capital expenditures, supplies,

professional services, and other typical operating expenses, as permitted by §2.110(b) [§2.116] of this title (relating to Scope of Subchapter [Texas Grant Management Standards]). The purpose of competitive grants is not for collection development [.] or other activities primarily focused on the acquisition of library materials or resources.

(b) Except as provided in grant guidelines, competitive grants may not fund the following [costs, in addition to those not permitted by §2.116 of this title]:

(1) Capital expenditures related to the purchase of real property or buildings; [building construction or renovation;]

(2) Capital expenditures related to the construction or expansion of facilities, including fixtures and services;

(3) Capital expenditures related to renovation costs, including fixtures and services;

(4) [(2)] Food [føød], beverages, or food delivery equipment or services; [awards, honoraria, prizes, or gifts;]

(5) Awards, honoraria, prizes, gifts, or incentives;

(6) [(3)] Equipment [equipment] or technology not specifically needed to carry out the goals of the grant;

(7) [(4)] Transportation [transportation] /travel for project participants or non-grant funded personnel;

(8) [(5)] Databases [databases] currently offered or similar to ones offered by the agency (i.e., a magazine index database may not be purchased if a comparable one is provided by the agency);

(9) [(6)] Collection [collection] development purchases not targeted directly to the grant goals nor integral to the service program;

(10) [(7)] Advertising [advertising] or public relations costs not directly related to promoting awareness of grant-funded activities; [er]

(11) [(8)] Performers [performers] or presenters whose purpose is to entertain rather than to educate; or [-]

(12) Other expenses as excluded in the grant guidelines.

§2.113. Selection Process. [Peer Review]

(a) To be eligible for review, each application must be submitted by the specified deadline with all required components and all necessary authorization signatures.

(b) Agency staff will review each application for the following: [The director and librarian may select professionals, citizens, community leaders, and agency and library staff to evaluate grant applications. Peer reviewers must have appropriate training or service on citizen boards in an oversight capacity and may not evaluate grant applications in which there is, or is a possible appearance of, a conflict of interest.]

(1) legal eligibility of the institution to participate in a grant program and appropriate authorizing signature;

(2) conformance to the federal and state regulations pertaining to grants;

(3) inclusion of unallowable costs;

(4) errors in arithmetic or cost calculations;

(5) submission of all required forms;

(6) compliance with submission procedures and deadlines;

and

(7) relevance and appropriateness of the project design and activities to the purpose of the grant program.

(c) Agency staff will raise issues and questions regarding the needs, methods, staffing and costs of the applications. Staff will also raise concerns regarding the relevance and appropriateness of the project design and activities to the purpose of the grant program. Staff comments will be sent to the review panel with the applications for consideration by the panel. [The agency staff will distribute selected applications to reviewers and will provide written instructions or training for peer reviewers. Reviewers must complete any training prior to reviewing applications.]

(d) Applicants will be sent a copy of the staff comments to give applicants an opportunity to respond in writing. Applicants may not modify the proposal in any way; however, applicants' responses to staff comments will be distributed to the panel. [The reviewers score each application according to the review criteria and requirements stated in the grant guidelines.]

(1) Applications with significant errors, omissions, or eligibility problems will not be rated. Applications in which the project design and activities are not relevant and appropriate to the purpose of the grant program will be ineligible.

(2) Agency staff will be available to offer technical assistance to reviewers.

(e) [(a)] The agency [commission] may use peer review panels to evaluate applications in competitive grant programs.

(1) Peer reviewers may include professionals, citizens, community leaders, and agency and library staff to evaluate grant applications. Peer reviewers must have appropriate training or service on citizen boards in an oversight capacity and may not evaluate grant applications in which there is, or is a possible appearance of, a conflict of interest.

(2) The agency staff will distribute selected applications to reviewers and will provide written instructions or training for peer reviewers. Reviewers must complete any training prior to reviewing applications.

(3) The reviewers will score each application according to the review criteria and requirements stated in the grant guidelines.

(4) Each evaluation of an application for competitive grants shall be appropriately documented by the peer reviewer conducting the evaluation. The documentation shall include the scores assigned by the peer reviewer. The peer reviewer may also include comments that may be shared with the applicant.

[(e) Each peer review evaluation of an application for competitive grants shall be appropriately documented by the peer reviewer conducting the evaluation. The documentation shall include the scores assigned by the peer reviewer. The peer reviewer may also include comments that may be shared with the applicant.]

(f) Applications will be scored using the following process:

(1) The peer reviewers will review all complete and eligible grant applications forwarded to them by agency staff and complete a rating form for each. Each reviewer will evaluate the proposal in relation to the specific requirements of the criteria and will assign a value, depending on the points assigned to each criterion.

(2) No reviewer who is associated with an applicant or who stands to benefit directly from an application will serve on the review panel for the grant program in which the application is submitted for that grant cycle. Any reviewer who is associated with a potential applicant in the respective category must inform the agency and their organ-

ization about a potential conflict of interest. Any reviewer who feels unable to evaluate a particular application fairly may choose not to review that application.

(3) Reviewers will consider and assess the strengths and weaknesses of any proposed project only on the basis of the documents submitted. Considerations of geographical distribution, demographics, type of library, or personality will not influence the assessment of a proposal by the review panel. The panel members must make their own individual decisions regarding the applications. The panel may discuss applications, but the panel's recommendations will be compiled from the individual assessments, not as the result of a collective decision or vote.

(4) Reviewers may not discuss proposals with any applicant before the proposals are reviewed. Agency staff is available to provide technical assistance to reviewers. Agency staff will conduct all negotiations and communication with the applicants.

(5) Reviewers may recommend setting conditions for funding a given application or group of applications (e.g., adjusting the project budget, revising project objectives, modifying the timetable, amending evaluation methodology, etc.). The recommendation must include a statement of the reasons for setting such conditions. Reviewers who are ineligible to evaluate a given proposal will not participate in the discussion of funding conditions.

(6) Reviewers will submit their evaluation forms to the agency. In order to be counted, the forms must arrive before the specified due date.

~~{(f) To be eligible for review, each application must be submitted by the specified deadline with all required components and all necessary authorization signatures.}~~

§2.114. Funding Decisions.

(a) The agency staff will submit a recommended priority-ranked list of applicants for possible funding. Final approval of a grant award will be made by the commission in an open meeting. ~~[is solely at the determination of the State Library and Archives Commission].~~

(b) Applications for grant funding will be evaluated only upon the information provided in the written application, including attachments, if any.

(c) The agency staff may negotiate with selected applicants to determine the terms of the award. To receive an award, the applicant must accept any additional or special terms and conditions listed in the grant contract and any changes in the grant application.

(d) The agency staff will notify unsuccessful applicants in writing.

(e) The agency has the right to reject applications or cancel or modify a grant solicitation at any point before a contract is signed. The award of any grant is subject to the availability of funds.

§2.115. Grant Recommendation and Award Process.

To be considered eligible for funding, any application must receive a minimum adjusted mean score of more than 60 percent of the maximum points available. However, eligibility does not guarantee funding. The commission may also choose to award extra points to libraries that have not received funding within a specified time frame to be determined by the agency or that have limited resources. To reduce the impact of scores that are exceedingly high or low, or otherwise outside the range of scores from other reviewers, agency staff will tabulate the panel's work using calculations such as an adjusted mean score.

(1) Applications will be ranked in priority order by score for consideration by the commission.

(2) If insufficient funds remain to fully fund the next application, the staff may negotiate a reduced grant with the next ranked applicant.

(3) If the panel recommends funding an application that, for legal, fiscal, or other reasons, is unacceptable to the staff, a contrary recommendation will be made. The applicant will be informed of this situation prior to presentation to the commission and may negotiate a revision to the application. A positive recommendation to the commission will be contingent upon successfully completing these negotiations prior to the commission meeting.

(4) If the panel is unable to produce a set of recommendations for funding, the agency staff will use the same evaluation procedures to develop recommendations to the commission.

§2.120. Applicant Eligibility.

(a) Each notice of funding opportunity for a specific grant program ~~[authorized by commission rule]~~ will identify one or more of the following Texas entities as an eligible applicant:

- (1) public libraries;
- (2) TexShare Library Consortium member institutions; or
- (3) nonprofit organizations.

(b) A public library is eligible for a grant program if it is accredited under Subchapter C of Chapter 1 of this Title (relating to Minimum Standards for Accreditation of Libraries in the State Library System).

(c) A nonprofit organization is eligible if it is applying on behalf of accredited public libraries as defined by this section or TexShare member institutions, and the nonprofit organization's organizational charter, operating guidelines, or mission statement includes providing direct support for activities and goals of one or more public libraries or TexShare member institutions as a defined objective.

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

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Sarah Swanson

General Counsel

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5460



CHAPTER 2. GENERAL POLICIES AND PROCEDURES

The Texas State Library and Archives Commission (commission) proposes the repeal of §2.4, Principles; §2.10, §2.54, Bid Procedures and HUB Program, Dual Office Holding; §2.58, Use of Technology; §2.110, Scope of Subchapter; §2.115, Awarding of Grants; §2.116, Texas Grant Management Standards; §2.117, Grant Review and Award Process; §2.118, Decision Making Process; §2.210, Negotiated Grants; §2.211, Resource Sharing--Interlibrary Loan Grants; §2.212, Technical Assistance

Grants; §2.213, System Integrated Negotiated Grants; §2.610, Goals and Purposes; §2.611, Eligible Applicants; §2.612, Criteria for Award; §2.810, Goals and Purposes; §2.811, Definitions; §2.812, Eligible Applicants; §2.813, Eligible Expenses; §2.814, Funding Formula; §2.815, Application Review and Awarding Process; §2.910, Goals and Purposes; §2.911, Eligible Applicants; and §2.912, Criteria for Award.

EXPLANATION OF PROPOSED REPEALS. The commission recently concluded its quadrennial review of Chapter 2, General Policies and Procedures, as required by Government Code, §2001.039. While the commission determined that, in general, the reasons for initially adopting the rules continue to exist, the commission identified several sections that are no longer necessary. Some of the rules proposed for repeal merely recite statutory requirements and are unnecessary as administrative rules. Other rules proposed for repeal are being folded into other existing rules as proposed amendments or new sections, which may be found in this edition of the *Texas Register*. Lastly, other sections are proposed for repeal as they detail requirements for grant programs the commission no longer administers. Furthermore, it is not necessary to adopt specific rules pertaining to individual grant programs, as the rules codified in 13 TAC Chapter 2, Subchapter C, Grant Policies, Division 1, General Grant Guidelines, are applicable to all of the commission's grant opportunities unless specified otherwise. Additional details regarding specific agency grant programs, including the goals and purposes of each opportunity, will always be provided in the Notice of Funding Opportunities published by the commission's Library Development and Networking Division for each specific grant.

The Administrative Procedure Act, Government Code, Chapter 2001, defines a rule as a state agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the procedure or practice requirements of a state agency. Gov't Code, §2001.003(6). As stated in the Administrative Law Handbook published by the Office of the Attorney General, this definition specifically excludes statements governing purely internal agency management or organization.

The commission proposes the repeal of §2.4, Principles, because it does not implement, interpret, or prescribe law or policy or describe a commission procedure or practice requirement. Furthermore, it is outdated, having last been amended almost 20 years ago.

The commission proposes the repeal of §2.10, Dual Office Holding, as this requirement is unnecessary and inappropriate in a commission rule. Dual office holding is prohibited by Texas law, based on the Texas constitutional restriction on holding two civil offices of emolument and common-law incompatibility.

The commission proposes the repeal of §2.58, Use of Technology, because it does not implement, interpret, or prescribe law or policy or describe a commission procedure or practice requirement.

The commission proposes the repeal of §2.110, Scope of Subchapter, because the commission is proposing new language for this section. Rather than amend the existing rule, the commission finds it more efficient to repeal the existing rule and propose a new rule in its place.

The commission proposes the repeal of §2.115, Awarding of Grants; §2.116, Texas Grant Management Standards; §2.117, Grant Review and Award Process; and §2.118, Decision Making Process, because the commission is reorganizing the rules within Subchapter C (Grant Policies), Division 1 (General Grant

Guidelines). The general subject matter of these rules will remain in rule, but may be organized differently and with updated, streamlined language. By repealing these sections, the commission will be able to propose new sections and ensure the Division as a whole is concisely worded and flows more logically. In turn, the commission believes the commission's rules will be easier to understand and apply.

Lastly, the commission proposes the repeal of §2.210, Negotiated Grants; §2.211, Resource Sharing--Interlibrary Loan Grants; §2.212, Technical Assistance Grants; §2.213, System Integrated Negotiated Grants; §2.610, Goals and Purposes; §2.611, Eligible Applicants; §2.612, Criteria for Award; §2.810, Goals and Purposes; §2.811, Definitions; §2.812, Eligible Applicants; §2.813, Eligible Expenses; §2.814, Funding Formula; §2.815, Application Review and Awarding Process; §2.910, Goals and Purposes; §2.911, Eligible Applicants; and §2.912, Criteria for Award. The commission proposes the repeal of each of these sections because they relate specifically to grant programs the commission no longer administers. Furthermore, they are unnecessary, as the commission's general grant rules apply to all of the commission's grant programs and individual rules pertaining to specific grant programs are not necessary, unless required by statute. In this case, none of the specific grant programs described in the rules proposed for repeal are required in statute to be adopted by rule.

FISCAL NOTE. Donna Osborne, Chief Operations and Fiscal Officer, has determined that for each of the first five years the proposed repeals are in effect, there will not be a fiscal impact on state or local government.

PUBLIC BENEFIT/COST NOTE. Gloria Meraz, Director and Librarian, has determined that for the first five-year period the repeals are in effect, the public benefit will be consistency and clarity in the commission's rules related to general commission programs, services, and grants.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Ms. Meraz has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these repeals and therefore no regulatory flexibility analysis, as specified in Government Code, §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Pursuant to Government Code, §2001.0221, the commission provides the following Government Growth Impact Statement for the proposed repeals:

During the first five years that the proposed repeals would be in effect, the proposed repeals: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the proposed repeal will be in effect, the proposed repeal will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed repeal may be directed to Sarah Swanson, General Counsel, via email rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §§2.4, 2.10, 2.54, 2.58

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and §441.006, General Powers and Duties, which directs the commission to govern the state library.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.4. *Principles.*

§2.10. *Dual Office Holding.*

§2.54. *Bid Procedures and HUB Program.*

§2.58. *Use of Technology.*

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

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SUBCHAPTER C. GRANT POLICIES DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §§2.110, 2.115 - 2.118

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.110. *Scope of Subchapter.*

§2.115. *Awarding of Grants.*

§2.116. *Texas Grant Management Standards.*

§2.117. *Grant Review and Award Process.*

§2.118. *Decision Making Process.*

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

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Sarah Swanson
General Counsel
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DIVISION 2. NEGOTIATED GRANTS

13 TAC §§2.210 - 2.213

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.210. *Negotiated Grants.*

§2.211. *Resource Sharing--Interlibrary Loan Grants.*

§2.212. *Technical Assistance Grants.*

§2.213. *System Integrated Negotiated Grants.*

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

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DIVISION 6. LIBRARY SERVICES AND TECHNOLOGY ACT, GUIDELINES FOR LIBRARY SYSTEMS

13 TAC §§2.610 - 2.612

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.610. *Goals and Purposes.*

§2.611. *Eligible Applicants.*

§2.612. *Criteria for Award.*

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

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DIVISION 8. LOAN STAR LIBRARIES GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.810 - 2.815

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.810. *Goals and Purposes.*

§2.811. *Definitions.*

§2.812. *Eligible Applicants.*

§2.813. *Eligible Expenses.*

§2.814. *Funding Formula.*

§2.815. *Application Review and Awarding Process.*

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

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DIVISION 9. IMPACT GRANTS FOR LIBRARY INNOVATION AND IMPROVEMENT

13 TAC §§2.910 - 2.912

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of

all available formal and informal procedures; §441.135, Grants, which directs the commission to adopt by rule the guidelines for awarding grants; and §441.136, Rules, which directs the commission to adopt rules necessary to the administration of the program of state grants.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§2.910. *Goals and Purposes.*

§2.911. *Eligible Applicants.*

§2.912. *Criteria for Award.*

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

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CHAPTER 7. LOCAL RECORDS SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.123

The Texas State Library and Archives Commission (commission) proposes an amendment to §7.123, General.

BACKGROUND. House Bill 1962, 86th R.S. (2019) (HB 1962) amended Government Code, §441.095, Disposition of Unscheduled Records, by repealing subsections (a), (b), and (c). HB 1962 also added Government Code, §441.169, Duties of Local Governments. Together, these amendments changed the process for the destruction of records not listed on a records retention schedule. Prior to the amendments, a custodian was required to file with the commission a notice of intent to destroy a record not listed on an approved records retention schedule at least 60 days before destroying the record. Now, under Government Code, §441.169, a local government is authorized to destroy records that do not appear on a records retention schedule issued by the commission if the local government notifies the commission at least 10 days before destroying the record. The proposed amendment to §7.123 is necessary to update the commission's general rule related to records retention schedules for local governments, which currently refers to the filing of records destruction requests with the commission.

ANALYSIS OF PROPOSED AMENDMENTS. A proposed amendment to §7.123 deletes subsection (c), which lists five circumstances when a local government may destroy records without filing a records destruction request with the commission. Because a local government is no longer required to file records destruction requests with the commission, this subsection is now obsolete.

A proposed amendment to §7.123(b) makes a correction to a reference to another commission rule.

FISCAL IMPACT. Craig Kelso, Director, State and Local Records Management, has determined that for each of the first five years the proposed amendments are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the rule, as proposed.

PUBLIC BENEFIT AND COSTS. Mr. Kelso has determined that for each of the first five years the proposed amendments are in effect, the anticipated public benefit will be increased clarity in the commission's rules and requirements for local governments and consistency with statutory requirements. There are no anticipated economic costs to persons required to comply with the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendments do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Government Code, §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendments will be in effect, the commission has determined the following:

1. The proposed amendments will not create or eliminate a government program;
2. Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the commission;
4. The proposed amendments will not require an increase or decrease in fees paid to the commission;
5. The proposal will not create a new regulation;
6. The proposal will not expand or repeal an existing regulation;
7. The proposed amendments will not increase the number of individuals subject to the proposal's applicability; and
8. The proposed amendments will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to their property that would otherwise exist in the absence of government action. Therefore, the proposed amendment does not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted to Craig Kelso, Director, State and Local Records Management Division, Texas

State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed under Government Code, §441.158, which directs the commission to adopt records retention schedules for each type of local government by rule.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441 and Local Government Code, Chapters 201, 202, and 203.

§7.123. *General.*

(a) The following purposes of this undesignated head are to:

- (1) implement the Government Code, §441.158; and
- (2) provide procedures for the development of records retention schedules which ensure participation by the public, local officials, and state agencies having regulatory authority over local government recordkeeping.

(b) The records retention schedules adopted in §7.125 of this title (relating to [~~Adoption of~~] Records Retention Schedules [~~by Reference~~]) shall be considered minimum requirements and shall in no way affect the authority of the governing bodies of local governments or of elected county officials to establish longer periods of time for which records of their government or office are to be retained.

~~[(c) Local governments and elected county officers may destroy the following records without first filing records destruction requests with the director and librarian:]~~

~~[(1) any record whose retention period in a records retention schedule is AV (as long as administratively valuable);]~~

~~[(2) any record whose retention period in a records retention schedule is one year or less;]~~

~~[(3) any record whose retention period in a records retention schedule is US (until superseded), unless an additional period exceeding one year is prescribed beyond supersession;]~~

~~[(4) any record listed in Local Schedule EL, as adopted under §7.125 of this title (relating to Adoption of Records Retention Schedules by Reference), whose retention period is RP-1 (general, special, and primary elections that do not involve a federal office—60 days after election day) or RP-2 (general, special, and primary elections that do involve a federal office—22 months after election day);]~~

~~[(5) any record listed as exempt from the destruction request requirement in a records retention schedule.]~~

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

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Sarah Swanson
General Counsel

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CHAPTER 10. ARCHIVES AND HISTORICAL RESOURCES

13 TAC §10.4

The Texas State Library and Archives Commission (commission) proposes an amendment to 13 Texas Administrative Code §10.4, Reappraisal and Deaccessioning of Items.

BACKGROUND. Government Code, §441.190 authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records. The statute further directs the commission to pay particular attention to the maintenance and storage of archival and vital state records and authorizes the commission to adopt rules as it considers necessary to protect those records.

The commission adopted §10.4, Reappraisal and Deaccessioning of Items, in January 2023, and the new rule became effective March 6, 2023. Section 10.4(b) addresses the deaccessioning of items in the State Archives, specifically providing guidance as to when deaccessioning may be appropriate. Subsection (b)(3) provides that deaccessioning may be appropriate for items that are duplicates of other items in the State Archives. Agency archivists regularly encounter duplicates of records in the State Archives. Sometimes duplicates are found in separate state agency records series or in separate non-state agency collections. Other times, duplicates of items are found within a single records series or collection. The commission proposes an amendment to this section to enable commission staff to weed out duplicates of items in the State Archives when they are located within a single records series or collection. This amendment would enable staff to manage and process the collection more efficiently. Duplicates of items found in separate state agency records series or in separate non-state agency collections would still need to go through the formal reappraisal and deaccessioning process before they are disposed of under §10.4(d).

EXPLANATION OF PROPOSED AMENDMENT. The proposed amendment to §10.4 would add a clarifying clause to subsection (b)(3) to clarify that deaccession may be an appropriate option for items that are duplicates of other items in the State Archives if the duplicates are found within records of a separate state agency or a separate non-state agency collection.

FISCAL IMPACT. Jelain Chubb, State Archivist, has determined that for each of the first five years the proposed amendment is in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the amended rule, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Chubb has determined that for each of the first five years the proposed amendment is in effect, the anticipated public benefit will be increased clarity regarding the process for deaccessioning of items from the State Archives. In addition, by enabling the commission to weed out certain duplicates without going through the formal process in certain limited instances, the commission will be able to process archives more efficiently, enabling the commission to make progress on its archival backlog, which will ultimately make more archives available to the public. There are no anticipated economic costs to persons required to comply with the proposed amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employ-

ment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendment does not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Gov't Code §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendment will be in effect, the commission has determined the following:

1. The rule as proposed for amendment will not create or eliminate a government program;
2. Implementation of the rule as proposed for amendment will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the rule as proposed for amendment will not require an increase or decrease in future legislative appropriations to the commission;
4. The proposal will not require an increase or decrease in fees paid to the commission;
5. The proposal will not create a new regulation;
6. The proposal will not expand, limit, or repeal an existing regulation;
7. The proposal will not increase the number of individuals subject to the proposed rules' applicability; and
8. The proposal will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed amendment does not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rules may be submitted to Jelain Chubb, State Archivist, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711 or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendment is proposed under Government Code, §441.190; which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records, paying particular attention to the maintenance, storage, and protection of archival and vital state records; §441.193, which authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission; and §441.186, which authorizes the state archivist to remove the designation of a state record as an

archival state record and permit destruction of the record under rules adopted under Chapter 441, Subchapter L.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441, Subchapter L, Preservation and Management of State Records and Other Historical Resources.

§10.4. Reappraisal and Deaccessioning of Items.

(a) The commission recognizes the need for periodic reevaluations and thoughtful selection necessary for the growth and proper care of collections. To maintain the integrity of the State Archives holdings, items may be reappraised by staff to determine if they still meet professional appraisal criteria and comply with the agency's acquisition policy. Items that do not meet professional appraisal criteria and are not in compliance will be considered for deaccession.

(b) Deaccession may be appropriate for items:

(1) That were never appraised or are not subject to archival review according to the creating agency's approved records retention schedule;

(2) Whose retention period has changed from permanent to nonpermanent according to the creating agency's approved records retention schedule;

(3) That are duplicates of other items in the State Archives if such duplicates are found in records of a separate state agency or in a separate non-state agency collection;

(4) That are reproductions of archival materials owned by other individuals or repositories;

(5) Whose condition has deteriorated to a point that they are unstable or endanger staff or other items;

(6) The agency cannot properly access or store;

(7) That are permanently closed, in whole or in part, by the creating agency;

(8) That do not meet the requirements of the agency's current acquisition policy; or

(9) Approved on a case-by-case basis for deaccession for other reasons not listed above.

(c) Items may only be deaccessioned if a majority of the Deaccession Workgroup votes to recommend deaccession and the state archivist approves. The state archivist will notify the director and librarian prior to final approval of deaccessioning of items.

(d) The agency will determine the appropriate method by which to dispose of a deaccessioned item, which may include, but is not limited to the following:

(1) Items may be transferred to a repository with an appropriate collecting scope;

(2) Items that are state records will be destroyed by the agency;

(3) For any other non-government records, the agency will make a reasonable effort to locate the original donor to return the deaccessioned item, unless the donor claimed a charitable donation tax deduction. To return a donated item to the original donor:

(A) Donor(s) must sign a written acknowledgment at testing to the fact that a tax deduction was not claimed;

(B) If the donor is deceased, any claimant requesting return in lieu of the donor must present a notarized statement that he/she is either the sole party at interest or authorized to represent all parties at interest, along with providing supporting proof; and

(C) If the original donor cannot be located, these items may be offered to another repository or destroyed;

(4) Any item whose condition could endanger individuals or other items will be destroyed; and

(5) The sale of any deaccessioned materials will be approved by the Commission and the funds will be used to preserve state archival records and other historical resources and to make the records and resources available for research.

(e) If an item or collection of items approved for deaccession has been logged in the accession log as "on loan" to the agency or has unknown provenance, staff will follow the procedures in Property Code, Chapter 80 (relating to Ownership, Conservation, and Disposition of Property Loaned to Museum) regarding ultimate disposition of the item or items.

(f) Upon deaccession, the agency relinquishes title to the object or collection, except in the case of theft or loss. If deaccessioning is due to theft or loss, the agency will retain title to the item for the state in case it is ever recovered.

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

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Sarah Swanson

General Counsel

Texas State Library and Archives Commission

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 151. GENERAL ADMINISTRATION 22 TAC §§151.1 - 151.7

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new 22 TAC §151.1, Definitions; §151.2, Charges for Copies of Public Information; §151.3, Employee Training and Education; §151.4, Historically Underutilized Businesses Program; §151.5, Bid Opening and Tabulation; §151.6, Negotiation and Mediation of Certain Contract Disputes; and §151.7, Vendor Protest Procedures.

The proposed new rules create a General Administration Chapter for rules of general applicability to TALCB's administration. The changes create a new definitions section in §151.1 for ease of reading and terminology consistent with terms utilized by both the Texas Real Estate Commission and TALCB. In §151.2, the proposed rule outlines TALCB's approach to fees related to the production of documents in response to public information requests. In §151.3, the new rule addresses the Board's payment of education and training for TALCB employees. Finally, in §151.4, Historically Underutilized Businesses Program; §151.5,

Bid Opening and Tabulation; §151.6, Negotiation and Mediation of Certain Contract Disputes; and §151.7, Vendor Protest Procedures, the new rules relate TALCB's contracting and procurement processes.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed rules are in effect the public benefits anticipated as a result of enforcing the proposed rules will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed rules are in effect the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed rules are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed rules may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; §1103.154, which authorizes TALCB to adopt rules relating to professional conduct; and §1103.156 which authorizes TALCB to establish reasonable fees to administer Chapter 1103, Texas Occupations Code; and Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statutes affected by these new rules are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§151.1. Definitions.

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

(1) Agency--The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board.

(2) Board--The Texas Appraiser Licensing and Certification Board.

(3) Chief Financial Officer--The Chief Financial Officer of the Texas Real Estate Commission.

(4) Commission--The Texas Real Estate Commission.

(5) Comptroller--The Comptroller of Public Accounts.

(6) DIR--The Department of Information Resources.

(7) Executive Director--The Executive Director of the Commission and the Board.

(8) TAC--The Texas Administrative Code.

(9) TFC--The Texas Facilities Commission.

§151.2. Charges for Copies of Public Information.

The Board adopts by reference the rules promulgated by the Commission regarding Charges for Copies of Public Information as set forth in 22 TAC §534.2.

§151.3. Employee Training and Education.

(a) The Board may provide training and education for its employees in accordance with Subchapter C, Chapter 656, Texas Government Code.

(b) The Board may spend public funds as appropriate to pay the costs associated with employee training, including, but not limited to, salary, tuition and other fees, travel, and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

(c) The Executive Director shall adopt policies related to training for Board employees, including eligibility and obligations assumed upon completion.

(d) Before an employee may receive reimbursement of tuition expenses for successful completion of a training or education program offered by an accredited institution of higher education, the Executive Director must pre-approve the program and authorize the tuition reimbursement payment.

(e) Approval to participate in any portion of the Board's training and education program does not affect an employee's at-will status.

(f) Participation in the training and education program does not constitute a guarantee or indication of continued employment, nor does it constitute a guarantee or indication of future employment in a current or prospective position.

§151.4. Historically Underutilized Businesses Program.

To comply with Texas Government Code §2161.003, the Board adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter D, Division 1 (relating to the Historically Underutilized Businesses).

§151.5. Bid Opening and Tabulation.

To comply with Texas Government Code, §2156.005(d), the Board adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC §20.207 (relating to Competitive Sealed Bidding).

§151.6. Negotiation and Mediation of Certain Contract Disputes.

To comply with Texas Government Code, §2260.052(c), the Board adopts by reference the rules of the Office of the Attorney General in 1 TAC Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.

§151.7. Vendor Protest Procedures.

The Board adopts by reference the rules promulgated by the Commission regarding Vendor Protest Procedures as set forth in 22 TAC §534.7.

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

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Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

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CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.12, §153.16

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.12, Criminal History Checks and §153.16, License Reinstatement.

The proposed amendments to §153.12 accurately reflect the process of criminal history checks. The proposed amendments to §153.16 refine the requirements related to the reinstatement of an expired license. Specifically, the amendments remove re-examination as a requirement for reinstatement, clarify that the requirement are consistent with that of the Appraisal Qualifications Board, and specify the circumstances when an applicant must demonstrate experience in compliance with USPAP.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.12. Criminal History Checks.

(a) An applicant or license holder applying for or renewing a license issued by the Board must submit a complete and legible set of fingerprints, in a manner approved by the Board, to the Board, the Texas Real Estate Commission, the Texas Department of Public Safety, or other authorized entity for the purpose of obtaining criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation.

(b) The Board will conduct a criminal history check of each applicant for a license or renewal of a license.

~~[(c) If an applicant or license holder has previously submitted fingerprints on behalf of the Board or Commission as provided in (a), no additional fingerprints are required.]~~

§153.16. License Reinstatement.

(a) This section applies only to a person who:

(1) previously held a residential appraiser license or certification or general appraiser certification [an appraiser license] issued by the Board that has been expired for more than six months; and

(2) seeks to obtain the same level of appraiser license previously held by the person before its expiration.

(b) A person who seeks to reinstate a license expired less than five years must [described in subsection (a) may apply to reinstate the person's former license by]:

(1) submit [submitting] an application for reinstatement on a form approved by the Board;

(2) pay [paying] the required fee;

(3) satisfy [satisfying] the Board as to the person's honesty, trustworthiness and integrity;

and] (4) satisfying the experience requirements in this section;

(4) [(5)] satisfy [satisfying] the fingerprint and criminal history check requirements in §153.12 of this title; and[-]

(5) complete all AQB continuing education requirements that would have been required had the license not expired.

(c) A person who seeks to reinstate a license expired five years or more must:

(1) satisfy the requirements of subsection (b); and

(2) submit an experience log demonstrating his or her experience complies with USPAP, as outlined in subsection (d).

(d) An experience log submitted under subsection (c) must include at least 10 appraisals of a property type accepted by the AQB for the applicable license category, completed within 5 years from the date of application under this section.

(e) Unless otherwise provided in this section, the board will verify and award experience submitted under subsection (d) in accordance with §153.15 of this title (relating to Experience Required for Licensing).

(f) If a person who seeks to reinstate a license under subsection (c) is unable to submit appraisals or supporting documentation for verification, he or she may apply for a license as an appraiser trainee for the purposes of acquiring the appraisal experience required for reinstatement.

[(e) Applicants for reinstatement under this section must demonstrate completion of 14 hours of appraiser continuing education for each year since the last renewal of the person's previous license.]

[(d) Applicants for reinstatement must demonstrate that their appraisal experience complies with USPAP as follows:]

[(1) Persons who have work files and license expired less than 5 years. A person described in subsection (a) of this section who has appraisal work files and whose previous license has been expired less than five years may apply to reinstate the person's previous license by submitting an experience log as follows:]

[(A) For reinstatement as a licensed residential appraiser or a certified residential appraiser, a minimum of 10 residential appraisal reports representing at least 10 percent of the hours and property type of experience required by the AQB for the applicable license category.]

[(B) For reinstatement as a certified general appraiser, a minimum of 10 non-residential appraisal reports representing at least

10 percent of the total hours of experience required by the AQB for this license category.]

[(2) Persons who do not have work files or license expired more than 5 years.]

[(A) A person described in subsection (a) who does not have appraisal work files or whose previous license has been expired for more than five years may apply for a license as an appraiser trainee for the purpose of acquiring the appraisal experience required under this subsection.]

[(B) An appraiser trainee licensed under this section may apply for reinstatement at the same level of appraiser license that the applicant previously held, after the applicant completes the required number of appraisal reports or hours of real estate appraisal experience as follows:]

[(i) For reinstatement as a licensed residential appraiser or certified residential appraiser, the applicant must complete a minimum of 10 residential appraisal reports representing at least 10 percent of the experience hours required by the AQB for the applicable license category.]

[(ii) For reinstatement as a certified general appraiser, the applicant must complete a minimum of 10 non-residential appraisal reports representing at least 10 percent of the total hours of experience required by the AQB for this license category.]

[(C) Upon completion of the required number of appraisal reports or hours of real estate appraisal experience, the applicant must submit an experience log.]

[(D) If an appraiser trainee seeking reinstatement under this section is supervised by a supervisory appraiser with more than three appraiser trainees, those trainees seeking reinstatement under this section satisfy the required progress monitoring through completion of the experience audit under subsection (e) of this section and need not complete the voluntary appraiser trainee experience reviews under §153.22 of this title.]

[(e) Consistent with §153.15 of this title, the Board will evaluate each applicant's real estate appraisal experience for compliance with USPAP based on the submitted experience log.]

[(f) For those persons described in subsection (a) of this section the Board has discretion to waive the following requirements:]

[(1) Proof of qualifying education;]

[(2) College education or degree requirement; or]

[(3) Examination for persons whose appraiser license has been expired for less than five years.]

[(g) Consistent with this chapter, upon review of the applicant's real estate appraisal experience, the Board may:]

[(1) Reinstate the applicant's previous appraiser license;]

[(2) Reinstate the applicant's previous appraiser license, contingent upon completion of additional education, experience or mentorship; or]

[(3) Deny the application.]

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

Filed with the Office of the Secretary of State on November 13, 2023.

TRD-202304211
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 936-3652



CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.110

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.110, AMC National Registry.

The proposed amendments allow for greater flexibility in addressing AMCs that fail to pay the AMC registry fee.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188,

Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.110. AMC National Registry.

(a) For purposes of this rule, the term "AMC" includes each AMC registered with the Board under Chapter 1104, Occupations Code, including AMCs with an active or inactive license status, and each federally regulated AMC operating in this state.

(b) An AMC must provide information to the Board and pay the required AMC Registry Fee on an annual basis.

(c) The Board will send notice to each AMC regarding payment of AMC Registry Fees on or before November 1st of each calendar year.

(d) On or after January 1st and before March 31st of the calendar year following the issuance of notice under subsection (c), each AMC must:

(1) Submit the information required to determine the applicable AMC Registry Fee; and

(2) Pay the applicable AMC Registry Fee.

(e) The Board will transmit the information collected from each AMC to the Appraisal Subcommittee for inclusion on the AMC National Registry as required by federal law.

(f) Failure to receive notice from the Board regarding annual payment of AMC Registry Fees does not relieve an AMC from submitting the required information and paying the applicable AMC Registry Fee in a timely manner as required in this section.

(g) Failure to submit the required information and pay the applicable AMC Registry Fee in a timely manner as required in this section is a violation of this rule that may result in one or more of the following:

(1) Assessment of a late fee; [~~and~~]

(2) Placement on inactive status; and

(3) [~~2~~] Disciplinary action, up to and including license revocation.

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

Filed with the Office of the Secretary of State on November 13, 2023.

TRD-202304210
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.52 concerning Recognized Institutions of Higher Education.

Background, Justification and Summary

There are business entities and other organizations that offer courses which do not meet the minimum standards to be approved by the board to sit for the Uniform CPA Exam. The proposed rule revision identifies a specific entity that offers courses that are not approved by the board.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will allow the public and applicants to take the Uniform CPA Exam to know in advance specific course offerings that cannot be used to qualify to sit for the Uniform CPA Exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.52. *Recognized Institutions of Higher Education.*

(a) The board recognizes institutions of higher education that offer a baccalaureate or higher degree, that either:

(1) are accredited by one of the following organizations:

(A) Middle States Commission on Higher Education (MSCHE);

(B) Northwest Commission on Colleges and Universities (NWCCU);

(C) Higher Learning Commission (HLC);

(D) New England Commission of Higher Education (NECHE);

(E) Southern Association of Colleges and Schools, Commission on Colleges (SACS); and

(F) WASC Senior College and University Commission;

or

(2) provide evidence of meeting equivalent accreditation requirements of SACS.

(b) The board is the final authority regarding the evaluation of an applicant's education and has received assistance from the reporting

institution in the State of Texas, the University of Texas at Austin, in evaluating:

- (1) an institution of higher education;
 - (2) organizations that award credits for coursework taken outside of a traditional academic environment and shown on a transcript from an institution of higher education;
 - (3) assessment methods such as credit by examination, challenge exams, and portfolio assessment; and
 - (4) non-college education and training.
- (c) The following organizations and assessment methods may not be used to meet the requirements of this chapter:
- (1) American Council on Education (ACE);
 - (2) Prior Learning Assessment (PLA);
 - (3) Defense Activity for Non-Traditional Education Support (DANTES); ~~and~~
 - (4) Defense Subject Standardized Test (DSST); ~~and~~ [-]
 - (5) Straighterline.
- (d) The board may accept courses completed through an extension school, a correspondence school or continuing education program provided that the courses are offered and accepted by the board approved educational institution for a business baccalaureate or higher degree conferred by that educational institution.
- (e) Except as provided in subsection (d) of this section, extension and correspondence schools or programs and continuing education courses do not meet the criteria for recognized institutions of higher education.
- (f) The requirements related to recognized community colleges are provided in §511.54 of this chapter (relating to Recognized Texas Community Colleges).
- (g) The board may recognize a community college that offers a baccalaureate degree in accounting or business, provided that the applicant is admitted to a graduate program in accounting or business offered at a recognized institution of higher education that offers a graduate or higher degree.

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

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304146

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 305-7842



22 TAC §511.53

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.53 concerning Evaluation of International Education Documents.

Background, Justification and Summary

There are business entities and other organizations that offer courses which do not meet the minimum standards to be approved by the board to sit for the Uniform CPA Exam. The proposed rule revision identifies a specific entity that offers courses that have been evaluated and determined to not meet minimum standards to be used as credit to sit for the Uniform CPA Exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will allow the public and applicants to take the Uniform CPA Exam to know in advance specific course offerings that cannot be used to qualify to sit for the Uniform CPA Exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his

attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.53. *Evaluation of International Education Documents.*

(a) It is the responsibility of the board to confirm that education obtained at colleges and universities outside of the United States (international education) is equivalent to education earned at board-recognized institutions of higher education in the U.S.

(b) The board shall use, at the expense of the applicant, the services of the University of Texas at Austin, Graduate and International Admissions Center, to validate, review, and evaluate international education documents submitted by an applicant to determine if the courses taken and degrees earned are substantially equivalent to those offered by the board-recognized institutions of higher education located in the U.S. The evaluation shall provide the following information to the board:

(1) Degrees earned by the applicant that are substantially equivalent to those conferred by a board-recognized institution of higher education in the U.S. that meets §511.52 of this chapter (relating to Recognized Institutions of Higher Education);

(2) The total number of semester hours or quarter hour equivalents earned that are substantially equivalent to those earned at U.S. institutions of higher education and that meet §511.59 of this chapter (relating to Definition of 120 Semester Hours to take the UCPAE);

(3) The total number of semester hours or quarter hour equivalents earned in accounting coursework that meets §511.57 of this chapter (relating to Qualified Accounting Courses to take the UCPAE) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE);

(4) An analysis of the title and content of courses taken that are substantially equivalent to courses listed in §511.57 or §511.60 of this chapter; and

(5) The total number of semester hours or quarter hour equivalents earned in business coursework that meets §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE).

(c) The University of Texas at Austin, Graduate and International Admissions Center, may use the American Association of Collegiate Registrars and Admissions Officers (AACRAO) material, including the Electronic Database for Global Education (EDGE), in evaluating international education documents.

(d) Other evaluation or credentialing services of international education are not accepted by the board.

(e) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

- (1) American College Education (ACE);
- (2) Prior Learning Assessment (PLA);
- (3) Defense Activity for Non-Traditional Education Support (DANTES); ~~and~~
- (4) Defense Subject Standardized Test (DSST); and [-]
- (5) Straighterline.

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

Filed with the Office of the Secretary of State on November 9, 2023.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 305-7842



22 TAC §511.58

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.58 concerning Definitions of Related Business Subjects to take the UCPAE.

Background, Justification and Summary

The revision proposes to identify course work from an organization that the board will not accept for purposes of qualifying to take the Uniform CPA Exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will put the public on notice that course work from an identified business entity will not be accepted for purposes of qualifying to take the Uniform CPA Exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with

the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.58. Definitions of Related Business Subjects to take the UCPAE.

(a) Related business courses are those business courses that a board recognized institution of higher education accepts for a business baccalaureate or higher degree by that educational institution.

(b) An individual who holds a baccalaureate or higher degree from a recognized educational institution as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) may take related business courses from four-year degree granting institutions, or recognized community colleges, provided that all such institutions are recognized by the board as defined by §511.52 or §511.54 of this chapter (relating to Recognized Texas Community Colleges). Related business courses taken at a recognized community college are only the courses that the board has reviewed and approved to meet this section.

(c) The board will accept no fewer than 24 semester credit hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas.

(1) No more than 6 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

- (A) business law, including study of the Uniform Commercial Code;
- (B) economics;
- (C) management;
- (D) marketing;
- (E) business communications;
- (F) statistics and quantitative methods;
- (G) information systems or technology; and
- (H) other areas related to accounting.

(2) No more than 9 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

- (A) finance and financial planning; and
- (B) data analytics, data interrogation techniques, cyber security and/or digital acumen in the accounting context, whether taken in the business school or in another college or university program, such as the engineering, computer science, information systems, or math programs (while data analytic tools may be used in the course, application of the tools should be the primary objective of the course).

(d) The board requires that a minimum of 2 upper level semester credit hours in accounting communications or business communications with an intensive writing curriculum be completed. The semester hours may be obtained through a standalone course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the accounting communications or business communications content. The course may be used toward the 24 semester credit hours of upper level business courses listed in subsection (c)(1) of this section.

(e) Credit for hours taken at recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(f) Related business courses completed through and offered by an extension school, correspondence school, or continuing education program of a board recognized educational institution may be accepted by the board, provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(g) The board may review the content of business courses and determine if they meet the requirements of this section.

(h) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

- (1) American College Education (ACE);
- (2) Prior Learning Assessment (PLA);
- (3) Defense Activity for Non-Traditional Education Support (DANTES); ~~and~~
- (4) Defense Subject Standardized Test (DSST); and[-]
- (5) Straighterline.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 305-7842



22 TAC §511.59

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.59 concerning Definition of 120 Semester Hours to take the UCPAE.

Background, Justification and Summary

The revision proposes to identify course work from an organization that the board will not accept for purposes of qualifying to take the Uniform CPA Exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will put the public on notice that course work from an identified business entity will not be accepted for purposes of qualifying to take the Uniform CPA Exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with

the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.59. *Definition of 120 Semester Hours to take the UCPAE.*

(a) To be eligible to take the UCPAE, an applicant must hold at a minimum a baccalaureate degree, conferred by a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education), and have completed the board-recognized coursework identified in this section:

(1) no fewer than 21 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter (relating to Qualified Accounting Courses) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE);

(2) no fewer than 24 semester hours or quarter-hour equivalents of upper level related business courses, as defined by §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE); and

(3) academic coursework at an institution of higher education as defined by §511.52 of this chapter, when combined with paragraphs (1) and (2) of this subsection meets or exceeds 120 semester hours.

(b) An individual holding a baccalaureate degree conferred by a board-recognized institution of higher education, as defined by §511.52 of this chapter, and who has not completed the requirements of this section shall meet the requirements by taking coursework in one of the following ways:

(1) complete upper level or graduate courses at a board recognized institution of higher education as defined in §511.52 of this chapter that meets the requirements of subsection (a)(1) and (2) of this section; or

(2) enroll in a board recognized community college as defined in §511.54 of this chapter (relating to Recognized Texas Community Colleges) and complete board approved accounting or business courses that meet the requirements of subsection (a)(1) and (2) of this section. Only specified accounting and business courses that are approved by the board will be accepted as not all courses offered at a community college are accepted.

(c) The following courses, courses of study, certificates, and programs may not be used to meet the 120-semester hour requirement:

(1) any CPA review course offered by an institution of higher education or a proprietary organization;

(2) remedial or developmental courses offered at an educational institution; and

(3) credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(A) American College Education (ACE);

(B) Prior Learning Assessment (PLA);

(C) Defense Activity for Non-Traditional Education Support (DANTES); ~~and~~

(D) Defense Subject Standardized Test (DSST); and [-]

(E) Straighterline.

(d) The hours from a course that has been repeated will be counted only once toward the required 120 semester hours.

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

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304149

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 305-7842



22 TAC §511.60

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.60 concerning Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE.

Background, Justification and Summary

The revision proposes to identify course work from an organization that the board will not accept for purposes of qualifying to take the Uniform CPA Exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will put the public on notice that course work from an identified business entity will not be accepted for purposes of qualifying to take the Uniform CPA Exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.60. *Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE.*

(a) An applicant shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) and present valid transcript(s) from board-recognized institution(s) that show degree credit for no fewer than 21 semester credit hours of upper division accounting courses as defined in subsection (e) of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter, and after obtaining the degree, complete the requisite 21 semester credit hours of upper division accounting courses, as defined in subsection (e) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by §511.52 of this chapter, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

(b) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a

semester credit hour for each hour of credit received under the quarter system.

(c) The board will accept no fewer than 21 semester credit hours of accounting courses from the courses listed in subsection (e)(1) - (14) of this section. The hours from a course that has been repeated will be counted only once toward the required 21 semester hours. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the UCPAE. A board-recognized institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript.

(d) A non-traditionally-delivered course meeting the requirements of this section must have been reviewed and approved through a formal, institutional faculty review process that evaluates the course and its learning outcomes and determines that the course does, in fact, have equivalent learning outcomes to an equivalent, traditionally delivered course.

(e) The subject-matter content should be derived from the UCPAE Blueprints and cover some or all of the following:

(1) financial accounting and reporting for business organizations that may include:

(A) up to nine semester credit hours of intermediate accounting;

(B) advanced accounting; or

(C) accounting theory;

(2) managerial or cost accounting (excluding introductory level courses);

(3) auditing and attestation services;

(4) internal accounting control and risk assessment;

(5) financial statement analysis;

(6) accounting research and analysis;

(7) up to 12 semester credit hours of taxation (including tax research and analysis);

(8) financial accounting and reporting for governmental and/or other nonprofit entities;

(9) up to 12 semester credit hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(10) up to 12 semester credit hours of accounting data analytics, provided the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting (while data analytics tools may be taught in the courses, application of the tools should be the primary objective of the courses);

(11) fraud examination;

(12) international accounting and financial reporting;

(13) at its discretion, the board may accept up to three semester credit hours of accounting course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (12) of this subsection (for any course

submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's merit and content); and

(14) at its discretion, the board may accept up to three semester credit hours of independent study in accounting selected or designed by the student under faculty supervision (the curriculum for the course shall not repeat the curriculum of another accounting course that the student has completed).

(f) The board requires that a minimum of two semester credit hours in research and analysis relevant to the course content described in subsection (e)(6) or (7) of this section be completed. The semester credit hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the institution of higher education must advise the board of the course(s) that contain the research and analysis content.

(g) The following types of introductory courses do not meet the accounting course definition in subsection (e) of this section:

- (1) elementary accounting;
- (2) principles of accounting;
- (3) financial and managerial accounting;
- (4) introductory accounting courses; and
- (5) accounting software courses.

(h) Any CPA review course offered by an institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(i) CPE courses shall not be used to meet the accounting course definition.

(j) Accounting courses completed through an extension school of a board recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(k) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

- (1) American College Education (ACE);
- (2) Prior Learning Assessment (PLA);
- (3) Defense Activity for Non-Traditional Education Support (DANTES); ~~and~~
- (4) Defense Subject Standardized Test (DSST); and [-]
- (5) Straighterline.

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

Filed with the Office of the Secretary of State on November 9, 2023.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 305-7842



SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.80

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.80 concerning Granting of Credit.

Background, Justification and Summary

Events occur beyond the control of individuals attempting to become licensed CPAs which interfere with the individual's ability to take or pass the uniform CPA exam. The proposed rule revision would recognize unavoidable and unforeseeable events that create hardships to individuals deserving of a fair opportunity to become CPAs.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will provide a fair opportunity for qualified individuals to become licensed as a CPA.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.80. Granting of Credit.

(a) The board shall grant credit to an applicant for the satisfactory completion of a section of the UCPAE provided the applicant earns a passing score on the section as determined by board rule. The credit shall be valid for 30 months from the actual date of notification of passing score results. The 30 months may be temporarily extended by the executive director, in accordance with §901.307(b) of the Act (relating to Grading Examination), in order to provide for uniformity with other state regulatory authorities or for reasonably unforeseeable or uncontrollable events.

(b) An applicant must pass the remaining sections within the next 30 months. Should an applicant's exam credit be invalidated due to the expiration of 30 months without earning credit on the remaining sections, the applicant remains qualified to take the examination.

(c) An applicant receiving and retaining credit for every section on the UCPAE, within a 30-month period, shall be considered by the board to have completed the examination and may make application for certification as a CPA.

(d) Effective January 1, 2024, an applicant under this section shall have 36 months from the time all test sections are passed to meet the education requirements of §511.164 of this chapter (relating to Definition of 150 Semester Hours to Qualify for Issuance of a Certificate) or the credit for all test sections will expire.

(e) Effective January 1, 2024, an applicant who has an active credit on a section of the UCPAE shall have earned credit on the newly structured UCPAE as follows:

- (1) credit on auditing and attestation (AUD) shall transition to auditing and attestation (AUD);
- (2) credit on financial accounting and reporting (FAR) shall transition to financial accounting and reporting (FAR);

(3) credit on regulation (REG) shall transition to taxation and regulation (REG); and

(4) credit on business environment and concepts (BEC) shall not transition to a specific discipline as there is not an equivalent section, however, credit will be retained in lieu of a discipline.

(f) Effective January 1, 2024, the Board shall grant credit to an applicant for the satisfactory completion of the following sections of the UCPAE provided the applicant earns a passing score on the section as determined by board rule. The credit shall be valid for 30 months from the actual date of notification of passing score results:

- (1) auditing and attestation (AUD);
- (2) financial accounting and reporting (FAR);
- (3) taxation and regulation (REG); and
- (4) one of the following discipline sections:
 - (A) business analysis and reporting (BAR);
 - (B) information systems and controls (ISC); or
 - (C) tax compliance and planning (TCP).

(g) An applicant who has received and retained credit for any or all sections on the UCPAE may transfer such credits to another licensing jurisdiction if the applicant pays in advance a transfer fee set by board rule as identified in §521.7 of this title (relating to Fee for Transfer of Credits).

(h) If the UCPAE is restructured by the AICPA, the board shall determine the manner in which active credit earned prior to the restructure for a subject is integrated into the new UCPAE.

(i) Credits earned between January 1, 2020 and January 1, 2024 that are no longer valid may be considered for reinstatement for not more than 18 months from the date that reinstatement occurs. The following conditions are required:

(1) the applicant was impacted by an unforeseeable and uncontrollable event; and

(2) the applicant provides documentation to substantiate the unforeseeable and uncontrollable event.

(j) [(+) Interpretive Comment: For the purpose of this section unforeseeable and uncontrollable events include, but are not limited to, the health of the applicant, accidents limiting the applicant, military service, natural disasters, or acts of God.

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

Filed with the Office of the Secretary of State on November 9, 2023.

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J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 305-7842



22 TAC §511.87

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.87 concerning Loss of Credit.

Background, Justification and Summary

Events occur beyond the control of individuals attempting to become licensed CPAs which interfere with the individual's ability to take or pass the uniform CPA exam. The proposed rule revision would recognize unavoidable and unforeseeable events that create hardships to individuals deserving of a fair opportunity to become CPAs.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will provide a fair opportunity for qualified individuals to become licensed as a CPA.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his

attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.87. *Loss of Credit.*

(a) An applicant having earned credit under this Act or a prior Act and who has two testing quarters remaining before the expiration of credits earned shall be notified prior to each UCPAE of these facts.

(b) An applicant failing to receive credit for all sections within the time limitation of this Act shall be notified that credits have expired.

(c) The expiration of credits shall not hinder an applicant from reapplying for the examination.

(d) Credits earned between January 1, 2020 and January 1, 2024 that are no longer valid may be considered for reinstatement for not more than 18 months from the date that reinstatement occurs. The following conditions are required:

(1) the applicant was impacted by an unforeseeable and uncontrollable extreme hardship event; and

(2) the applicant provides documentation to substantiate the unforeseeable and uncontrollable event.

(e) An extreme hardship event that limits the applicant is defined as:

(1) a serious illness of an applicant or member of the immediate family, which includes a spouse, child, sibling or parent;

(2) death of an immediate family member;

(3) accidents that impacts the applicant;

(4) military service of the applicant; or

(5) natural disasters that impacts the applicant.

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

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304153



SUBCHAPTER H. CERTIFICATION

22 TAC §511.164

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.164 concerning Definition of 150 Semester Hours to Qualify for Issuance of a Certificate.

Background, Justification and Summary

The revision proposes to require at least two hours of course work in research and analysis in order to be certified as a CPA. This is an existing provision that has been relocated to this rule to make it a requirement for certification and not to sit for the exam at 120 hours.

The revision also proposes to identify coursework completed at an identified business entity that may not qualify an applicant seeking to sit for the CPA exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will make it clear that a two-hour course work in research and analysis is required prior to certification but not to sit for the Uniform CPA exam.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed

rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.164. Definition of 150 Semester Hours to Qualify for Issuance of a Certificate.

(a) To qualify for the issuance of a CPA certificate, an applicant must hold at a minimum a baccalaureate degree, conferred by a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education), and have completed the board-recognized coursework identified in this section:

(1) no fewer than 27 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter (relating to Qualified Accounting Courses to take the UCPAE) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE) to include a minimum of two semester credit hours in research and analysis;

(2) no fewer than 24 semester hours or quarter-hour equivalents of upper level related business courses, as defined by §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE);

(3) a three semester hour board-approved standalone course in accounting or business ethics. The course must be taken at a recognized educational institution and should provide students with

a framework of ethical reasoning, professional values, and attitudes for exercising professional skepticism and other behavior in the best interest of the public and profession. The ethics course shall:

(A) include the ethics rules of the AICPA, the SEC, and the board;

(B) provide a foundation for ethical reasoning, including the core values of integrity, objectivity, and independence; and

(C) be taught by an instructor who has not been disciplined by the board for a violation of the board's rules of professional conduct, unless that violation has been waived by the board; and

(4) academic coursework at an institution of higher education as defined by §511.52 of this chapter, when combined with paragraphs (1) - (3) of this subsection meets or exceeds 150 semester hours, of which 120 semester hours meets the education requirements defined by §511.59 of this chapter (relating to Definition of 120 Semester Hours to take the UCPAE). An applicant who has met paragraphs (1) - (3) of this subsection may use a maximum of 9 total semester credit hours of undergraduate or graduate independent study and/or internships as defined in §511.51(b)(4) or §511.51(b)(5) of this chapter (relating to Educational Definitions) to meet this paragraph. The courses shall consist of:

(A) a maximum of three semester credit hours of independent study courses; and

(B) a maximum of six semester credit hours of accounting/business course internships.

(b) The following courses, courses of study, certificates, and programs may not be used to meet the 150 semester hour requirement:

(1) any CPA review course offered by an institution of higher education or a proprietary organization;

(2) remedial or developmental courses offered at an educational institution; and

(3) credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirement of this chapter:

(A) American College Education (ACE);

(B) Prior Learning Assessment (PLA);

(C) Defense Activity for Non-Traditional Education Support (DANTES); ~~and~~

(D) Defense Subject Standardized Test (DSST); and [-]

(E) Straighterline.

(c) The hours from a course that has been repeated will be counted only once toward the required semester hours.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



CHAPTER 515. LICENSES

22 TAC §515.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.5 concerning Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct.

Background, Justification and Summary

The revision proposes to recognize the relocation of the rule providing accommodations to military service members, spouses and veterans to a new chapter and to implement the provisions of Texas Occupation Code § 55.004 and § 55.0041.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will make it easier for the public to locate the rules on accommodating military service members, military spouses and military veterans.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.5. *Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct.*

(a) An individual whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1 1/2 times the normally required renewal fee.

(b) An individual whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(c) An individual whose license has been expired for at least one year but less than two years may renew the license by paying to the board a renewal fee that is equal to three times the normally required renewal fee.

(d) An individual whose license has been expired for two years or more may obtain a license by paying all renewal fees including late fees.

(e) An individual whose license has been suspended or certificate revoked for the voluntary non-payment of the annual license fees, the voluntary non-completion of the annual license renewal, or the voluntary non-completion of the board required CPE may be administratively reinstated by complying with the board's CPE requirements pursuant to Chapter 523 of this title (relating to Continuing Professional Education) and providing the board the individual's required fingerprints if not previously submitted; and

(1) by paying all renewal fees including late fees; or

(2) upon showing of good cause, entering into an Agreed Consent Order that reinstates the certificate and permits the issuance of a conditional license with the agreement to pay all required fees by a certain date.

(f) An individual who was revoked under §901.502(3) or (4) of the Act (relating to Grounds for Disciplinary Action), has moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of submitting a complete application may obtain a new license without reexamination by:

(1) providing the board with a complete application including evidence of the required licensure;

(2) demonstrating that the out of state license is no more than 90 days beyond the normal expiration date of the license;

(3) paying the board a fee that is equal to two times the normally required renewal fee for the license; and

(4) meeting the other requirements for licensing.

(g) If the certificate, license, or registration was suspended, or revoked for non-payment of annual license fees, failure to complete the annual license renewal, or failure to comply with §501.94 of this title (relating to Mandatory Continuing Professional Education), upon written application the executive director will decide on an individual basis whether the renewal fees including late fees must be paid for those years and whether any fee exemption is applicable.

(h) A military service member, military veteran or military spouse may obtain a license in accordance with the provisions of Chapter 516 of this title (relating to Military Service Members, Spouses and Veterans) [~~§515.11 of this chapter (relating to Licensing for Military Service Members, Military Veterans, and Military Spouses)~~].

(i) Interpretive Comment: Effective September 1, 2015, when calculating the renewal fee provided for in subsections (a) - (d) of this section, the professional fee that was required by §901.406 and §901.407 of the Act (relating to Fee Increase and Additional Fee) will no longer be included in the renewal fee. However, when calculating any renewal fees accrued prior to September 1, 2015, the professional fee that was required by §901.406 and §901.407 of the Act will be included in the renewal fee.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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22 TAC §515.11

The Texas State Board of Public Accountancy (Board) proposes the repeal of §515.11 concerning Licensing for Military Service Members, Military Veterans, and Military Spouses.

Background, Justification and Summary

The revision proposes to recognize the relocation of the rule providing accommodations to military service members, spouses and veterans to a new chapter.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the repeal.

Public Benefit

The adoption of the proposed revision will make it easier for the public to locate the rules on accommodating military service members, military spouses and military veterans.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the repeal and a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed repeal will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the repeal does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the repeal is in effect, the proposed repeal: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed repeal.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the repeal is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an

adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§15.11. *Licensing for Military Service Members, Military Veterans, and Military Spouses.*

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

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J. Randel (Jerry) Hill

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CHAPTER 516. MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

22 TAC §516.1

The Texas State Board of Public Accountancy (Board) proposes new rule §516.1 concerning Definitions.

Background, Justification and Summary

Texas Occupation Code 55.0041 directs state agencies to accommodate military service members, military spouses and military veterans in practicing accounting in Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the proposed new rule.

Public Benefit

The adoption of the proposed new rule will assist qualified service members, military spouses and military veterans in providing accounting services in Texas.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the proposed new rule and a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed new rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed new rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses. If the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the new rule, describe and estimate the economic impact of the new rule on small businesses, offer alternative methods of achieving the purpose of the new rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed new rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the

Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§516.1. Definitions.

The following words and terms, when used in Title 22, Part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001 of the Texas Government Code (relating to Definitions), or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(6) "Restrictive license" includes the following or its equivalent:

(A) an individual license that does not permit the attest service practice;

(B) an individual's retired or disabled license that limits an individual's authority to practice public accountancy;

(C) an individual's non-public industry license or authorization to practice; or

(D) a license that limits the scope of the individual's right to practice public accountancy.

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

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J. Randel (Jerry) Hill

General Counsel

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22 TAC §516.2

The Texas State Board of Public Accountancy (Board) proposes new rule §516.2 concerning Licensing for Military Service Members and Spouses.

Background, Justification and Summary

Texas Occupation Code 55.004 directs a state agency that issues a license to military service members and military spouses to adopt rules that provide accommodations for their practice of public accounting in Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the proposed new rule.

Public Benefit

The adoption of the proposed new rule will assist qualified military service members, and military spouses in providing accounting services in Texas in recognition of their service to this state to protect this state and its residents and assist them in overcoming the hardships created from their current military assignments.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the proposed new rule and a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed new rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed new rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses. If the proposed

new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the new rule, describe and estimate the economic impact of the new rule on small businesses, offer alternative methods of achieving the purpose of the new rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed new rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§516.2. Licensing for Military Service Members and Spouses.

(a) A military service member or military spouse may obtain a license if the applicant for licensure:

(1) through the fingerprinting process, has been deemed to have an acceptable criminal history according to Chapter 53 of the Texas Occupations Code (relating to Consequences of Criminal Conviction); and

(2) holds a current license with no restrictions issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state; or

(3) within the five years preceding the application date held a license in this state.

(b) The executive director may:

(1) waive any prerequisite to obtaining a license for an applicant described in subsection (a) of this section after reviewing the applicant's credentials; or

(2) consider, other methods that demonstrate the applicant is qualified to be licensed.

(c) The board will:

(1) process a military service member or military spouse's license application, as soon as practical but no more than 30 days from the date of receipt of the application, and issue a non-provisional license when the board determines the applicant is qualified in accordance with board rules;

(2) waive the license application and examination for a military service member or military spouse applicant:

(A) whose military service, training or education substantially meets all the requirements for a license; or

(B) who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to this agency's requirements; and

(3) notify the license holder of the requirements for renewing the license in writing or by electronic means and the term of the license.

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

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22 TAC §516.3

The Texas State Board of Public Accountancy (Board) proposes new rule §516.3 concerning Licensing for Military Veterans.

Background, Justification and Summary

Texas Occupation Code § 55.004 directs state agencies to accommodate military veterans in obtaining a license to practice public accounting in Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the proposed new rule.

Public Benefit

The adoption of the proposed new rule recognizes the service of military veterans to this state, and assists military veterans in providing public accounting services in Texas.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the proposed new rule and a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed new rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed new rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses. If the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the new rule, describe and estimate the economic impact of the new rule on small businesses, offer alternative methods of achieving the purpose of the new rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed new rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§516.3. Licensing for Military Veterans.

(a) A military veteran may obtain a license if the applicant for licensure:

(1) through the fingerprinting process, has been deemed to have an acceptable criminal history according to Chapter 53 of the Texas Occupations Code (relating to Consequences of Criminal Conviction); and

(2) holds a current license with no restrictions issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state; or

(3) within the five years preceding the application date held a license in this state.

(b) The executive director may:

(1) waive any prerequisite to obtaining a license for an applicant described in subsection (a) of this section after reviewing the applicant's credentials; or

(2) consider other methods that demonstrate the applicant is qualified to be licensed.

(c) The board will:

(1) process a military veteran's license application, as soon as practical but no more than 30 days from the date of receipt of the

application, and issue a non-provisional license when the board determines the applicant is qualified in accordance with board rules;

(2) waive the license application and examination for a military veteran applicant:

(A) whose military service, training or education substantially meets all the requirements for a license; or

(B) who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to this agency's requirements; and

(3) notify the license holder of the requirements for renewing the license in writing or by electronic means and the term of the license.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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22 TAC §516.4

The Texas State Board of Public Accountancy (Board) proposes new rule §516.4 concerning Accounting Practice Notification by Military Service Members and Spouses.

Background, Justification and Summary

Texas Occupation Code § 55.0041 directs state agencies to accommodate military service members and military spouses in practicing accounting in Texas while serving in the armed services. It allows military service members and military spouses to practice public accounting in Texas without a license and fees for up to three years so long as they have a license from a jurisdiction with substantially equivalent requirements. They may also practice in Texas without a license if they held a license in Texas within five years preceding the application date.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the proposed new rule.

Public Benefit

The adoption of the proposed new rule will assist qualified military service members and military spouses in providing accounting services to Texas residents.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the proposed new rule and a Local Employment Impact State-

ment is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed new rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed new rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 25, 2023.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses. If the proposed new rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the new rule, describe and estimate the economic impact of the new rule on small businesses, offer alternative methods of achieving the purpose of the new rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed new rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§516.4. Accounting Practice Notification by Military Service Members and Spouses.

(a) This section applies to all board regulated public accountancy practice requirements, other than the examination requirement, by a military service member or military spouse not requiring a license.

(b) A military service member or military spouse:

(1) may practice accounting in Texas during the period the military service member or military spouse is stationed at a military installation in Texas for a period not to exceed the third anniversary of the date the military service member or military spouse receives confirmation of authorization to practice by the board, if the military service member or military spouse:

(A) notifies the board of an intent to practice public accountancy in this state;

(B) submits proof of residency in this state along with a copy of their military identification card;

(C) receives from the board confirmation that the board has verified the license in the other jurisdiction and that the other jurisdiction has licensing requirements that are substantially equivalent to the board's licensing requirements; and

(D) receives confirmation of authorization to practice public accountancy in Texas from the board;

(2) may not practice in Texas with a restricted license issued by another jurisdiction nor practice with an unacceptable criminal history according to Chapter 53 of the Texas Occupations Code (relating to Consequences of Criminal Conviction); and

(3) shall comply with all other laws and regulations applicable to the practice of public accountancy in this state including, but not limited to, providing attest services through a licensed accounting firm.

(e) The board, in no less than 30 days following the receipt of notice of intent, will provide confirmation of authorization to practice to a military service member or military spouse, who has satisfied the board's rules.

(f) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the confirmation described by subsection (b)(1)(D) of this section.

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

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304160

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 305-7842



PART 23. TEXAS REAL ESTATE
COMMISSION

CHAPTER 537. PROFESSIONAL
AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.66

The Texas Real Estate Commission (TREC) proposes new 22 TAC §537.66, Standard Contract Form TREC No. 59-0, Notice to Purchaser of Special Taxing or Assessment District, in Chapter 537, Professional Agreements and Standard Contracts. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property, although some forms are adopted by the Commission for voluntary use by license holders. Contract forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended the new rule, and the form adopted by reference, in Chapter 537 as a result of statutory changes enacted by the 88th Legislature in HB 2815 and HB 2816.

HB 2815 and 2816 replace the several different disclosure notices related to tax assessments made by water districts with a single notice and provides the language required for the notice. The bills also require the water districts to post their own notice online if they are required by the Tax Code to have a website.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be increased availability of a disclosure notice required by statute.

For each year of the first five years the proposed new rule is in effect the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules->

and-laws/comment-on-proposed-rules, to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The new rule is also proposed under Texas Occupations Code §1101.155, which allows the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Broker-Lawyer Committee and adopted by the Commission.

The statute affected by these amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments and new rules.

§537.66. Standard Contract Form TREC No. 59-0, Notice to Purchaser of Special Taxing or Assessment District.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 59-0 approved by the Commission in 2024 for voluntary use to fulfill the disclosure requirements of Texas Water Code §49.452 and §49.4521.

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

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304139

Vanessa E. Burgess
General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 936-3284



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.68

Subchapter L. Workforce Diploma Pilot Program, §800.501

TWC proposes the following new section to Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.69

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The proposed amendments to Chapter 800 create new §800.69, Integrated English Literacy and Civics Education Program, which outlines how funds appropriated to the state under Workforce Innovation and Opportunity Act (WIOA), §243, Integrated English Literacy and Civics Education (IELCE), will be allocated through a statewide competition.

The proposed amendments incorporate into rule the requirements of House Bill (HB) 1602 and HB 2575, as passed by the 88th Texas Legislature, Regular Session (2023).

HB 1602 requires TWC to establish rules to develop performance criteria for the prioritization for the continuous award of grant funds. As such, TWC is proposing revisions to Subchapter B. Allocations, §800.68(a).

HB 2575 requires revisions to the definition of "qualified providers" in Subchapter L, Workforce Diploma Pilot Program, §800.501(12).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. ALLOCATIONS

TWC proposes the following amendments to Subchapter B:

§800.68. Adult Education and Literacy

Section 800.68 outlines how the state allocates General Revenue funds as well as WIOA, Title II, Temporary Assistance for Needy Families (TANF) funds to support the Adult Education and Literacy (AEL) program in Texas. Added to §800.68(a) are the HB 1602 requirements relating to priority of awarding grant funds based on performance criteria comparable to Texas Labor Code §315.007. TWC also proposes removing §800.68(d) and placing it in new section, §800.69.

§800.69. Integrated English Literacy and Civics Education Program

New §800.69 sets forth the state's allocation methodology that allows eligible applicants to demonstrate a need for funds to provide IELCE program activities to eligible adult learners across the state.

SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

TWC proposes the following amendments to Subchapter L:

§800.501. Definitions

Section 800.501 is amended to update the definition of "qualified provider" to align with Texas Labor Code §317.004(2)(B), as amended by HB 2575.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are estimated losses in revenue to local governments as a result of enforcing or administering the rules. The US Depart-

ment of Education's Office of Career, Technical, and Adult Education (OCTAE) has determined that TWC's AEL program can no longer require applicants to accept both WIOA §231 and §243 funds. Instead, applicants must be allowed to choose whether to apply for one or both funds. In response to OCTAE's directive, TWC will offer AEL and Integrated English Literacy and Civics Education (IELCE) funds through separate competitive statewide applications. Separating the application processes could cause funding that was previously allocated to providers based upon the counties served in each local workforce development area (workforce area) to distribute differently. Specifically, IELCE funds will now be awarded through statewide competition and based on demonstrated need, while regular AEL funds will still be allocated proportionally to the state's 28 workforce areas based on eligible populations by county. IELCE funding will still be available statewide, but IELCE services may not be locally available in all 254 Texas counties due to the changes in the procurement process, which could mean a loss of funds in some areas if no providers apply for funding. In particular, some rural communities may not have a demonstrated need for the funds because of their small populations, which may cause a disadvantage for rural applicants.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules. Because IELCE funds now will be awarded through statewide competition instead of through proportional allocation to all workforce areas, smaller grant recipients in rural areas may not find it financially feasible to compete for grants.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to establish rules as required by HB 1602, amend existing rules as necessitated by HB 2575, and implement changes related to federal statutory requirements regarding the allocation of WIOA Title II funds.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in

a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to maximize the use of funds while ensuring equitable access to entities that have demonstrated program effectiveness.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

The proposed amendments align TWC rules with federal statutes and regulations regarding procurement of WIOA Title II funds, and implement HB 1672 and HB 2575, as passed by the 88th Texas Legislature, Regular Session (2023). AEL program staff have informed AEL grant recipients of the proposed rulemaking through their regular biweekly conference calls. The public will have an opportunity to comment on these proposed rules for 30 days upon publication in the *Texas Register*.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than December 25, 2023.

SUBCHAPTER B. ALLOCATIONS

40 TAC §800.68, §800.69

PART VI.

STATUTORY AUTHORITY

The rules are proposed under the following statutory authority:

--Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code Chapter 317, enacted by Senate Bill 1055, 86th Texas Legislature, Regular Session (2019), which required TWC to establish and administer the Workforce Diploma Pilot Program.

Additionally, HB 1602, 88th Texas Legislature, Regular Session (2023), added Texas Labor Code §315.002(b-1), which requires TWC to establish rules developing annual performance criteria for prioritizing the awarding of grant funds.

The proposed rules implement Title 4, Texas Labor Code, particularly Chapter 315.

§800.68. *Adult Education and Literacy.*

(a) AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act (AEFLA), WIOA Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission, as set forth in subsections (b) - (d) [subsections (b) - (f)] of this section. Prior to any grant recipient receiving notice of an award, the Commission shall review and approve the award of grant funds to be issued under this program. The Commission shall give priority in awarding funds to entities that consistently satisfy annual performance requirements comparable to subsection (e) of this section.

(b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c) [and amounts provided to the eligible agency under §243 for English Literacy/Civics (EL/Civics)]--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) [subsection (f)] of this section.

(c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c), will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) [subsection (f)] of this section.

~~[(d) At least 82.5 percent of the federal funds provided to the eligible agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission among the workforce areas according to the established federal formula, as follows:]~~

~~[(1) The relative proportion based on:]~~

~~[(A) 65 percent of the average number of legal permanent residents during the most recent 10-year period, available from U.S. Citizenship and Immigration Services data; and]~~

~~[(B) 35 percent of the average number of legal permanent residents during the most recent three-year period, available from U.S. Citizenship and Immigration Services data;]~~

~~[(2) a base amount of 1 percent for each workforce area; and]~~

~~[(3) the application of a hold-harmless/stop-gain procedure.]~~

~~[(4) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA.]~~

~~[(5) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.]~~

~~(d) [(e)] At least 80 percent of federal TANF funds associated with the AEL program--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a need-based formula, as follows:~~

~~(1) 100 percent will be based on:~~

~~(A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;~~

~~(B) an equal base amount; and~~

~~(C) the application of a hold-harmless/stop-gain procedure.~~

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) [subsection (f)] of this section.

(e) [(f)] AEL performance accountability benchmarks shall be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance shall, at a minimum, be expressed in an objective, quantifiable, and measurable form, and show continuous improvement.

(f) [(g)] Performance accountability benchmarks shall:

(1) include measures for high school equivalency program or ability-to-benefit program enrollment and achievement, as outlined in paragraph (2) of this subsection. A postsecondary ability-to-benefit program, as outlined in paragraphs (2) and (3) of this subsection, is a postsecondary education or training program that:

(A) results in a recognized postsecondary credential; and

(B) enrolls AEL eligible participants who:

(i) do not have a high school diploma or recognized equivalency;

(ii) qualify for federal student financial aid eligibility under the federal Ability-to-Benefit provisions enacted in §484(d) of the Higher Education Act of 1965; and

(iii) demonstrate on an assessment instrument that the participant can pass college-level courses with some support;

(2) include measures that require:

(A) at least 25 percent of all participants served in the program year to be enrolled in a high school equivalency or postsecondary ability-to-benefit program; and

(B) at least 70 percent of participants who were in a high school equivalency or postsecondary ability-to-benefit program during the program year and exited during the program year to achieve either a high school equivalency or a recognized postsecondary credential; and

(3) be approved by the Commission each program year for milestones toward meeting high school equivalency program or postsecondary ability-to-benefit program enrollment and achievement as outlined in paragraph (2) of this subsection.

§800.69. Integrated English Literacy and Civics Education Program.

(a) At least 82.5 percent of the AEFLA §243 Integrated English Literacy and Civics Education federal award allocated to the state must be awarded to entities with demonstrated effectiveness as determined through a statewide competitive procurement, as follows:

(1) 100 percent of the award will be based on the demonstrated need cited and supported with data by the eligible applicant as part of a statewide procurement;

(2) No more than 5 percent of the funds expended as part of the total allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate;

(3) No more than 10 percent of this allocation shall be available for expenditure on the basis of the achievement of performance benchmarks, as set forth in §800.68(e); and

(4) The application of a hold-harmless/stop gain procedure.

(b) The Commission shall give priority in awarding funds to entities that consistently satisfy annual performance requirements comparable to §800.68(f) of this subchapter.

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

Filed with the Office of the Secretary of State on November 7, 2023.

TRD-202304094

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 850-8356



SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

40 TAC §800.501

The rule is proposed under the following statutory authority:

--Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code Chapter 317, enacted by Senate Bill 1055, 86th Texas Legislature, Regular Session (2019), which required TWC to establish and administer the Workforce Diploma Pilot Program.

Additionally, HB 1602, 88th Texas Legislature, Regular Session (2023), added Texas Labor Code §315.002(b-1), which requires TWC to establish rules developing annual performance criteria for prioritizing the awarding of grant funds.

The proposed rule implements Title 4, Texas Labor Code, particularly Chapter 315.

§800.501. Definitions.

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

(1) Academic resiliency--A student's ability to persist and to academically succeed despite adversity.

(2) Academic skill intake assessment--A formal and/or informal assessment used at intake to gather information on a student's current knowledge and skills in specific academic areas (for example, literacy and numeracy). That information is then used to determine the student's appropriate instructional level as well as accommodations and/or remediation that the student needs.

(3) Career Pathway--A combination of rigorous and high-quality education, training, and other services that:

(A) aligns with the skill needs of industries in the economy of the state or regional economy involved;

(B) prepares an individual to be successful in any of a full range of secondary or postsecondary education options;

(C) includes counseling to support an individual in achieving the individual's education and career goals;

(D) includes, as appropriate, education offered concurrently with, and in the same context as, workforce preparation activities and training for a specific occupation or occupational cluster;

(E) organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(F) enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized post-secondary credential; and

(G) helps an individual enter or advance within a specific occupation or occupational cluster (29 USC §3102, Definitions).

(4) Eligible participant--An individual who is over the age of compulsory school attendance, as prescribed by Texas Education Code, §25.085, and as required by the Agency, must:

(A) be a Texas resident;

(B) lack a high school diploma;

(C) be authorized to work in the United States; and

(D) be able to work immediately upon graduation from the program.

(5) Employability skills certification program--Refers to a certification in general skills that are necessary for success in the labor market at all employment levels and in all industry sectors. Employability skills include problem-solving, collaboration, organization, and adaptability.

(6) Half credit--The standard award of credit given for a course that lasts one semester, and which is based on the Carnegie Unit. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week in addition to studying independently.

(7) High school diploma--A credential awarded by an entity, based on completion of all state graduation requirements as outlined in Texas Education Code, §28.025 and §39.023 and 19 TAC Chapter 74 (relating to Curriculum Requirements) and Chapter 101 (relating to Assessment).

(8) Industry-recognized credential--A state-approved credential verifying an individual's qualifications and competence and is issued by a third party with the relevant authority to issue such credentials (US Department of Labor, 2010). Industry-recognized credentials offered by qualified providers must align with the Agency's mission to target high-growth, high-demand, and emerging occupations that are crucial to the state and local workforce economies, and must reflect the target occupations for the workforce areas in which services will be provided. Qualified providers may also reference the list of industry-based certifications for public school accountability published by the Texas Education Agency.

(9) Learning Plan Development--The process by which an individualized learning plan is developed after student intake; it is maintained through coaching and mentoring.

(10) One credit--The standard award credit given for a course that lasts a full academic year, and which is based on the Carnegie Unit. When determining credits, qualified providers should

consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week, in addition to studying independently.

(11) Program--Refers to the Workforce Diploma Pilot Program, set forth in Texas Labor Code, Chapter 317.

(12) Qualified provider--A provider that may participate in the Program and receive reimbursement and that:

(A) is a public, nonprofit, or private entity that is:

(i) authorized under the Texas Education Code or other state law to grant a high school diploma; or

(ii) accredited by a regional accrediting body, as established by the US Secretary of Education, pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association and working in partnership with an entity described by clause (i) of this subparagraph;

(B) has at least two years of experience providing dropout reengagement services to adult students, including recruitment, learning plan development, and proactive coaching and mentoring, leading to the obtainment of a high school diploma;

(C) is equipped to:

(i) provide:

(I) academic skill intake assessment and transcript evaluations;

(II) remediation coursework in literacy and numeracy;

(III) a research-validated academic resiliency assessment and intervention;

(IV) employability skills development aligned to employer needs;

(V) career pathways coursework;

(VI) preparation for the attainment of industry-recognized credentials; and

(VII) career placement services; and

(ii) develop a learning plan that integrates academic requirements and career goals; and

(D) offers a course catalog that includes all courses necessary to meet high school graduation requirements in Texas, as authorized under 19 TAC Chapter 74, Subchapter B (relating to Graduation Requirements).

(13) Regional accrediting body--Must meet the criteria established by the US Secretary of Education pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association, and appear on the US Secretary of Education's list of federally recognized accrediting agencies in the Federal Register, as stated in 34 CFR §602.2. A copy of the list may be obtained from the US Department of Education.

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

Filed with the Office of the Secretary of State on November 7, 2023.



CHAPTER 805. ADULT EDUCATION AND LITERACY
SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

40 TAC §805.41

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 805, relating to Adult Education and Literacy:

Subchapter C. Service Delivery Structure and Alignment, §805.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 805 amendments is to align the rules with federal statutory language related to the state's requirement to award multiyear grants on a competitive basis to eligible providers with demonstrated effectiveness within the state.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

TWC proposes the following amendments to Subchapter C:

§805.41. Procurement and Contracting

Section 805.41(c) outlines the grant duration and term limits, which currently are more restrictive than federal statutory language. TWC seeks to align rule language to statutory language, which creates greater flexibility on defining grant duration.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend rules to implement changes related to the interpretation of federal statute and regulations regarding procurement of Workforce Innovation and Opportunity Act (WIOA), Title II funds.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to create greater flexibility in the length of grant awards to ensure TWC can effectively develop, implement, and improve adult education and literacy services and programs within the state.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

The proposed amendments align TWC rules with federal statutes and regulations regarding procurement of WIOA Title II funds. Adult Education and Literacy (AEL) program staff have informed AEL grant recipients of the proposed rulemaking through their regular biweekly conference calls. The public will have an opportunity to comment on these proposed rules for 30 days upon publication in the *Texas Register*.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than December 25, 2023.

PART VI.

STATUTORY AUTHORITY

The rule is proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapter 315.

§805.41. Procurement and Contracting.

(a) Eligible grant recipients shall compete for funding through a statewide procurement process conducted in accordance with federal and state procurement requirements. AEL funding shall be allocated as set forth in §800.68 and §800.69 of this title.

(b) Eligible grant recipients shall apply directly to the Agency using the grant solicitation process, and shall meet all deadlines, requirements, and guidelines set forth in the grant solicitation.

(c) Contracts awarded to AEL grant recipients shall be multiyear [~~limited to two years, with the option of three one-year renewals~~], at the Commission's discretion. In considering a renewal, the Commission shall take into account performance and other factors.

(1) Renewals for years three and beyond[~~, four, and five~~] are not automatic, and are based on meeting or exceeding performance and expenditure benchmarks, or other factors as determined by the Commission.

(2) The [~~At the completion of the five-year maximum contract term, the~~] Agency shall conduct a new competitive statewide procurement at its discretion and when appropriate to ensure that providers can effectively develop, implement, and improve AEL services and programs within the state[~~, including those contracts that have been in effect for less than the maximum five-year contract term~~].

(d) Determinations by the Agency in the statewide procurement process will be based on the indicated ability of the eligible grant recipient to effectively perform all services and activities needed to fully comply with contract performance requirements and all contract

terms and conditions and may be influenced by factors used to determine the allocation of AEL funds or other objective data or criteria.

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

Filed with the Office of the Secretary of State on November 7, 2023.

TRD-202304096

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 850-8356



CHAPTER 845. TEXAS WORK AND FAMILY POLICIES RESOURCES [CLEARINGHOUSE]

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 845, relating to Texas Work and Family Clearinghouse:

Subchapter A. General Provisions, §845.1 and §845.2

Subchapter B. Dependent Care Grants, §§845.11 - 845.13

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 845 is to implement House Bill (HB) 2975, 88th Texas Legislature, Regular Session (2023), relating to TWC's powers and duties with respect to work and family policies.

The Work and Family Policies Clearinghouse was created to house a grant program to provide assistance and information on dependent care and employment-related family issues, but its funding mechanism was repealed before it was implemented. HB 2975 amended Texas Labor Code Chapter 81 to disband the Clearinghouse and assigns all related responsibilities and rule-making authority to TWC.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

Texas Government Code §2001.039 requires that every four years each state agency review and consider for re adoption, revision, or repeal each rule adopted by that agency. TWC has conducted a rule review of Chapter 845, Texas Work & Family Clearinghouse, and any changes are described in Part II of this preamble.

CHAPTER 845. TEXAS WORK AND FAMILY CLEARINGHOUSE

TWC proposes the following amendment to the title of Chapter 845:

The Chapter 845 title is amended to remove "Clearinghouse" to align with Texas Labor Code Chapter 81 as amended by HB 2975. The chapter title is amended to read "Texas Work and Family Policies Resources."

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§845.1. Goals and Purpose

Section 845.1 is amended to replace "Clearinghouse" with "Policies Resources" to align with Texas Labor Code Chapter 81, as amended by HB 2975.

§845.2. Definitions

Section 845.2 is amended to remove the definition of "Clearinghouse" in accordance with Texas Labor Code §81.001, as amended by HB 2975. Remaining subsections are renumbered accordingly.

Renumbered §845.2(2) is amended for clarification to replace "Commission" with "Agency."

Renumbered §845.2(3) is amended to replace "Clearinghouse" with "Agency," because HB 2975 removed the clearinghouse from Texas Labor Code Chapter 81 and assigned its former responsibilities to TWC.

SUBCHAPTER B. DEPENDENT CARE GRANTS

TWC proposes the following amendments to Subchapter B:

§845.11. Submission of Grant Requests

Section 845.11 is amended for clarification to replace "Commission" with "Agency."

§845.12. Criteria for Awarding Grants

Section 845.12 is amended for clarification to replace "Commission" with "Agency."

§845.13. Cancellation or Other Corrective Action

Section 845.13 is amended for clarification to replace "Commission" with "Agency."

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to implement changes in accordance with HB 2975, 88th Texas Legislature, Regular Session (2023) relating to TWC's powers and duties with respect to work and family policies.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Mary York, Director, Outreach & Employer Initiatives, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide employment-related information to Texas employers.

PART IV. COORDINATION ACTIVITIES

HB 2975 amended Texas Labor Code Chapter 81 resulting in the need for TWC to update the rules under Texas Administrative Code Chapter 845, Texas Work & Family Clearinghouse.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than December 25, 2023.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§845.1, §845.2

PART VI. STATUTORY AUTHORITY

The rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also proposed under the specific authority of HB 2975, 88th Texas Legislature, Regular Session (2023). The bill amended Texas Labor Code §81.0045(b) and §81.007 to grant all program rulemaking authority to TWC, which was previously shared with the Work and Family Policies Clearinghouse, which was abolished by HB 2975.

The proposed rules affect Title 2, Texas Labor Code, particularly Chapter 81.

§845.1. Goals and Purpose.

The purpose of the Texas Work and Family Policies Resources [Clearinghouse] is to provide technical assistance and information on dependent care and other employment-related family issues to public and private employers, state agencies, policymakers, and individuals.

§845.2. Definitions.

~~The [In addition to the definitions contained in §800.2 of this title, the] following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.~~

~~{(1) Clearinghouse--The Texas Work and Family Clearinghouse established under Texas Labor Code Chapter 81, relating to Work and Family Policies.}~~

(1) [(2)] Dependent care--Care for a child, adult, or disabled relative ~~who~~; that is claimed as a dependent for federal income tax purposes, that has an impact on employment-related family issues.

(2) [(3)] Grant applicant--A public or private person as defined in the request for proposal or request for application published by the Agency [Commission].

(3) [(4)] Grant recipient--A public or private person awarded a grant from the Agency [Clearinghouse].

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

Filed with the Office of the Secretary of State on November 7, 2023.

TRD-202304097

Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: December 24, 2023
For further information, please call: (512) 850-8356



SUBCHAPTER B. DEPENDENT CARE GRANTS

40 TAC §§845.11 - 845.13

The rules are proposed under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also proposed under the specific authority of HB 2975, 88th Texas Legislature, Regular Session (2023). The bill amended Texas Labor Code §81.0045(b) and §81.007 to grant all program rulemaking authority to TWC, which was previously shared with the Work and Family Policies Clearinghouse, which was abolished by HB 2975.

The proposed rules affect Title 2, Texas Labor Code, particularly Chapter 81.

§845.11. Submission of Grant Requests.

(a) A grant applicant may submit a grant request to the Agency [Commission] in response to requests for proposals or requests for applications.

(b) The Request for Proposal or Request for Application will include a deadline for submission if applicable, a statement of work related to the use of the funds, any information related to the use of the funds and any other requirements established by the Agency [Commission].

§845.12. Criteria for Awarding Grants.

The Agency [Commission] may consider the following factors in awarding grants:

- (1) the purpose for which the specific grant is intended;
- (2) coordination requirements with employer organizations, employee organizations, child health agencies, and the category of dependent care to be addressed;
- (3) reporting and monitoring requirements;
- (4) the appeal process applicable to the grant; and
- (5) other criteria included by the Agency [Commission].

§845.13. Cancellation or Other Corrective Action.

(a) Cancellation. The Agency [Commission] may cancel a grant if the Agency [Commission] determines that the grant recipient has failed to perform as required in the grant request or award, or for circumstances that lead the Agency [Commission] to believe the grant recipient will fail to substantially comply with the terms set forth in the request for proposal, request for application, contract, or interagency agreement. Grounds for cancellation may also include: failure to ensure a program's intended results; waste, fraud or abuse of resources; and failure to timely capture, report, or use information to improve decision making.

(b) Corrective Action. The Agency [Commission] may take corrective action in lieu of cancellation if it is determined by the

Agency [Commission] to be the best course of action to facilitate the maximum use of funds.

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

Filed with the Office of the Secretary of State on November 7, 2023.

TRD-202304098

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: December 24, 2023

For further information, please call: (512) 850-8356



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.306, §355.314

The Texas Health and Human Services Commission withdraws proposed amendment to §355.306 and new §355.314 which appeared in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6065).

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304167

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: November 9, 2023

For further information, please call: (512) 221-9021



SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §§355.743, 355.746, 355.781

The Texas Health and Human Services Commission withdraws proposed amended §§355.743, 355.746, and 355.781 which ap-

peared in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6065).

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304168

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: November 9, 2023

For further information, please call: (512) 221-9021



SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 22. REIMBURSEMENT METHODOLOGY FOR THE EARLY CHILDHOOD INTERVENTION PROGRAM

1 TAC §355.8421

The Texas Health and Human Services Commission withdraws proposed amendments to §355.8421 which appeared in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6065).

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304169

Karen Ray

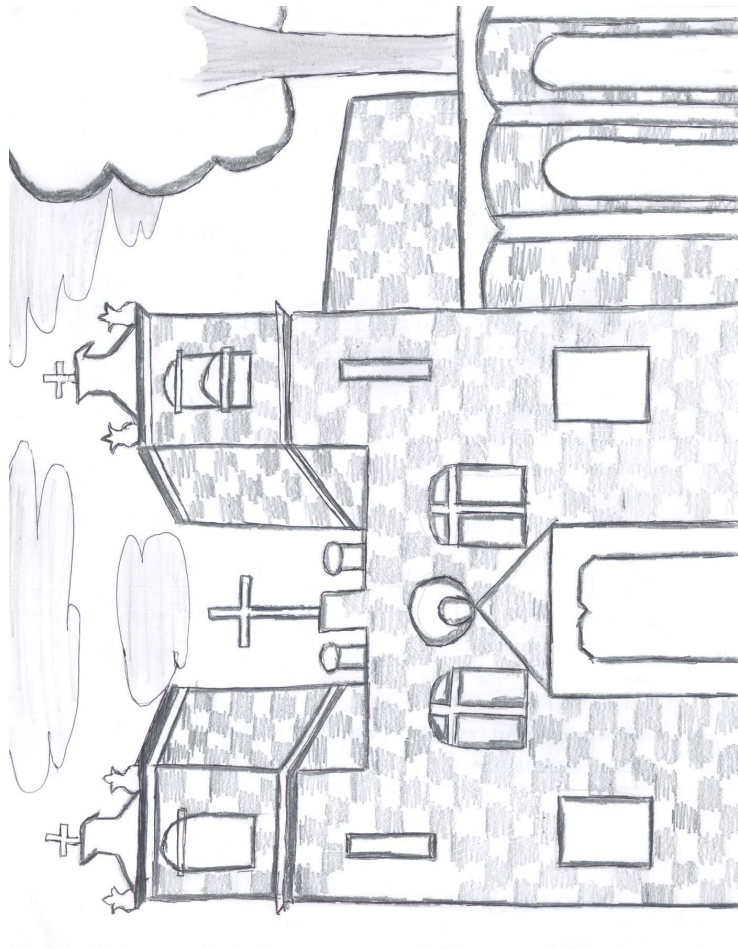
Chief Counsel

Texas Health and Human Services Commission

Effective date: November 9, 2023

For further information, please call: (512) 221-9021





ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §351.3, §351.6

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §351.3, concerning Recognition of Out-of-State License of Military Service Members and Military Spouses, and new §351.6, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans, in Texas Administrative Code Title 1, Chapter 351, Subchapter A. The amendment of §351.3 and new rule §351.6 are adopted with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5596). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendment and new rule implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023, which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Amended §351.3 allows military service members who are currently licensed in good standing by another jurisdiction to engage in a business or occupation in Texas if the other jurisdiction has licensing requirements substantially equivalent to the requirements for the license in Texas. New §351.6 creates an alternative licensing process for military service members, military spouses, and military veterans. Both rules establish requirements and procedures authorized or required by Texas Occupations Code Chapter 55 and do not modify or alter rights that may be provided under federal law.

The amendment to §351.3 replaces "military spouse" in the title with "military service members and military spouses" and otherwise makes the rule applicable to military service members in addition to military spouses. The proposed amendment also adds a requirement that HHSC verify the licensure and issue a verification letter recognizing the licensure within 30 days of the date a military service member or military spouse submits the information required by the rule. The amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the verification letter.

New §351.6 establishes alternative licensing for military service members, military spouses, and military veterans. Alternative licensing is appropriate when the military service member, military spouse, or military veteran is currently licensed in good standing with another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in Texas or held the same license in Texas within the preceding five years. The new rule provides that HHSC has 30 days from the date a military service member, military spouse, or military veteran submits an application for alternative licensing to process the application and issue a license to a qualified applicant.

COMMENTS

The 21-day comment period ended October 20, 2023.

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

Comment: An individual stakeholder commented that the military spouse waiver fee should apply to retired military spouses as well as retired servicemen/women.

Response: HHSC declines to revise §351.3 or §351.6 because both rules incorporate the definitions found in Texas Occupations Code §55.001. With respect to military spouses, these statutory definitions limit the applicability of both rules to persons married to military service members who are on active duty.

HHSC made changes to §351.3(e)(3) and §351.6(f) to be consistent with 25 TAC §1.81, Recognition of Out-of-State License of a Military Service Member and Military Spouse, and §1.91, Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

STATUTORY AUTHORITY

The amendment and new rule are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by HHSC for the administration of Texas Health and Safety Code Chapter 1001.

§351.3. Recognition of Out-of-State License of Military Service Members and Military Spouses.

(a) For the purposes of this section, the definitions found in Texas Occupations Code §55.001 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses to engage in a business or occupation which the Texas Health and Human Services Commission (HHSC) issues to an individual under authority granted by the laws of the State of Texas. A more specific rule concerning recognition of out-of-state licenses of military service members and military spouses may also apply but only to the extent the more specific rule does not conflict with this rule. Any conflicts between this rule and the more specific rule are resolved in favor of this rule.

(c) A military service member or military spouse may engage in a business or occupation as if licensed in the State of Texas without obtaining the applicable license in Texas if the military service member or military spouse:

(1) is currently licensed in good standing with another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state;

(2) notifies HHSC in writing of the military service member's or military spouse's intent to practice in this state;

(3) submits to HHSC proof of the military service member's or military spouse's residency in this state and a copy of the military service member's or military spouse's military identification card; and

(4) receives a verification letter from HHSC that:

(A) HHSC has verified the military service member's or military spouse's license in another jurisdiction; and

(B) the military service member or military spouse is authorized to engage in the business or occupation in accordance with Texas Occupations Code §55.0041 and rules for that business or occupation.

(d) HHSC will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another state's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state:

(1) whether the other state requires an applicant to pass an examination that demonstrates competence in the field to obtain the license;

(2) whether the other state requires an applicant to meet any experience qualifications to obtain the license;

(3) whether the other state requires an applicant to meet any education qualifications to obtain the license; and

(4) the other state's license requirements, including the scope of work authorized to be performed under the license issued by the other state.

(e) The military service member or military spouse must submit:

(1) a written request to HHSC for recognition of the military service member's or military spouse's license issued by the other state; no fee will be required;

(2) any form and additional information regarding the license issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(3) proof of residency in this state, which may include a copy of the permanent change-of-station order for the military service member;

(4) a copy of the military service member's or military spouse's identification card; and

(5) proof the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in Texas.

(f) HHSC has 30 days from the date a military service member or military spouse submits the information required by subsection (e) of this section to:

(1) verify that the member or spouse is licensed in good standing in a jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license under the statutes and regulations of this state; and

(2) issue a verification letter recognizing the licensure as the equivalent license in this state.

(g) The verification letter will expire three years from date of issuance or when the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is no longer stationed at a military installation in Texas, whichever comes first. The verification letter may not be renewed.

(h) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the verification described by subsection (f) of this section. A similar event includes the death of the military service member or the military service member's discharge from the military.

(i) A replacement letter may be issued after receiving a request for a replacement letter in writing or on a form, if any, required by the rules of the specific program or division within HHSC that licenses the business or occupation; no fee will be required.

(j) The military service member or military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code chapters and all relevant Texas Administrative Code provisions.

(k) HHSC may withdraw or modify the verification letter for reasons including the following:

(1) the military service member or military spouse fails to comply with subsection (j) of this section; or

(2) the military service member's or military spouse's licensure required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

§51.6. Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

(a) For the purposes of this section, the definitions found in Texas Occupations Code §55.001 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses to engage in a business or occupation which the Texas Health and Human Services Commission (HHSC) issues to an individual under authority granted by the laws of the State of Texas. A more specific rule concerning alternative licensing for military service members, military spouses, and military veterans may also apply but only to the extent the more specific rule does not conflict with this rule. Any conflicts between this rule and the more specific rule are resolved in favor of this rule.

(c) Notwithstanding any other rule, HHSC may issue a license to an applicant who is a military service member, military spouse, or military veteran if the military service member, military spouse, or military veteran:

(1) is currently licensed in good standing with another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state; or

(2) held the same license in Texas within the preceding five years.

(d) HHSC may waive any requirement to obtaining a license for an applicant described by subsection (c) of this section after reviewing the applicant's credentials.

(e) If an applicant described by subsection (c) of this section must demonstrate competency to meet the requirements for obtaining the license, HHSC may accept alternate forms of competency including:

(1) proof of a passing score for any national exams required to obtain the occupational license;

(2) if specific professional experience is required, proof of duration or hours that meet the professional experience requirement; and

(3) if specific training hours are required for obtaining the license, proof of verified hours related to training experience.

(f) If required by the specific program or division within HHSC that licenses the business or occupation, a military service member or military spouse must provide proof of residency in this state, which may include a copy of the permanent change-of-station order for the military service member or any other documentation HHSC deems appropriate to verify residency.

(g) HHSC has 30 days from the date a military service member, military spouse, or military veteran submits an application for alternative licensing to process the application and issue a license to an applicant who qualifies for the license.

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 November 9, 2023.

TRD-202304128

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: December 1, 2023

Proposal publication date: September 29, 2023

For further information, please call: (512) 574-2228



CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 9. AMBULANCE SERVICES

1 TAC §§354.1111, 354.1113, 354.1115

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1111, concerning Definitions; §354.1113, concerning Additional Claim Information Requirements; and §354.1115, concerning Authorized Ambulance Services. Section 354.1111

and §354.1115 are adopted with changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3955). These rules will be republished. Section 354.1113 is adopted without changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3955). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to implement legislation related to Medicaid ambulance services as directed by Senate Bill 1, Article II, Rider 42, 87th Legislature, Regular Session, 2021. The adoption implements emergency triage, treat, and transport (ET3) services to allow Medicaid-enrolled ambulance providers to address health care needs assessed as non-emergency, but medically necessary, by initiating and facilitating appropriate treatment in place at the scene; initiating and facilitating appropriate treatment in place via telemedicine or telehealth; and transporting a Medicaid recipient to an alternative non-hospital destination, such as a primary care physician office or an urgent care clinic. The adoption allows ET3 services similar to those put in place with the Centers for Medicare & Medicaid Services' ET3 Pilot project. The adoption amendments also update and clarify language in the rules.

COMMENTS

The 31-day comment period ended August 21, 2023.

During this period, HHSC received comments regarding the proposed rules from one stakeholder. Comments were received from Texas EMS Alliance. A summary of the comments relating to the rules and HHSC's responses follow.

Comment: Texas EMS Alliance commented that while the definition in §354.1111(9) of "nonemergency transport" includes valid examples, such as scheduled appointments and discharges from a medical facility, the language describing the Medicaid recipient's medical condition that would make nonemergency transport appropriate should be changed from "such that the use of an ambulance is medically required, e.g., bed confinement, and alternate means of transport are medically contraindicated" to "such that the use of an ambulance is medically required, e.g., bed confinement or alternate means of transport are medically contraindicated." The commenter explained that while it would be rare, it is possible for a patient who is not bed confined to still require stretcher transport, such as a patient who is dependent on a ventilator.

Response: HHSC respectfully declines to make the suggested change. The Medicaid recipient's medical condition must be such that both the use of an ambulance is medically required and alternate means of transport are medically contraindicated. Bed confinement is cited as an example of when the use of an ambulance is medically required.

Comment: Texas EMS Alliance also commented that emergency medical services providers would provide treatment as described in §354.1115(2)(A),(B), or (C), but not all three for the same response. The commenter suggested changing the last word in §354.1115(2)(B) to "or."

Response: HHSC disagrees and respectfully declines to make the suggested change. HHSC's decision to use "and" instead of "or" is because ambulance providers may be reimbursed for all of the ET3 services listed in §354.1115(2)(A), (B), and (C). The rule is not intended to specify that §354.1115(2)(A), (B), and (C) must be provided as part of the same treatment event in order for the provider to be reimbursed.

Minor editorial changes were made to §354.1111(5)(B) and (C) and §354.1115(2)(B) and (C) to use "initiating and facilitating" in the description of treatment in place.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resource Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

§354.1111. Definitions.

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

(1) Ambulance provider--A provider of ambulance services who:

(A) is enrolled as an ambulance provider in the Texas Medicaid Program to provide ambulance services for Medicaid recipients;

(B) is licensed with the Department of State Health Services, Emergency Medical Services Division;

(C) is enrolled in Medicare;

(D) agrees to accept assignment on all Medicare/Medicaid claims; and

(E) agrees to provide these services according to state and local laws, regulations, and guidelines governing ambulance services.

(2) Appropriate facility--The nearest medical facility that is equipped to provide medical care for the illness or injury of the Medicaid recipient involved. It is the institution, equipment, personnel, and capability to provide the services necessary to support the required medical care that determine whether a facility is appropriate.

(3) Designee--The contractor responsible for reimbursing Medicaid providers of ambulance transport services for Medicaid recipients.

(4) Emergency medical condition--A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances, or symptoms of substance abuse) such that a prudent layperson with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

(A) placing the recipient's health (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(5) Emergency triage, treat and transport (ET3) services--ET3 services are emergency ground ambulance services and include:

(A) transporting Medicaid recipients to alternative destination sites other than an emergency department, including primary care physician offices and urgent care clinics;

(B) initiating and facilitating appropriate treatment in place at the scene; or

(C) initiating and facilitating appropriate treatment in place via telemedicine or telehealth.

(6) Emergency transport--Transport provided by an ambulance provider for a Medicaid recipient whose condition meets the definition of an emergency medical condition. Facility-to-facility transports are appropriate as emergencies if the required treatment for the emergency medical condition is not available at the first facility.

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

(8) Medically necessary--When the condition of the Medicaid recipient meets the definition of emergency medical condition or meets the requirements for nonemergency transport.

(9) Nonemergency transport--Transport provided by an ambulance provider for a Medicaid recipient to or from a scheduled medical appointment, to or from another licensed facility for treatment, or to the recipient's home after discharge from a hospital. Nonemergency transport is appropriate when the Medicaid recipient's medical condition is such that the use of an ambulance is medically required, e.g., bed confinement, and alternate means of transport are medically contraindicated.

§354.1115. Authorized Ambulance Services.

In addition to the requirements stated in this section, a provider must comply with §354.1001 of this subchapter (relating to Claim Information Requirements), and §354.1113 of this division (relating to Additional Claim Information Requirements).

(1) Emergency ambulance transportation. HHSC will reimburse a Medicaid-enrolled ambulance provider for the emergency transport of a Medicaid recipient with an emergency medical condition in accordance with the following criteria.

(A) Transport must be to an appropriate facility. If the transport is made to a facility other than an appropriate facility, payment is limited to the amount that would be payable to an appropriate facility.

(B) Transport by air or boat ambulance is reimbursable if the time and distance required to reach an appropriate facility make the transport by ground ambulance impractical or would endanger the life or safety of the recipient. If the recipient's medical condition does not meet the emergency air or boat criteria, but does meet the emergency ground transportation criteria, the payment to the provider is limited to the amount that would be payable at the emergency ground transportation rate.

(2) Emergency triage, treat and transport (ET3) services. HHSC may reimburse a Medicaid-enrolled ambulance provider responding to a call initiated by an emergency response system and upon arrival at the scene the ambulance provider determines the recipient's needs are nonemergent, but medically necessary. ET3 services may be reimbursed for:

(A) transporting Medicaid recipients to alternative destination sites other than an emergency department;

(B) initiating and facilitating treatment in place at the scene; and

(C) initiating and facilitating treatment in place via telemedicine or telehealth.

(3) Nonemergency ambulance transportation. HHSC may reimburse a Medicaid-enrolled ambulance provider for nonemergency transport when the following requirements are met:

(A) A physician, nursing facility, health care provider, or other responsible party, must obtain prior authorization from HHSC when an ambulance is used to transport a recipient in circumstances not involving an emergency.

(i) Except as provided by clause (iii) of this subparagraph, a request for prior authorization must be evaluated by HHSC based on the recipient's medical needs and may be granted for a length of time appropriate to the recipient's medical condition;

(ii) Except as provided by clause (iii) of this subparagraph, a response to a request for prior authorization must be made by HHSC not later than 48 hours after receipt of the request; and

(iii) A request for prior authorization must be granted immediately by HHSC and must be effective for a period of not more than 180 days from the date of issuance if the request includes a written statement from a physician that:

(I) states that alternative means of transporting the recipient are contraindicated; and

(II) is dated not earlier than the 60th day before the date on which the request for authorization is made.

(B) If the request is for authorization of ambulance transportation for only one day in circumstances not involving an emergency, a physician, nursing facility, health care provider, or other responsible party must obtain authorization from HHSC no later than the next business day following the day of transport;

(C) If the request is for authorization of ambulance transportation for more than one day in circumstances not involving an emergency, a physician, nursing facility, health care provider, or other responsible party must obtain a single authorization before an ambulance is used to transport a recipient;

(D) A person denied payment for ambulance services rendered is entitled to payment from the nursing facility, health care provider, or other responsible party that requested the services if:

(i) payment under the Medicaid program is denied because of lack of prior authorization; and

(ii) the person provides the nursing facility, health care provider, or other responsible party with a copy of the bill for which payment was denied.

(E) HHSC must be available to evaluate requests for authorization under this section not less than 12 hours each day, excluding weekends and state holidays.

(4) Hearings. For information about recipient fair hearings, refer to HHSC's fair hearing rules, Chapter 357 of this title (relating to Hearings).

(5) Provider appeal. An ambulance provider denied payment for services rendered because of failure to obtain prior authorization, or because a request for prior authorization was denied, is entitled to appeal the denial of payment to HHSC. A denial of a claim may be appealed by a provider under HHSC's appeals procedures contained in the Texas Medicaid Provider Procedures Manual and §354.1003 of this subchapter (relating to Time Limits for Submitted Claims).

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 November 7, 2023.

TRD-202304103

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: November 27, 2023

Proposal publication date: July 21, 2023

For further information, please call: (512) 438-4651



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER C. PREVIOUS PARTICIPATION AND EXECUTIVE AWARD REVIEW AND ADVISORY COMMITTEE

10 TAC §§1.301 - 1.303

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §1.301 Definitions and Previous Participation Reviews for Multifamily Awards and Ownership Transfers, §1.302 Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and §1.303 Executive Award and Review Advisory Committee (EARAC), without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5240). The rules will not be republished.

The purpose of the repeal is to make changes that result from passage of HB 3591 (83rd Regular Legislature) which removed §2306.1112 from our statutes, thereby eliminating EARAC.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to existing guidance for program subrecipients.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand, limit, or repeal an existing regulation.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule compliant with legislative actions taken by the 83rd Texas Legislature. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from September 22, 2023, to October 23, 2023, to receive input on the proposed action. No comment on the repeal was received.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or 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 November 10, 2023.

TRD-202304181

Bobby Wilkinson
Executive Director

Texas Department of Housing and Community Affairs
Effective date: November 30, 2023

Proposal publication date: September 22, 2023

For further information, please call: (512) 485-3959

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10 TAC §§1.301 - 1.303

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter C, Previous Participation Review of Department Awards, §1.301 Definitions and Previous Participation Reviews for Multifamily Awards and Ownership Transfers, §1.302 Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and §1.303 Executive Director Review, with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5241). The rules will be republished.

The purpose of the rule is to make changes that result from passage of HB 3591 (83rd Regular Legislature) which removed §2306.1112 from our statutes, thereby eliminating EARAC. From the draft version released, several administrative revisions have been made relating to a change from reference to only NSPIRE to include other inspection methods that may have been used when considering past performance.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relate to changes to existing regulations applicable to Department subrecipients.
2. The new sections do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new sections do not require additional future legislative appropriations.
4. The new sections will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new sections will not expand, limit, or repeal an existing regulation.
7. The new sections will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new sections will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new sections and determined that the actions will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new sections do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new sections as to their possible effects on local economies and has determined that for the first five years the new sections would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections would be an updated and more germane rule compliant with legislative actions taken by the 83rd Texas Legislature. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from September 22, 2023, to October 23, 2023, to receive input on the proposed action. One comment on the new sections was received from Texas Housers.

COMMENT: Texas Housers proposes removing §1.301(c)(4). Texas Housers believes that failure to provide Fair Housing Disclosure notice should be considered when conducting a previous participation review. It is our understanding that the Fair Housing Disclosure Notice requirement is satisfied by providing the Tenant Rights and Resources Guide. This document has integral information for tenants, and failure to provide this should not be tolerated.

STAFF RESPONSE: The section referenced by Texas Housers relates to a list of items that will not be considered when conducting a previous participation review; on that list the item suggested for removal is events of noncompliance entitled "Failure to provide Fair Housing Disclosure notice." Staff notes that regardless of whether the item is taken into consideration during a previous participation review, the Compliance Division does still require the item to be corrected by a property if identified. There is now a Tenant's Rights and Resources Guide that must be provided to every tenant and staff monitors for this form in every tenant file we review, so the Department is diligently ensuring that low-income Texans are provided this Fair Housing

Disclosure information. Staff also checks any instances of outstanding noncompliance during onsite reviews and seeks to get any previous outstanding noncompliance corrected during the most recent review. Also, any outstanding noncompliance is referred to the Enforcement Division. No changes are being made in response to this comment.

STATUTORY AUTHORITY. The new sections are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

§1.301. *Definitions and Previous Participation Reviews for Multifamily Awards and Ownership Transfers.*

(a) Purpose and Applicability. The purpose of this rule is to provide the procedures used by the Department to comply with Tex. Gov't Code §§2306.057, and 2306.6713 which require the Compliance Division to assess the compliance history of the Applicant and any Affiliate, the compliance issues associated with the proposed or existing Development, and provide such assessment to the Board. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c) and Texas Grant Management Standards (TxGMS), where applicable.

(b) Definitions. The following definitions apply only as used in this subchapter. Other capitalized terms used in this section have the meaning assigned in the specific chapters and rules of this title that govern the program associated with the request, or assigned by federal or state laws.

(1) Actively Monitored Development--A Development that within the last three years has been monitored by the Department, either through a NSPIRE inspection or prior onsite monitoring inspection other than NSPIRE, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. NSPIRE inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(2) Affiliate--Persons are Affiliates of each other or are "affiliated" if they are under common Control by each other or by one or more third parties. "Control" is as defined in §11.1 of this title (relating to General items relating to Pre-Application, Definitions, Threshold Requirements and Competitive Scoring). For Applications for Multifamily Direct Grants/Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Grants/Loans or 811 PRA, for purposes of assurance that the Affiliate is not on the Federal Suspended or Debarred Listing, Affiliate is also defined as required by 2 CFR Part 180 and 2 CFR Part 2424.

(3) Applicant--In addition to the definition of applicant in §11.1 of this title, in this subchapter, the term applicant includes Persons requesting approval to acquire a Department monitored Development.

(4) Combined Portfolio--Actively Monitored Developments within the Control of Persons affiliated with the Application as identified by the Previous Participation Review and as limited by subsection (c) of this section.

(5) Corrective Action Period--The timeframe during which an Owner may correct an Event of Noncompliance, as permitted in §10.602 or §10.803 of this title (relating to Notice to Owners and Corrective Action Periods and Compliance and Events of Noncompliance, respectively), including any permitted extension or deficiency period.

(6) Events of Noncompliance--Any event for which an Actively Monitored Development may be found to be in noncompliance

for monitoring purposes as further provided for in §10.803 of this title or in the table provided at §10.625 of this title (relating to Events of Noncompliance).

(7) Monitoring Event--An onsite or desk monitoring review, an NSPIRE inspection, prior onsite monitoring inspection other than NSPIRE, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division or other reviewing area provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include, but not be limited to, responding to a tenant complaint.

(8) National Standards for the Physical Inspection of Real Estate (NSPIRE)--As developed by the Real Estate Assessment Center of HUD.

(9) Person--"Person" is as defined in 10 TAC Chapter 11 (relating Qualified Allocation Plan (QAP)). For Applications for Multifamily Direct Grants/Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Grants/Loans or 811 PRA, for purposes of assurance that the Applicant or Affiliate is not on the Federal Suspended or Debarred Listing, Person is also defined and includes Principal as required by 2 CFR Part 180 and 2 CFR Part 2424.

(10) Single Audit--As used in this rule, the term relates specifically to an audit required by 2 CFR §200.501 or the Texas Single Audit Circular.

(c) Items Not Considered. When conducting a previous participation review the items in paragraphs (1) - (10) of this subsection will not be taken into consideration:

(1) Events of Noncompliance, Findings, Concerns, and Deficiencies (as described in 10 TAC §6.2, 10 TAC §7.2, 10 TAC §10.625, 10 TAC §10.803 and 10 TAC §20.3 or by Contract) that were corrected over three years from the date the Event is closed;

(2) Events of Noncompliance with an "out of compliance date" prior to the Applicant's period of Control if the event(s) is currently corrected;

(3) Events of Noncompliance with an "out of compliance date" prior to the Applicant's period of Control if the event(s) is currently uncorrected and the Applicant has had Control for less than one year, or if the Owner is still within the timeframe of a Department-approved corrective action from the Department's Enforcement Committee;

(4) The Event of Noncompliance "Failure to provide Fair Housing Disclosure notice";

(5) The Event of Noncompliance "Program Unit not leased to Low income Household" sometimes referred to as "Household Income above income limit upon initial Occupancy" for units at Developments participating in U.S. Department of Housing and Urban Development programs (or used as HOME Match) or U.S. Department of Agriculture, if the household resided in the unit prior to an allocation of Department resources and Federal Regulations prevent the Owner from correcting the issue, provided that the household is below the program's upper income limit and otherwise qualifies for the Unit;

(6) The Event of Noncompliance "Casualty loss" if the restoration period has not expired;

(7) Events of Noncompliance that the Applicant believes can never be corrected and the Department agrees in writing that such item should not be considered;

(8) Events of Noncompliance corrected within their Corrective Action Period;

(9) Events of failure to respond within the Corrective Action Period which have been fully corrected prior to January 1, 2019, will not be taken into consideration under subsection (e)(2)(C) and (3)(C) of this section;

(10) Events of Noncompliance precluded from consideration by Tex. Gov't Code §2306.6719(e); and

(11) Except for Applications for Multifamily Direct Grants/Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Grants/Loans or 811 PRA, Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the responsibility for the Development's compliance has been delegated to another participant in the project (defined as a member of the Development Team), and the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term "Combined Portfolio" used in this section does not include those properties with such documentation. The Department may require additional information to support the Control Form including but not limited to partnership agreements or other legal documents.

(d) Applicant Process. Persons affiliated with an Application or an Ownership Transfer request must complete the Department's Uniform Previous Participation Review Form and respond timely to staff inquiries regarding apparent errors or omissions, but for Applications no later than the Administrative Deficiency deadline. For an Ownership Transfer request, a recommendation will be delayed until the required forms or responsive information is provided.

(e) Determination of Compliance Status. Through a review of the form, Department records, and the compliance history of the Affiliated multifamily Developments, staff will determine the applicable category for the Application or Ownership Transfer request using the criteria in paragraphs (1) - (3) of this subsection. Combined Portfolios will not be designated as a Category 3 if both Applicants are considered a Category 2 when evaluated separately. For example, if each Applicant is a Category 2 and their Combined Portfolio is a Category 3, the Application will be considered a Category 2.

(1) Category 1. An Application will be considered a Category 1 if the Actively Monitored Developments in the Combined Portfolio have no issues that are currently uncorrected, all Monitoring Events were responded to during the Corrective Action Period, and the Application does not meet any of the criteria of Category 2 or 3.

(2) Category 2. An Application will be considered a Category 2 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period totals at least three but is less than 50% of the number of Actively Monitored Developments in the Combined Portfolio; or

(B) There are uncorrected Events of Noncompliance but the number of Events of Noncompliance is 10% or less than the number of Actively Monitored Developments in the Combined Portfolio. Corrective action uploaded to the Department's Compliance Monitoring and Tracking System (CMTS) or submitted during the seven day period referenced in subsection (f) of this section will be reviewed and the Category determination may change as appropriate; or

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event; however, the number of times is less than 25% of the number of Actively Monitoring Developments in the Combined Portfolio; or

(D) The Applicant is required to have a Single Audit and a relevant issue was identified in the Single Audit (e.g. Notes to the Financial Statements), or the required Single Audit is past due.

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of Actively Monitored Developments in the Combined Portfolio;

(B) The number of Events of Noncompliance that are currently uncorrected total 10% or more than the number of Actively Monitored Developments in the Combined Portfolio. Corrective action uploaded to CMMS or submitted during the seven day period referenced in subsection (f) of this section will be reviewed and the Category determination may change as appropriate;

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event and the number of times is equal to or greater than 25% of the number of Actively Monitored Developments in the Combined Portfolio;

(D) Any Development Controlled by the Applicant has been the subject of an agreed final order entered by the Board and the terms have been violated;

(E) Any Person subject to previous participation review failed to meet the terms and conditions of a prior condition of approval imposed by the Executive Director, the Governing Board, voluntary compliance agreement, or court order;

(F) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable documents for any Development currently Controlled by the Applicant or that was Controlled by the Applicant at the time the payment was due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(G) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(H) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(I) Fees or other amounts owed to the Department by any Person subject to previous participation review are 30 days or more past due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(J) Despite past condition(s) agreed upon by any Person subject to previous participation review to improve their compliance operations, three or more new Events of Noncompliance have since been identified by the Department, and have not been resolved during the corrective action period;

(K) Any Person subject to previous participation review has or had Control of a TDHCA funded Development that has gone through a foreclosure; or

(L) Any Person subject to previous participation review or the proposed incoming owner is currently debarred by the Department or currently on the federal debarred and suspended listing.

(f) Compliance Notification to Applicant. The Compliance Division will notify Applicants of their compliance status from the categories identified in paragraphs (1) to (4) of this subsection.

(1) Previously approved. If the Executive Director or the Board previously approved the compliance history of an Applicant, with or without conditions (including approvals resulting from a Dispute under §1.303(g) of this subchapter such conditions have not been violated, and no new Events of Noncompliance have occurred since the last approval, the compliance history will be deemed acceptable without further review or discussion and recommended as approved or approved with the same prior conditions. For 4% Housing Tax Credit Applications (without other Department resources), where it has been determined by staff that the Determination Notice can be issued administratively, and for which the Board previously approved a set of conditions associated with a prior Application of the Applicant's, and those same conditions are to be applied to the new 4% Application by Program or Compliance, or if an Application only has underwriting conditions, then the new 4% Application does not need to be approved by the Executive Director and is not required to be presented to the Board.

(2) Category 1. The compliance history of Category 1 applications will be deemed acceptable (for Compliance purposes only) without further review or discussion.

(3) Category 2 and Category 3. Category 2 and 3 Applicants will be informed by the Compliance Division that the Application is a Category 2 or 3 and provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to the Executive Director.

(4) The Department will not make an award or approve an Ownership Transfer to any entity who has an Affiliate, Board member, or a Person identified in the Application that is currently on the Federal Debarred and Suspended Listing. An Applicant or entity requesting an Ownership Transfer will be notified of the debarred status and will be given the opportunity (subject to other Department rules) to remove and replace the Affiliate, Board member, or Person so that the transfer or award may proceed.

(g) Compliance Recommendation to Executive Director for Awards.

(1) After taking into consideration the information received during the seven-day period, Category 2 Applications will be recommended for approval or approval with conditions (for compliance purposes only). Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this subchapter. The Applicant will be notified if their award is recommended for approval with conditions.

(2) After taking into consideration the information received during the seven-day period, Category 3 applications will be recommended for approval, approval with conditions (for compliance purposes only) or denial. Any recommendation for an award or ownership transfer with conditions will utilize the conditions identified in

§1.303 of this subchapter. The Applicant will be notified if their award is recommended for denial or approval with conditions.

(3) An Applicant that will be recommended for denial or awarded with conditions will be informed of their right to file a Dispute under §1.303 of this subchapter.

(4) In the case of 4% Housing Tax Credit Applications where it has been determined by staff that the Determination Notice can be issued administratively, Category 2 and 3 applications being approved with conditions that are specifically listed in §1.303 of this subchapter and that have been previously approved by the Board for the Applicant, do not require approval of the Executive Director or the Board unless the Applicant is requesting to Dispute the Compliance Recommendation.

(h) Compliance Recommendation for Ownership Transfers. After taking into consideration the information received during the seven-day period the results will be reported to the Executive Director with a recommendation of approval, approval with conditions, or denial. If the Executive Director determines that the request should be denied, or approved with conditions and the requesting entity disagrees, the matter may be appealed to the Board under §1.7 of this title (relating to Appeals).

§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter.

(a) Purpose and applicability. This section applies to program awards not covered by §1.301 of this subchapter (relating to Previous Participation Reviews for Multifamily Awards and Ownership Transfers). With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a Contract or through a Reservation Agreement a previous participation review will be performed in conjunction with the presentation of award actions to the Department's Board.

(b) Capitalized terms used in this subchapter herein have the meaning assigned in the specific chapters and rules of this title that govern the program associated with the request, or assigned by federal or state laws. For this section, the word Applicant means the entity that the Department's Board will consider for an award of funds or a Contract. As used in this section, the term Single Audit relates specifically to the audit required by 2 CFR §200.501 or the Texas Single Audit Act.

(c) Upon Department request, Applicant will be required to submit:

(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information has been submitted in accordance with §1.22 of this subchapter (relating to Providing Contact Information to the Department), and if applicable with §6.6 of this title (relating to Subrecipient Contact Information and Required Notifications);

(2) A list of any multifamily Developments owned or Controlled by the Applicant that are monitored by the Department;

(3) Identification of all Department programs that the Applicant has participated in within the last three years;

(4) An Audit Certification Form for the Applicant or entities identified by the Applicant's Single Audit, or a certification that the form has been submitted to the Department in accordance with §1.403 of this chapter (relating to Single Audit Requirements). If a Single Audit is only required by the State Single Audit Act and not by a federal requirement, a copy of the State Single Audit must be submitted to the Department;

(5) In addition to direct requests for information from the Applicant, information is considered to be requested for purposes of

this section if the requirement to submit such information is made in a NOFA or Application for funding; and

(6) Applicants will be provided a reasonable period of time, but not less than seven calendar days, to provide the requested information.

(d) The Applicant's/Affiliate's financial obligations to the Department will be reviewed to determine if any of the following conditions exist:

(1) The Applicant or Affiliate entities identified by the Applicant's Single Audit owes an outstanding balance in accordance with §1.21 of this chapter (relating to Action by Department if Outstanding Balances Exist), and a repayment plan has not been executed between the Subrecipient and the Department or the repayment plan has been violated;

(2) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department; or

(3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department.

(e) The Single Audit of an Applicant, or Affiliate entities identified by the Applicant's Single Audit, subject to a Single Audit, and not currently contracting for funds with the Department will be reviewed. In evaluating the Single Audit, the Department will consider both audit findings, and management responses in its review to identify concerns that may affect the organization's ability to administer the award. The Department will notify the Applicant of any Deficiencies, findings or other issues identified through the review of the Single Audit that requires additional information, clarification, or documentation, and will provide a deadline to respond.

(f) The Compliance Division will make a recommendation of award, award with conditions, or denial based on:

(1) The information provided by the Applicant;

(2) Information contained in the most recent Single Audit;

(3) Issues identified in subsection (d) of this section;

(4) The Deficiencies, Findings and Concerns identified during any monitoring visits conducted within the last three years (whether or not the Findings were corrected during the Corrective Action Period); and

(5) The Department's record of complaints concerning the Applicant.

(g) Compliance Recommendation to the Executive Director.

(1) If the Applicant has no history with Department programs, and Compliance staff has not identified any issues with the Single Audit or other required disclosures, the Application will be deemed acceptable (for Compliance purposes) without further review or discussion.

(2) An Applicant with no history of monitoring Findings, Concerns, and/or Deficiencies or with a history of monitoring Findings, Concerns, and/or Deficiencies that have been awarded without conditions subsequent to those identified Findings, Concerns, and/or Deficiencies, will be deemed acceptable without further review or discussion for Compliance purposes, if there are no new monitoring Findings, Concerns, or Deficiencies or complaint history, and if the Compliance Division determines that the most recent Single Audit or other required disclosures indicate that there is no significant risk to the Department funds being considered for award.

(3) The Compliance Division will notify the Applicant when an intended recommendation is an award with conditions or denial. Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this subchapter. The Applicant will be provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this subchapter, or propose other conditions for consideration by the Board.

(4) After review of materials submitted by the Applicant during the seven day period, the Compliance Division will make a final recommendation regarding the award. If recommending denial or award with conditions, the Applicant will be notified of their right to file a dispute under §1.303 of this subchapter.

(h) Consistent with §1.403 of Subchapter D of this chapter, (relating to Single Audit Requirements), the Department may not enter into a Contract or extend a Contract with any Applicant who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency except as required by law, and in the case of certain programs, funds may be reserved for the Applicant or the service area covered by the Applicant.

(i) Except as required by law, the Department will not enter into a Contract with any Applicant or entity who has an Affiliate, Board member, or person identified in the Application that is currently debarred by the Department or is currently on the Federal Suspended or Debarred Listing. Applicants will be notified of the debarred status of an Affiliate, Board Member or Person and will be given an opportunity to remove and replace that Affiliate, Board Member or Person so that funding may proceed. However, individual Board Member's participation in other Department programs is not required to be disclosed, and will not be taken into consideration by the Executive Director.

(j) Previous Participation reviews will not be conducted for Contract extensions. However, if the Applicant is delinquent in submission of its Single Audit, the Contract will not be extended except as required by law, unless the submission is made, and the Single Audit has been reviewed and found acceptable by the Department.

(k) For CSBG funds required to be distributed to Eligible Entities by formula, the recommendation of the Compliance Division will only take into consideration subsection (i) of this section.

(l) Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve, although federal and state requirements will still be affirmed, including but not limited to Single Audit, debarment and suspension, litigation disclosures, and §1.21 of this chapter (relating to Action by the Department if Outstanding Balances Exist).

§1.303. *Executive Director Review.*

(a) Authority and Purpose. The Executive Director will make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. The Department utilizes this process to consider funding and allocation recommendations to the Board related to other programs, and to consider an awardee under the requirements of 2 CFR §200.331(b) and (c) and TxGMS, which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs and as described in §1.403 of Subchapter D of this chapter (relating to Single Audit Requirements). It is also the purpose of this rule to provide for the considerations and processes of award approvals, and to address actions of the Board relating to the Executive Director's recommendations. Capitalized terms used in this section herein have

the meaning assigned in the specific chapters and rules of this title that govern the program associated with the request, or assigned by federal or state laws.

(b) Award Recommendation Process.

(1) A positive recommendation by the Executive Director represents a determination that, at the time of the recommendation and based on available information, the Department has not identified a rule or statutory-based impediment that would prohibit the Board from making an award.

(2) A positive recommendation may have conditions placed on it. Conditions placed on an award will be limited to those conditions noted in subsection (e) of this section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of proposed conditions. If the Applicant does not concur with the applicability of one or more of the conditions, it will be provided an opportunity to dispute the conditions as described in subsection (g) of this section, regarding Disputes.

(4) Category 3 applicants that will be recommended for denial will be notified and informed of their right to dispute the negative recommendation as described in subsection (g) of this section, regarding Disputes.

(5) Applications for 4% credits that do not include other resources from TDHCA and that are only being issued a Determination Notice are not considered awards for purposes of this rule and do not require approval by the Executive Director prior to issuance of such Notice, even if being presented to the Board in relation to public comment or possible requests for waivers.

(c) Conditions to an award may be placed on a single Development, a Combined Portfolio, or a portion of a Combined Portfolio if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in subsection (e) of this section may be customized to provide specificity regarding affected Developments, Persons or dates for meeting conditions. Category 2 or Category 3 Applications may be awarded with the imposition of one or more of the conditions listed in subsection (e) of this section.

(d) Possible Conditions.

(1) Applicant/Owner is required to ensure that each Person subject to previous participation review for the Combined Portfolio will correct all applicable issues of non-compliance identified by the previous participation review on or before a specified date and provide the Department with evidence of such correction within 30 calendar days of that date.

(2) Owner is required to have qualified personnel or a qualified third party perform a one-time review of an agreed upon percentage of files and complete the recommended actions of the reviewer on or before a specified deadline for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(3) The Applicant or the management company contracted by the Applicant is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department upon request or by a specified date.

(4) Owner agrees to hire a third party to perform reviews of an agreed upon percentage of their resident files on a quarterly basis, and complete the recommended actions of the reviewer for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(5) Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise Control.

(6) Owner agrees to replace the existing management company, consultant, or management personnel, with another of its choosing.

(7) Owner agrees to establish an email distribution group in CMTS (or other Department required system), to be kept in place until no later than a given date, and include agreed upon employee positions and/or designated Applicant members.

(8) Owner is required to revise or develop policies regarding the way that it will handle situations where persons under its control engage in falsification of documents. This policy must be submitted to TDHCA on or before a specified date and revised as required by the Department.

(9) Owner or Subrecipient is required to ensure that agreed upon persons attend and/or review the trainings listed in subparagraphs (A), (B), (C) and/or (D) of this paragraph (only for Applications made and reviewed under §1.301 of this subchapter (relating to Definitions and Previous Participation Reviews for Multifamily Awards and Ownership Transfers)) and/or (E) for applications made and reviewed under §1.302 of this subchapter (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and provide TDHCA with certification of attendance or completion no later than a given date.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association;

(B) Income Determination Training conducted by TDHCA staff;

(C) Review one or more of the TDHCA Compliance Training Presentation webinars:

(i) 2012 Income and Rent Limits Webinar Video;

(ii) 2023 Supportive Services Webinar Video;

(iii) Income Eligibility Presentation Video;

(iv) 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;

(v) Most current Tenant Selection Criteria Presentation;

(vi) Most current Affirmative Marketing Requirements Presentation;

(vii) Fair Housing Webinars (including but not limited to the 2017 FH webinars);

(viii) Multifamily Direct Loan Presentation Video;

(ix) 2022 Housing Tax Credit Monitoring after the Compliance Period Presentation Video;

(x) 2022 Section 811 Project Rental Assistance Presentation Video; and

(xi) 2023 Utility Allowance Training Presentation Video;

(D) Training for Certified Occupancy Specialist or Blended Occupancy Specialist; or

(E) Any other training deemed applicable and appropriate by the Department, which may include but is not limited to, weatherization related specific trainings such as OSHA, Lead Renovator, or Building Analyst training.

(10) Owner is required to submit the written policies and procedures for all Developments subject to a TDHCA LURA for review and will correct them as directed by the Department.

(11) Owner is required to have qualified personnel or a qualified third party perform NSPIRE inspections of 5% of their Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted to the Department upon request.

(12) Within 60 days of the condition issuance date the Owner will contract for a third party Property Needs Assessment and will submit to the Department a plan for addressing noted issues along with a budget and timeframe for completion.

(13) Owner agrees to have a third party accessibility review of the Development completed at a time to be determined by the Applicant, but no later than prior to requesting a TDHCA final construction inspection. Evidence of review must be submitted to the Department upon request.

(14) Applicant/Owner is required to provide all documentation relating to a Single Audit on or before a specified date.

(15) Any of the conditions identified in 2 CFR §200.207 which may include but are not limited to requiring additional, more detailed financial reports; requiring additional project monitoring; or establishing additional prior approvals. If such conditions are utilized, the Department will adhere to the notification requirements noted in 2 CFR §200.207(b).

(16) Applicant is required to have qualified personnel or a qualified third party perform an assessment of its operations and/or processes and complete the recommended actions of the reviewer on or before a specified deadline.

(17) Applicant is required to have qualified personnel or a qualified third party performs DOE required Quality Control Inspections of 5% of its Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted upon request.

(18) Applicant is required to provide evidence that reserves for physical repairs are fully funded as required by §10.404 of this title (relating to Replacement Reserves).

(19) In the case of a Development being funded with direct Grant funds (where an ongoing compliance agreement is a requirement) or Loan funds, Applicant is required to provide evidence of invoices and a lien waiver from the contractor, subcontractor, materials supplier, equipment lessor or other party to the construction project stating they have received payment and waive any future lien rights to the property for the amount paid at the time of every draw request submitted.

(e) Failure to meet conditions.

(1) The Executive Director may, for good cause and as limited by federal commitment, expenditure, or other deadlines, grant one extension to a deadline specified in a condition, with no fee required, for up to six months, if requested prior to the deadline. Any subsequent extension, or extensions requested after the deadline, must be approved by the Board.

(2) If any condition agreed upon by the Applicant and imposed by the Board is not met as determined by the evidence submitted (or lack thereof) when requested, the Applicant may be referred to the Enforcement Committee for debarment.

(f) Dispute of Recommendations or Compliance Recommendations for 4% Applications Eligible for Administrative Approval.

(1) The Appeal provisions in §1.7 of this title (relating to Appeals Process), relating to the appeals of a staff decision to the Executive Director, are not applicable.

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute that may be considered by Compliance, program area, or underwriting staff, (as applicable) or may be presented to the Board without further Department consideration consistent with paragraph (3) of this subsection.

(A) Their category as determined under §1.301(f) of this subchapter;

(B) Any conditions proposed by the program area, underwriting or Compliance; or

(C) A negative recommendation by the program area, underwriting or Compliance.

(3) Prior to the Board meeting at which the award recommendation is scheduled to be made, or within seven days of the notification of Compliance Conditions for 4% Application Eligible for Administrative Approval an Applicant or potential Subrecipient may submit to the Department (to the attention of Compliance staff), their Dispute detailing:

(A) The condition or determination with which the Applicant or potential Subrecipient disagrees;

(B) The reason(s) why the Applicant/potential Subrecipient disagrees with program, underwriting, or Compliance's recommendation or conditions;

(C) If the Dispute relates to conditions, any suggested alternate condition language;

(D) If the Dispute relates to a negative recommendation, any suggested conditions that the Applicant believes would allow a positive recommendation to be made; and

(E) Any supporting documentation not already submitted to the Department.

(4) An Applicant must file a written Dispute not later than the seventh calendar day after notice recommendation of denial or award with conditions has been provided. The Dispute must include any materials that the Applicant wishes Department staff and/or the Board to consider. An Applicant may request to meet with Department staff and staff is not obligated to meet with the Applicant.

(5) Department staff is not required to consider a Dispute prior to making its recommendation to the Board.

(6) If an Applicant proposes alternative conditions staff may provide the Board with a recommendation to accept, reject, or modify such proposed alternative conditions.

(7) A Dispute will be included on the Board agenda if received at least seven calendar days prior to the required posting date of that agenda. If the Applicant desires to submit additional materials for Board consideration, it may provide the Department with such materials, provided in pdf form, to be included in the presentation of the matter to the Board if those materials are provided not later than close

of business of the fifth calendar day before the date on which notice of the relevant Board meeting materials must be posted, allowing staff sufficient time to review the Applicant's materials and prepare a presentation to the Board reflecting staff's assessment and recommendation. The agenda item will include the materials provided by the Applicant and may include a staff response to the dispute and/or materials. It is within the Board chair's discretion whether or not to allow an applicant to supplement its response. An Applicant who wishes to provide supplemental materials at the time of the Board meeting must comply with the requirements of §1.10 of this chapter (relating to Public Comment Procedures). There is no assurance the Board chair will permit the submission, inclusion, or consideration of any such supplemental materials.

(8) The Board will make reasonable efforts to accommodate properly and timely filed Disputes under this subsection.

(g) Board Discretion. Subject to limitations in federal statute or regulation or in TxGMS, the Board has the discretion to accept, reject, or modify any recommendations in response to a recommendation for an award or in response to a Dispute. The Board may impose other conditions not noted or contemplated in this rule as recommended by the Department, or as requested by the Applicant; in such cases the conditions noted will have the force and effect of an order of the Board.

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 November 10, 2023.

TRD-202304182

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: November 30, 2023

Proposal publication date: September 22, 2023

For further information, please call: (512) 475-3959



CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5334), the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (the Bond Rules). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this adopted rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making

changes to an existing activity, the issuance of Private Activity Bonds (PAB).

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department or a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the issuance of PABs.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The repeal does not contemplate nor authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the issuance of PAB. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment be-

tween September 22, 2023, and October 13, 2023, with no comments on the repeal itself received.

The Board adopted the final order adopting the repeal on November 9, 2023.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or 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 November 10, 2023.

TRD-202304186

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). Sections 12.4 and 12.5 are adopted with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5335) and will be republished. Sections §§12.1 - 12.3 and 12.6 - 12.10 are adopted without changes and will not be republished. The purpose of the new sections is to provide compliance with Tex. Gov't Code §2306.359 and to update the rules to make changes to the scoring criteria to reflect the competitive nature of the Private Activity Bond program. Moreover, the changes reflect minor administrative revisions, and to ensure that it is reflective of changes made in the Department's Qualified Allocation Plan where applicable.

Tex. Gov't Code §2001.0045(b) does not apply to the action on these rules pursuant to item (9), which excepts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").

2. The rule does not require a change in work that would require the creation of new employee positions, nor are the rule

changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The rule does not require additional future legislative appropriations.

4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.

5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The rule does not increase or decrease the number of individuals subject to the rule's applicability.

8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between \$50,000 and \$60,000; which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The adopted rules do not, on average result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of \$11,000 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The fee for submitting an Application for PAB layered with LIHTC is based on \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units.

These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the nec-

essary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are approximately 1,300 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, often involve a total input of, typically at a minimum, \$5 million in capital, but often an input of \$10 million - \$30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule" Considering that significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an

updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between September 22, 2023, and October 13, 2023. Comments from two commenters were received.

The Board adopted the final order adopting the new rule on November 9, 2023. The rule has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 22, 2023, and October 13, 2023, with comments received from: (1) Pedcor Investments, LLC, and (2) Lincoln Avenue Communities.

§12.4(c) - Pre-Application Process and Evaluation (1)

COMMENT SUMMARY:

Commenter (1) expressed concern relating to the Department's ranking and submission of applications with a Priority 3 Carryforward designation. The commenter states the ranking of pre-applications, as described under 10 TAC §12.4 of the Multifamily Housing Revenue Bond Rule, seems unclear with regard to those with a Priority 3 Carryforward classification and that the Department lacks transparency in how it handles such applications. The commenter states that the Department's practice of submitting a Priority 3 Carryforward application for a Certificate of Reservation (Reservation) from the Texas Bond Review Board (BRB) throughout the year decreases the chances of construction-ready projects with a Priority 5 or 6 Carryforward classification (i.e. local issuer applications) to receive a Reservation, due to the finite volume cap. Moreover, the commenter notes that developments with a Priority 5 or 6 designation have performed significant due diligence and expended in excess of 10% of total project costs. The commenter believes that in order for the development community to better assess the likelihood of receiving a Reservation from the BRB, the scoring and ranking of applications with a Priority 3 Carryforward designation should be applied in a more transparent manner and should only apply to those applications with exceptional scores or unique circumstances after considering the applications already submitted for Priority 5 or 6 designation.

STAFF RESPONSE:

In response to the commenter, there is nothing in Chapters 1372 or 2306 of the Tex. Gov't Code that requires the Department to consider applications proposed by local bond issuers. However, §1372.065 of the Tex. Gov't Code very clearly prioritizes applications filed by TDHCA (Priority 3), a state agency with a Governing Board that is appointed by the Governor and confirmed by the Texas Legislature, over any application filed by a local issuer (Priority 5 or 6). Further, the expenditures made for such applications noted by the commenter is a statutory requirement applicable only to Priority 5 applications; however, it is not difficult to imagine a Priority 3 application with similar expenditures given the timeline associated with when Traditional Carryforward becomes available. In addition, a developer with a Priority 3 application is continuing the same due diligence, with a greater risk, not only because there may not be volume cap, but because they have no assurance of whether the required signature under §1372.070 will be obtained.

§2306.351 authorizes the Department to issue bonds, which affords the Department the opportunity to assist local governments in providing housing for their residents and providing affordable housing options, thereby meeting its purposes under Chapter 2306. Moreover, the Multifamily Housing Revenue Bond rules govern and relate to bond issuances by the Department, not how the Department should evaluate applications it receives comparable to applications that may be affiliated with various local issuers to determine which are more unique, shovel-ready, etc., as suggested by the commenter. Commenter noted that if the Department submits projects for Traditional Carryforward then "*other shovel-ready affordable multifamily projects likely would not come to fruition.*" The Department received 2022 Traditional Carryforward for two projects that were shovel ready, and both projects (a total of 564 units) closed in 6 months.

Commenter claims that the Department does not pursue Traditional Carryforward in a transparent manner. An inducement resolution for a project is adopted by the Department's Governing Board in a public meeting, and the Board materials are published on the Department's website generally seven days and at least three days prior to the meeting. These materials have reflected whether it is the Department's intent to pursue Traditional Carryforward for the reservation, which was a change in Department practice based on previous comments received by this same commenter. Interested individuals are afforded an opportunity to address the Board regarding this action. The Department makes decisions regarding the best path to obtain bond volume cap, in light of a limited statutory set-aside, in order to provide affordable housing options to communities across the state.

§1372.070 requires the Department to obtain the Governor's signature on an application for Traditional Carryforward and the timing of when this signature is received is not within the Department's control. For the commenter to suggest that the Department refrain from exercising what it is clearly statutorily authorized to do as a statewide issuer would constrain not only the authority of the Department's Governor-appointed and Legislature-confirmed Board, but the Office of the Governor in addressing the need for affordable housing for low-income Texans.

Staff recommends no changes based on this comment.

§12.4(b) - Pre-Application Process and Evaluation (2)

COMMENT SUMMARY:

Commenter (2) commends the removal of language under §12.4(b) relating to the possible termination of an application

due to a neighborhood risk factor. The commenter believes that this results in more of a balance between community interests and development feasibility.

STAFF RESPONSE:

Staff appreciates the support.

Staff recommends no changes based on this comment.

§12.5(8) - Pre-Application Threshold Requirements - Re-notifications

To be consistent with a change made to the 2023 Qualified Allocation Plan, staff recommends removing the following language from the Rule relating to changes in density that would require a re-notification to local elected officials and neighborhood organizations:

"Re-notification will be required by Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site."

§12.6(2) - Pre-Application Scoring Criteria - Cost of Development per Square Foot (2)

COMMENT SUMMARY:

Commenter (2) approves of the Department's increase in the threshold amount for the construction cost per square foot of Net Rentable Area (NRA), however, suggests that the threshold should be increased to approximately \$190 to \$200 per square foot of NRA in order to better align with current market conditions.

STAFF RESPONSE:

Staff proposed to increase the threshold from \$125 to \$150 per square foot of NRA based upon comments received relative to the Competitive Housing Tax Credit Program. Staff appreciates the challenges presented by rising construction costs and believes that costs will continue to vary across different Texas markets. There is difficulty in identifying an exact number until there is more normalcy in the market.

Staff recommends no change based on this comment.

§12.6(8) - Pre-Application Scoring Criteria- Underserved Area (2)

COMMENT SUMMARY:

Commenter (2) approves of the additional points for the Underserved Area scoring criteria and believes it will incentivize the development of housing in regions where it is most needed.

STAFF RESPONSE:

Staff appreciates the support.

Staff recommends no change based on this comment.

§12.6(10) Pre-Application Scoring Criteria- Preservation Initiative (2)

COMMENT SUMMARY:

Commenter (2) expressed concern regarding the reduction in the number of points for the Preservation Initiative scoring criteria. Commenter (2) notes that while there is a supply shortage of new units in many markets, preservation projects are essential in maintaining current housing stock and ensures longevity of existing communities. Moreover, commenter (2) notes that pre-

serving existing communities is more cost-effective as it is more expensive to build new affordable housing.

STAFF RESPONSE:

Staff appreciates the importance of the preservation of existing affordable housing and communities and strives to only adjust the scoring criteria in a manner that will achieve a balance in both new construction and preservation. Currently, acquisition and rehabilitation developments remain slightly favored based on the scoring criteria.

Staff recommends no change based on this comment.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

§12.4. Pre-Application Process and Evaluation.

(a) **Pre-Inducement Questionnaire.** Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) **Neighborhood Risk Factors.** If the Development Site has any of the characteristics described in §11.101(a)(3)(D) of this part (relating to Neighborhood Risk Factors), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board.

(c) **Pre-Application Process.** An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold

Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria). The selection criteria, as further described in §12.6 of this chapter, reflects a structure that gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359, as well as other important criteria. Tie Breakers. Should two or more pre-applications receive the same score, the Department will utilize the factors in this section, which will be considered in the order they are presented herein, to determine which pre-application will receive preference in consideration of a Certificate of Reservation:

(1) To the pre-application that was on the waiting list with the TBRB but did not have an active Certificate of Reservation at the time of the TBRB lottery and achieved the maximum number of points under §12.6(12) of this chapter (relating to Waiting List); and

(2) To the pre-application with the highest number of positive points achieved under §12.6(9) of this chapter (relating to Development Support/Opposition).

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Notwithstanding the foregoing, Department staff may, but is not required to, recommend that an inducement resolution be approved despite the presence of neighborhood risk factors, undesirable site features, or requirements that may necessitate a waiver, that have not fully been evaluated by staff at pre-application. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11, Subchapter D of this part (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application. The threshold requirements of a pre-application include:

(1) Submission of the required tabs of the Uniform Application as prescribed by the Department in the Multifamily Bond Pre-Application Procedures Manual;

(2) Submission of the completed Bond Pre-Application Supplement in the form prescribed by the Department;

(3) Completed Bond Review Board Residential Rental Attachment for the current program year;

(4) Site Control, evidenced by the documentation required under §11.204(10) of this part (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of both the Board meeting at which the inducement resolution is considered and subsequent submission of the application to the TBRB. For Lottery applications, Site Control must meet the requirements of 34 TAC §190.3(b)(13).

(5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(6) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the

names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, and completed List of Organizations form, as provided in the pre-application. The List of Organizations form must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State; and

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this part (relating to Public Notifications (§2306.6705(9))). In general, notifications should not be older than three months prior to the date of Application submission. In addition, should the jurisdiction of the official holding any position or role described in §11.203 of this part change between the submission of a pre-application and the submission of an Application in a manner that results in the Development being within a new jurisdiction, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

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 November 10, 2023.

TRD-202304187

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: September 22, 2023

For further information, please call: (512) 475-3959



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.1 - 3.3, 3.7

The Texas State Library and Archives Commission (commission) adopts amendments to §3.1, Definitions; §3.2, Standard Requirements for State Publications in All Formats; and §3.7, State Publications Contact Person; and new §3.3, Standard Deposit and Reporting Requirements for State Publications in All Formats. The amendments to §§3.1, 3.2 and 3.7 are adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4739). These rules will not be republished. Section 3.3 is adopted with nonsubstantive changes to the proposed rule and will be republished.

The commission recently concluded its quadrennial review of 13 TAC Chapter 3 as required by Government Code, §2001.039. During the review, staff identified the need for multiple amendments to update and improve the rules. The amendments and new section are necessary to streamline, simplify, update, and

clarify the commission's existing rules related to the State Publications Depository Program (program).

Amendments to §3.1 improve existing definitions, delete unnecessary definitions, make minor grammar and punctuation corrections, and renumber the definitions as appropriate.

Amendments to §3.2 clarify and improve the rule language and delete unnecessary language.

New §3.3 replaces the commission's previous rule regarding Standard Deposit and Reporting Requirements for State Publications in All Formats but does not make any major substantive changes. The new rule provides clearer guidance to state agencies regarding their duties under the program with respect to certain types of state publications. Subsection (a) establishes the general requirement for the number of copies of state publications that must be deposited, which is four copies for most state publications except for annual financial reports and annual operating budgets (three copies) and requests for legislative appropriations, quarterly and annual reports of measures, and state or strategic plans (two copies). These numbers are consistent with the previous requirement in rule with the exception of state or strategic plans. The new rule also requires two copies of state or strategic plans as opposed to three, in compliance with Government Code, §2056.002, which requires that two copies be provided to the commission.

New subsection (b) applies to state publications in electronic format, noting that the number and method of submission differs depending on whether the publication is available online. The subsection also notes that specific instructions may apply to the preparation and distribution of the publication. State agencies should comply with specific instructions in statute or administrative rule or as promulgated by other state agencies regarding state publications. However, in the absence of specific instructions, subsection (b) requires either online access to the publication or the submission of one copy on removable electronic media or other method approved by the Director and Librarian. The commission will maintain information about state publications that may have specific instructions regarding distribution on its website for state agencies to reference.

New subsection (c) establishes minimum requirements for electronic submissions, including file type, the requirement that state agencies include a publication reporting form, submission by the designated state agency publication liaison, and required descriptive information.

New subsection (d) clarifies that a publication reporting form must be included with each submission to the program, whether the submission is in print or electronic format.

New subsection (e) addresses the Texas Records and Information Locator (TRAIL), authorized by Government Code, §441.102, and notes that a state agency is not required to submit copies of its agency websites to the program. The subsection also establishes minimum technical requirements to which a state agency website should adhere to enable the commission to harvest information from the website through TRAIL.

Finally, amendments to §3.7 clarify the language, improve readability, and add one new requirement to the duties of state agency publications liaisons identifying and depositing historical publications that may be discovered that should have been provided to the program but were not.

SUMMARY OF COMMENTS. The commission did not receive any comments on the proposed amendments or new section.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.102, which requires the commission by rule to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications; Government Code, §441.103, which requires a state agency to furnish copies of its state publications that exist in a physical format to the Texas State Library in the number specified by commission rules; and Government Code, §441.104, which directs the commission to establish a program for the preservation and management of state publications.

§3.3. Standard Deposit and Reporting Requirements for State Publications in All Formats.

(a) State publications in physical format. State agencies must deposit four copies of state publications in physical format to the State Publications Depository Program except as follows:

(1) State agencies must deposit three copies of the following state publications:

- (A) Annual financial reports; and
- (B) Annual operating budgets.

(2) State agencies must deposit two copies of the following state publications:

- (A) Requests for legislative appropriations;
- (B) Quarterly and annual reports of measures; and
- (C) State or strategic plans (for agency services, programs within its jurisdiction).

(b) State publications in electronic format. The number and method of submission of state publications in electronic format differs depending on whether the electronic state publication is available online and specific instructions that may apply to the preparation and distribution of the publication. Unless specific instructions require otherwise:

(1) If a state publication is available online, a state agency shall provide the commission online access to the publication. The state agency is not required to submit an electronic copy of the state publication on removable electronic storage media. If also available in print, the URL for the online publication must be included on the cover or title page of the printed publication submitted in accordance with subsection (a) of this section;

(2) If a state publication is not available online, the state agency must submit one copy of each state publication on removable electronic storage media or other method approved by the Director and Librarian. Files must be formatted in a readily accessible format or other file type accessible via software provided to the commission or that is in the public domain. If the file is compressed, it must be compressed using lossless compression techniques.

(c) Minimum requirements for electronic submissions. All submissions of state publications in electronic format for the State Publications Depository Program must:

(1) Consist of an Adobe Portable Document File (PDF) or other secure file type accepted at the determination of the Director and Librarian;

(2) Include a publication reporting form;

(3) Be submitted by the designated state agency publications liaison(s); and

(4) Include the following descriptive information at a minimum:

(A) a title tag;

(B) an author meta tag that includes the name of the state agency responsible for creating the state publication;

(C) a description meta tag that includes a narrative description of the publication; and

(D) a keyword or subject meta tag that includes selected terms from within the publication.

(d) Publication reporting form. A state agency must include a completed publication reporting form with each submission of a publication in either print or electronic format. If a state publication is made available to the commission online in compliance with subsection (b)(1) of this section, the state agency must provide a completed publication reporting form to the commission when the agency notifies the commission that the publication is available.

(e) The Texas Records and Information Locator (TRAIL). TRAIL provides access to state publications that are made available to the public by state agencies online. A state agency is not required to submit copies of its state agency websites to the commission for the State Publications Depository Program. State agencies should ensure their websites adhere to the following minimum technical requirements to enable the commission to harvest the website through TRAIL:

(1) Guaranteed access, at no charge, to the state agency's online state publications. If a "robots.txt" file is used to prevent harvesting of a State Agency website, then that file must include an exception for TSLAC's designated harvesting system;

(2) State publications must be accessible:

(A) by anonymous File Transfer Protocol (FTP), Hyper Text Transfer Protocol (HTTP) or other electronic means as defined in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community; and

(B) by following a link or series of links from the Agency's primary URL. For publications accessible only by database searching or similar means, an alternative path such as a hidden link to a comprehensive site map must be provided except as exempted in §3.5 of this title (relating to Standard Exemptions for State Publications in All Formats); or

(C) on alternative electronic formats and interfaces consistent with requirements of the Americans with Disabilities Act of 1990 and as amended.

(3) Each original state publication and subsequent versions as described in §3.2(c) of this title (relating to Standard Requirements for State Publications in All Formats) must remain available on the agency website for a minimum of nine months to ensure that the publication has been collected by the commission and made available in TRAIL. Agencies may confirm that a version of an online publication has been added to the TRAIL archive by searching at www.tsl.texas.gov/trail/index.html.

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 November 9, 2023.

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Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Effective date: November 29, 2023

Proposal publication date: September 1, 2023

For further information, please call: (512) 463-5460



13 TAC §3.3

The Texas State Library and Archives Commission (commission) adopts the repeal of 13 Texas Administrative Code §3.3, Standard Deposit and Reporting Requirements for State Publications in All Formats. The repeal is adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4744) and will not be republished.

The commission repeals the existing §3.3 simultaneous with the adoption of new §3.3, also in this issue of the *Texas Register*. Due to the nature and number of necessary amendments to §3.3, the commission found it simpler to repeal existing §3.3 and propose new §3.3.

STATUTORY AUTHORITY. The repeal is adopted under Government Code, §441.102, which requires the commission by rule to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications; Government Code, §441.103, which requires a state agency to furnish copies of its state publications that exist in a physical format to the Texas State Library in the number specified by commission rules; and Government Code, §441.104, which directs the commission to establish a program for the preservation and management of state publications.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

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

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Sarah Swanson

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Texas State Library and Archives Commission

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For further information, please call: (512) 463-5460



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 157. HEARINGS AND APPEALS

SUBCHAPTER CC. HEARINGS OF APPEALS

ARISING UNDER FEDERAL LAW AND

REGULATIONS

19 TAC §157.1082

The Texas Education Agency (TEA) adopts an amendment to §157.1082, concerning a grantee's or subgrantee's opportunity for a hearing in an enforcement arising under federal law and regulations. The amendment is adopted without changes to the proposed text as published in the September 8, 2023 issue of the *Texas Register* (48 TexReg 4979) and will not be republished. The adopted amendment updates the citation to the federal regulation applicable to the rule.

REASONED JUSTIFICATION: Section 157.1082 describes actions TEA may take if a grantee or subgrantee of a federal grant materially fails to comply with any term of an award. The adopted amendment to §157.1082 updates the federal citation that allows the actions specified in the rule. No substantive changes were made.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 8, 2023, and ended October 9, 2023. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under 2 Code of Federal Regulations, §200.339, which addresses federally required appeal processes associated with enforcement of federal grants.

CROSS REFERENCE TO STATUTE. The amendment implements 2 Code of Federal Regulations, §200.339.

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 November 8, 2023.

TRD-202304111

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: November 28, 2023

Proposal publication date: September 8, 2023

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



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.5, 153.6, 153.9, 153.15, 153.20, 153.21, 153.24, 153.28, 153.241

The Texas Appraiser Licensing and Certification Board (TALCB) adopts new and amendments to 22 TAC §153.1, Definitions; §153.5, Fees; §153.6, Military Service Member, Veteran, or Military Spouse Applications; §153.9, Applications; §153.15, Experience Required for Licensing; §153.20, Guidelines for Disciplinary Action, Denial of License; Probationary License; §153.21, Appraiser Trainees and Supervisory Appraisers;

§153.24, Complaint Processing; §153.28, Peer Investigative Committee Review; and §153.241, Sanctions Guidelines.

The amendments to §§153.1, 153.5, 153.9, 153.15, 153.20, 153.21, 153.24, 153.28 and 153.241 are adopted without changes to the proposed text as published in the September 1, 2023 issue of the *Texas Register* (48 TexReg 4753) and will not be republished. The amendments to §153.6 are adopted with nonsubstantive changes to the proposed text and will be republished.

The amendments to §§153.1, 153.5, 153.9, 153.24 and 153.28 implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective on January 1, 2024, and which changes the title of the TALCB "Commissioner" to "Executive Director."

New §153.6 and amendments to §153.9 implement statutory changes enacted by the 88th Legislature in SB 422 and become effective on September 1, 2023. SB 422 expands out-of-state occupational license recognition to include military service members, as long as certain criteria are met. SB 422 also modifies the time period within which verification of good standing occurs, as well as issuance of a license after certain conditions are satisfied, from "as soon as practicable" to no later than 30 days. The bill also addresses the term of the license in situations of divorce or other events impacting the military spouse's status. The amendments reflect these statutory changes. Specifically, new rule 153.6 is intended to replace and consolidated language struck from §153.9 related specifically to applicants who are military service members, veterans, and military spouses for greater clarity and organization, in unison with the reciprocity process in Occupations Code 1103, requirements established by the Appraisal Qualifications Board, and Appraisal Subcommittee. The amendments eliminate references to a residency requirement and references to alternative methods of demonstrating competency inapplicable to appraiser applicants. Finally, a statement of purpose is being added to the rule to make clear that this rule addresses the requirements provided under Chapter 55, Occupations Code, and is not intended to alter or modify licensure requirements governed by federal law.

The amendments to §§153.15, 153.20 and 153.21 implement statutory changes enacted by the 88th Legislature in SB 1222, which becomes effective on September 1, 2023, and which eliminates the requirement that experience required for licensing be submitted on an affidavit. As a result, references to this requirement are removed from TALCB rules and replaced by a certification. Additionally, the amendments to §153.15 remove a requirement that an applicant submit experience performed within five years of the date of application.

The amendments to §153.241 allow for greater flexibility in sanctions.

No comments were received regarding adoption of the amendments.

The amendments and new rule are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; §1103.154, which authorizes TALCB to adopt rules relating to professional conduct; and §1103.156 which authorizes TALCB to establish

reasonable fees to administer Chapter 1103, Texas Occupations Code.

§153.6. *Military Service Member, Veteran, or Military Spouse Applications.*

(a) Definitions.

(1) "Military service member" means a person who is on current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.

(b) The purpose of this section is to establish procedures authorized or required by Texas Occupations Code Chapter 55 and is not intended to modify or alter rights or legal requirements that may be provided under federal law, Chapter 1103 of the Occupations Code, or requirements established by the AQB.

(c) Expedited application.

(1) The Board will process an application for a military service member, veteran, or military spouse on an expedited basis.

(2) If an applicant under this section holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license or certification issued in this state, the Board will issue the license not later than the 30th day after receipt of the application.

(d) Waiver of fees.

(1) The Board will waive the license application fee and examination fees for an applicant who is:

(A) a military service member or veteran whose military service, training, or education substantially meets all of the requirements for a license; and

(B) a military service member, veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the same license in this state.

(2) The executive director or his or her designee may waive the application fee of a military service member, veteran, or military spouse who is not currently licensed, but within the five years preceding the application date held a license in this state and applies for reinstatement in accordance with subsection (f)(2) of this section.

(e) Credit for military experience.

(1) For an applicant who is a military service member or veteran, the Board shall credit any verifiable military service, training, or education toward the licensing requirements, other than an examination requirement.

(2) The Board shall award credit under this subsection consistent with the criteria adopted by the AQB and any exceptions to those criteria as authorized by the AQB.

(3) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(f) Reciprocity and reinstatement.

(1) For a military service member, veteran, or military spouse who holds a current license issued by another jurisdiction that

has licensing requirements that are substantially equivalent to the requirements for the license in this state may apply by submitting an application for license by reciprocity and any required supplemental documents for military service members, military veterans, or military spouses.

(2) For a military service member, veteran, or military spouse who is not currently licensed, but within the five years preceding the application date held a license in this state may submit an application for reinstatement and any required supplemental documents for military service members, military veterans, or military spouses.

(3) For a military service member and military spouse who wants to practice in Texas in accordance with 55.0041, Occupations Code:

(A) the Board will issue a license by reciprocity if:

(i) the applicant submits:

(I) notice to the Board of the applicant's intent to practice in Texas by submitting an application for reciprocity and any supplemental document for military service members or military spouses; and

(II) a copy of the member's military identification card; and

(ii) no later than 30 days upon receipt of the documents required under subparagraph (A) of this paragraph, the Board verifies that the member or spouse is currently licensed and in good standing with the other state or jurisdiction.

(B) a person authorized to practice in this state under this subsection must comply with all other laws and regulations applicable to the license.

(C) The event of a divorce or similar event that affects a person's status as a military spouse shall not affect the validity of a license issued under this subsection.

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

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Kathleen Santos

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Texas Appraiser Licensing Certification Board

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For further information, please call: (512) 936-3652



CHAPTER 157. RULES RELATING TO
PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.6

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.6, Request for Advisory Opinions.

The amendments are adopted without changes to the proposed text as published in the September 1, 2023 issue of the *Texas Register* (48 TexReg 4765) and will not be republished.

The amendments add language to the rule to reflect a process for Advisory Opinions issued by TALCB to be reviewed and determine whether to be withdrawn or superseded.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code 1103.151, Rules Relating to Certificates and Licenses and §1103.154, which authorizes TALCB to adopt rules related to professional conduct.

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

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Kathleen Santos

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SUBCHAPTER F. RULEMAKING

22 TAC §157.50

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.50, Negotiated Rulemaking.

The amendments are adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4765) and will not be republished.

The amendments implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective on January 1, 2024, and which changes the title of the TALCB "Commissioner" to "Executive Director."

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §1103.162, which required the Board to develop a policy to encourage the use of negotiated rulemaking.

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

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CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §§159.1, 159.52, 159.104, 159.105, 159.155, 159.201, 159.202, 159.204

The Texas Appraiser Licensing and Certification Board (TALCB) adopts new and amendments to 22 TAC §159.1, Definitions; §159.52, Fees; §159.104, Primary Contact; Appraiser Contact; Controlling Person; Contact Information; §159.105, Denial of Registration or Renewal of Registration; §159.155, Periodic Review of Appraisals; §159.201, Guidelines for Disciplinary Action; §159.202, AMC Investigative Committee; and §159.204, Complaint Processing.

The amendments are adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4766) and will not be republished.

The amendments to §§159.1, 159.52, 159.104, 159.105 and 159.204 implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective on January 1, 2024, and which changes the title of the TALCB "Commissioner" to "Executive Director."

The new rule §159.202, AMC Investigative Committee is proposed to implement statutory changes enacted by the 88th Legislature in SB 1222, which becomes effective on September 1, 2023, and which authorizes a process for a committee to review of complaints received under chapter 1104 of the Occupations Code, involving AMCs. The new rule identifies who may serve on the committee, delineates functions of the committee members and TALCB staff in the review process, and establishes process deadlines. The rule also specifies the types of complaints that are subject or not subject to the review of the AMC Investigative Committee, and the manner committee members and staff may communicate during the review process. The process outlined in the proposed rule is modeled after an existing process on governing the committee review of complaints under 1103 of the Occupations Code, involving appraisers.

The amendments to §159.155 remove a specified percentage requirement for the periodic review of appraisal that AMCs perform on appraisers performing appraisal services. The amendments require AMCs to have a written policy in place for conducting periodic reviews and make the policy and documentation demonstrating compliance with the policy available upon request by the Board.

The amendments to §159.201 and §159.204 clarify the applicability of USPAP as it relates to AMCs and the obligation to submit certain information to the ASC. The amendments to §159.204 also update language related to the statute of limitations to align with statute and allow greater flexibility in sanctions.

Two comments were received regarding adoption of the amendments. Both comments were in support of the changes to the chapter in general and in favor of the amendments to §159.155, Periodic Review of Appraisals, specifically.

The new and amendments are adopted under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

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

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.2 - 214.10, 214.12, 214.13

The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §§214.2 - 214.10, 214.12 and 214.13, without changes to the proposed text as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3481). The rules will not be republished.

Reasoned Justification. The amendments are adopted under the Board's authority to adopt and enforce rules necessary to regulate the practice of vocational nursing under Occupations Code §301.151(2), and in accordance with the Board's duty under Occupations Code §301.157(b)(3) to prescribe rules necessary for the conduct of approved schools of nursing and educational programs for vocational nurses. The adopted amendments are necessary to correct outdated references, provide clarifying and editorial changes, and simplify the existing numbering system for the Board's educational guidelines, contained in Chapter 214, Vocational Nursing Education.

Section 214.2 contains the definitions for the chapter. Adopted §214.2 clarifies existing definitions within the section and corrects outdated references. Additionally, adopted §214.2 adds a definition of *nursing clinical judgment* for use in the chapter: The term is nationally recognized and refers to the process by which nurses make decisions based on nursing knowledge. In 2012, the NCSBN National Council Licensing Examination (NCLEX) Committee (an advisory committee to monitor the exam reviewed findings from the practice analysis), examined nursing decision-making in the provision of ongoing nursing care to patients. The committee studied the decision making of nurses through the processes of critical thinking and making judgments about the patient's response to nursing care and patient needs for continuing or adjusting the nursing care. Over

the following decade, NCSBN studied the steps in the nursing process for making nursing assessments and planning care accordingly, and further researched the possibility of measuring nursing clinical judgment as a part of an updated version of the national licensure examinations for vocational and professional nursing. NCSBN provides the following definition of nursing clinical judgment: a nurse engages in an iterative multistep process that uses nursing knowledge to observe and assess presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions to deliver safe client care. On the national licensure examination, nursing clinical judgment content may be represented as a case study or as an individual stand-alone item.

The Board's definition provides clarity in discussing *nursing clinical judgment* as a key concept of vocational and professional nursing that is tested on the national licensure examination. In application the term is necessarily limited to nursing solutions for client care that fall within the scope of the nurse's practice and is not intended to include medical diagnoses or any final resolution of a patient's condition for care.

Section 214.3 contains the Board's requirements for nursing education program development, expansion, and closure. First, adopted §214.3 clarifies factors that will be considered by the Board when determining whether to approve a new nursing education program. Second, the adopted amendments to that section simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule. Third, the adopted amendments clarify factors that will be considered by the Board when determining whether a nursing education program is high-risk. Adopted §214.3 also specifies that the Board may require the appointment of a mentor to assist the director of a nursing education program who does not have prior experience in the director role in an effort to ensure the success of a high-risk program. Finally, the adopted section clarifies how NCLEX-PN® examination testing codes will be addressed in the event of program consolidation.

Section 214.4 addresses nursing education program approval status. Consistent with other changes made throughout the chapter, adopted §214.4 simplifies the existing numbering system for the Board's education guidelines that are currently referenced in the rule. The remaining changes made in adopted §214.4 are non-substantive in nature and clarify existing provisions within the section.

Adopted §214.5 updates an outdated reference.

Adopted §214.6 simplifies the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

Adopted §214.7 includes editorial changes made for better readability within the section.

Adopted §214.8 clarifies existing requirements related to increases in enrollment of 25% or more for accredited and non-accredited programs; simplifies the existing numbering system for the Board's education guidelines that are currently referenced in the rule; and includes editorial changes.

Adopted §214.9 updates an outdated reference, removes obsolete provisions from the section, and simplifies the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

Adopted §214.10 adds clarity to the section and removes obsolete provisions from the section.

Adopted §214.12 makes editorial changes.

Adopted §214.13 includes a reference to the Board's guidelines for additional clarity in the section.

Summary of Comments and Agency Response

Comment: A commenter representing the Texas Medical Association (TMA) states TMA has questions and concerns regarding the addition of the term "nursing clinical judgment" as a defined term in the Definitions sections of Chapter 214 and Chapter 215. The commenter states that the basis for the changes is not clear and that there is no legislative support for this terminology in that the term is not used in statute. TMA opposes the adoption of this amendment. Additionally, TMA has objections to the language contained within the definition indicating that there is a belief that the language of the definition could create scope of practice confusion. TMA objects specifically to the term "generate the best possible evidence-based solutions" as those solutions may require medical diagnosis and prescription of therapeutic or corrective measures. Further, TMA states that the term "solutions" implies a final resolution to the patient's concern or situation, which TMA states is inconsistent with a nurse's role as part of the continuum of care. TMA suggests that the term "nursing act" be used in place of the term "solutions."

TMA also raises concerns regarding the term "nursing diagnoses" in its comment regarding the simultaneously proposed amendments to both Chapters 214 and 215. That term is not used in Chapter 214 and the adopted amendments do not add the term. The comment applies only regarding Chapter 215, *Professional Nursing Education*.

Agency Response to Comments:

The Board declines to make the commenter's specific requested changes related to the Nursing Clinical Judgment definition. The Board does not agree that the language would reasonably generate any scope of practice confusion nor is the Board aware of any requirement that a term be used in statute to be adopted as a definition in a rule.

The commenter seeks additional background information for the addition of this definition. The National Council for State Boards of Nursing (NCSBN) provides the national licensing examination for pre-licensure nursing education programs in the United States, territories, and other countries. The examinations are designed at the vocational nursing (VN) level as well as at the professional nursing level for registered nurses (RN). In 2012, the NCSBN National Council Licensing Examination (NCLEX) Committee (an advisory committee to monitor the exam reviewed findings from the practice analysis), examined nursing decision making in the provision of ongoing nursing care to patients. The committee studied the decision making of nurses through the processes of critical thinking and making judgments about the patient's response to nursing care and patient needs for continuing or adjusting the nursing care. Over the following decade, NCSBN studied the steps in the nursing process for making nursing assessments and planning care accordingly, and further researched the possibility of measuring nursing clinical judgment as a part of an updated version of the national licensure examinations for vocational and professional nursing. NCSBN provides the following definition of nursing clinical judgment: a nurse engages in an iterative multistep process that uses nursing knowledge to observe and assess presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions to deliver safe client care. On the national licensure examination, nursing clinical judgment content may be

represented as a case study or as an individual stand-alone item. This nationally recognized definition informs the Board's proposed definition.

Beginning on April 1, 2023, both VN and RN candidates received a portion of Next Generation NCLEX (NGN) questions on their NCLEX examination. These new NGN items serve to measure the nursing clinical judgment of nursing applicants. Regulated schools of nursing must prepare their students for the NGN, which includes a nursing clinical judgment component.

The commenter's concern regarding the term "nursing diagnosis" does not apply to the amendments adopted to Chapter 214, *Vocational Nursing Education*. The term is contained only in Chapter 215, *Professional Nursing Education*.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code, §301.151 and §301.157(b)(3).

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

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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §§215.2 - 215.10, 215.12, 215.13

Introduction. The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §§215.2 - 215.10, 215.12 and 215.13, without changes to the adopted text as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3489). The rules will not be republished.

Reasoned Justification. The amendments are adopted under the Board's authority to adopt and enforce rules necessary to regulate the practice of professional nursing under Occupations Code §301.151(2), and in accordance with the Board's duty under Occupations Code §301.157(b)(3) to prescribe rules necessary for the conduct of approved schools of nursing and educational programs for professional nurses. The adopted amendments are necessary to correct outdated references; contain clarifying and editorial changes; and simplify the existing numbering system for the Board's educational guidelines, contained Professional Nursing Education.

Section 215.2 contains the definitions for the chapter. Adopted §215.2 clarifies existing definitions within the section and corrects outdated references. Additionally, adopted 215.2 adds the following new definition of nursing clinical judgment for use in the chapter. The term is nationally recognized and refers to the process by which nurses make decisions based on nursing knowledge. In 2012, the NCSBN National Council Licensing Examination (NCLEX) Committee (an advisory committee to monitor the exam reviewed findings from the practice analysis),

examined nursing decision-making in the provision of ongoing nursing care to patients. The committee studied the decision making of nurses through the processes of critical thinking and making judgments about the patient's response to nursing care and patient needs for continuing or adjusting the nursing care. Over the following decade, NCSBN studied the steps in the nursing process for making nursing assessments and planning care accordingly, and further researched the possibility of measuring nursing clinical judgment as a part of an updated version of the national licensure examinations for vocational and professional nursing. NCSBN provides the following definition of nursing clinical judgment: a nurse engages in an iterative multistep process that uses nursing knowledge to observe and assess presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions to deliver safe client care. On the national licensure examination, nursing clinical judgment content may be represented as a case study or as an individual stand-alone item.

The Board's definition provides clarity in discussing nursing clinical judgment as a key concept of vocational and professional nursing that is tested on the national licensure examination. In application the term is necessarily limited to nursing solutions for client care that fall within the scope of the nurse's practice and does not include medical diagnoses or imply a final resolution of a patient's condition and need for care.

The adopted amendments refer to nursing diagnoses. The term is commonly used in nursing practice and in professional nursing education in this state. A nursing diagnosis provides the basis for selection of nursing interventions to achieve outcomes for which the nurse is accountable. It is easily distinguishable from medical diagnosis and historically has not caused scope of practice confusion for doctors or nurses.

Section 215.3 contains the Board's requirements for nursing education program development, expansion, and closure. First, adopted §215.3 clarifies factors that will be considered by the Board when determining whether to approve a new nursing education program. Second, the adopted amendments to that section simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule. Third, the adopted amendments clarify factors that will be considered by the Board when determining whether a nursing education program is high-risk. Adopted §215.3 also specifies that the Board may require the appointment of a mentor to assist the director of a nursing education program who does not have prior experience in the director role in an effort to ensure the success of a high-risk program. Finally, the adopted amendments correct typographical errors in the section.

Section 215.4 addresses nursing education program approval status. Consistent with other changes made throughout the chapter, the adopted amendments simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule. The remaining changes are non-substantive in nature and clarify existing provisions within the section and make editorial edits.

Adopted §215.5 updates an outdated reference.

Adopted §215.6 simplifies the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

Adopted §215.7 makes editorial changes for better readability within the section.

Adopted §215.8 clarifies existing requirements related to increases in enrollment of 25% or more for accredited and non-accredited programs. The remaining proposed amendments also simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule and include editorial changes.

Adopted §215.9 updates an outdated reference and simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

Adopted §215.10 adds reference to an education guideline for additional guidance and clarity.

Adopted §215.12 makes editorial changes.

Adopted §215.13 includes a reference to the Board's guidelines for additional clarity in the section.

Summary of Comments and Agency Response

Comment: A commenter representing the Texas Medical Association (TMA) states TMA has questions and concerns regarding the addition of the term "nursing clinical judgment" as a defined term in the Definitions sections of Chapter 214 and Chapter 215. The commenter states that the basis for the changes is not clear and that there is no legislative support for this terminology in that the term is not used in statute. TMA opposes the adoption of this amendment. Additionally, TMA has objections to the language contained within the definition indicating that there is a belief that the language of the definition could create scope of practice confusion. TMA objects specifically to the term "generat[ing] the best possible evidence-based solutions" as those solutions may require medical diagnosis and prescription of therapeutic or corrective measures. Further, TMA states that the term "solutions" implies a final resolution to the patient's concern or situation, which TMA states is inconsistent with a nurse's role as part of the continuum of care. TMA suggests that the term "nursing act" be used in place of the term "solutions."

TMA also raises concerns regarding the term "nursing diagnoses." TMA raises concern that the term is not found in statute and has the potential to cause confusion with scope of practice limitations in the Nursing Practice Act. TMA suggests the term "nursing assessments" be used instead.

Agency Response to Comments:

The Board declines to make the commenter's specific requested changes related to the Nursing Clinical Judgment definition. The Board does not agree that the language would reasonably generate any scope of practice confusion nor is the Board aware of any requirement that a term be used in statute to be adopted as a definition in a rule.

The commenter seeks additional background information for the addition of this definition. The National Council for State Boards of Nursing (NCSBN) provides the national licensing examination for pre-licensure nursing education programs in the United States, territories, and other countries. The examinations are designed at the vocational nursing (VN) level as well as at the professional nursing level for registered nurses (RN). In 2012, the NCSBN National Council Licensing Examination (NCLEX) Committee (an advisory committee to monitor the exam reviewed findings from the practice analysis), examined nursing decision making in the provision of ongoing nursing care to patients. The committee studied the decision making of nurses through the processes of critical thinking and making judgments about the patient's response to nursing care and patient needs for contin-

uing or adjusting the nursing care. Over the following decade, NCSBN studied the steps in the nursing process for making nursing assessments and planning care accordingly, and further researched the possibility of measuring nursing clinical judgment as a part of an updated version of the national licensure examinations for vocational and professional nursing. NCSBN provides the following definition of nursing clinical judgment: a nurse engages in an iterative multistep process that uses nursing knowledge to observe and assess presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions to deliver safe client care. On the national licensure examination, nursing clinical judgment content may be represented as a case study or as an individual stand-alone item. This nationally recognized definition informs the Board's proposed definition.

Beginning on April 1, 2023, both VN and RN candidates received a portion of Next Generation NCLEX (NGN) questions on their NCLEX examination. These new NGN items serve to measure the nursing clinical judgment of nursing applicants. Regulated schools of nursing must prepare their students for the NGN, which includes a nursing clinical judgment component.

Nursing diagnoses provide the basis for selection of nursing interventions to achieve outcomes for which the nurse is accountable. The Board disagrees that the term would reasonably cause scope of practice confusion as the term includes the word "nursing," which serves to distinguish the term from "medical diagnosis," which appears to be the thrust of the commenter's concern. This rule, in no way, would expand or is intended to expand the scope of nursing practice. Further, the term "nursing diagnosis" has been used in nursing practice since the 1970's without generating scope of practice confusion.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.157(b).

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

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.57 concerning Qualified Accounting

Courses, with changes to the proposed text published in the July 28, 2023 issue of the *Texas Register* (48 TexReg 4060) and will be republished.

With the revision to the Public Accountancy Act (Act) permitting a candidate to sit for the exam at 120 semester hours, the number of upper level accounting courses is being reduced to 21 semester hours of course work. With the reduction of upper level accounting course work, the number of hours in the separate disciplines is correspondingly being reduced to implement the revisions to the Act.

Three comments were received regarding the adoption of the amendment.

The Board received comments from Melanie Thompson.

Ms. Thompson asked for clarification regarding the required ethics class. She understood that the ethics class would not be used for satisfying the 120 hours needed to sit for the exam. She posed the question as to whether the ethics class could be used toward the 24 hours of business classes needed for licensing.

Response: It was the committee's intent that the ethics class not be applied toward the number of hours needed for business classes. Ms. Thompson also recommended that the two-hour research class be a requirement of licensing and not for exam eligibility.

Response: The rule revision as proposed will be a requirement for licensing and not exam eligibility.

The Board also received comments from the TXCPA.

Proposed §511.57(e) requires a minimum of 12 hours of upper level accounting to take the UCPAE. The 12 upper level accounting hours includes intermediate accounting. Because most schools have two intermediate accounting courses this equates to six hours plus the additional upper level accounting classes. So instead of 21 hours of upper level accounting classes the result is a requirement of 24 hours of upper level accounting classes to take the exam.

Another comment concerned the requirement that a student must take two semester hours in research and analysis in order to be eligible to take the exam. This is in addition to the 21 hours of upper level accounting. The comment suggests that the requirement for research and analysis makes it more difficult for the student to be determined eligible to take the exam which was not the intent of SB 159.

The comment also suggests that requiring the research and analysis class earlier in their education causes problems in many university accounting programs and is not consistent with the current practice to take the class toward the end of their education program. It will therefore interfere with many students' ability to take advantage of the intent of SB 159.

An additional comment was included which expressed concern that the proposed rule does not permit internships in the educational program for students in the state's community colleges.

Response:

The proposed revision reflects the Board's agreement with the comments except that the issue regarding internships in community colleges will be examined at a later date.

The Board received comments from Trinity University

Commenter expressed the belief that the Accounting/Tax Research and Analysis be a requirement to become certified and not a requirement to sit for the exam.

Commenter also expressed the belief that internships should be counted toward the required upper level accounting hours or required upper division business courses.

Response: The Accounting/Tax Research and Analysis will not be a requirement to sit for the exam but will be a requirement to become licensed. Also internships from community colleges will be examined at a future date.

The amendment is adopted under the Act, Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§511.57. *Qualified Accounting Courses to take the UCPAE.*

(a) An applicant shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) and present official transcript(s) from board-recognized institution(s) that show degree credit for no fewer than 21 semester credit hours of upper division accounting courses as defined in subsections (e), (f) and (g) of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter, and after obtaining the degree, complete the requisite 21 semester credit hours of upper division accounting courses, as defined in subsections (e), (f) and (g) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by §511.52 or §511.54 of this chapter (relating to Recognized Texas Community Colleges).

(b) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester credit hour for each hour of credit received under the quarter system.

(c) The board will accept no fewer than 21 semester credit hours of accounting courses from the courses listed in subsections (e), (f) and (g) of this section. The hours from a course that has been repeated will be counted only once toward the required 21 semester hours. The courses must meet the board's standards by containing sufficient accounting knowledge and application to be useful to candidates taking the UCPAE. A board-recognized institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate or higher degree or its equivalent, and they must be shown on an official transcript.

(d) Upper level accounting coursework recognized by the board and in effect prior to January 1, 2024, may be found in §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE).

(e) Effective January 1, 2024, the subject-matter content should be derived from the UCPAE Blueprint. A minimum of 12 semester hours with at least three semester hours in each of the following accounting course content areas is required:

(1) financial accounting and reporting for business organizations or intermediate accounting;

(2) financial statement auditing;

(3) taxation; and

(4) accounting information systems or accounting data analytics.

(f) Effective January 1, 2024, a minimum of 9 hours in any of the following accounting course content areas is required:

(1) up to 6 semester credit hours of additional financial accounting and reporting for business organizations or intermediate accounting;

(2) advanced accounting;

(3) accounting theory;

(4) managerial or cost accounting (excluding introductory level courses);

(5) auditing and attestation services;

(6) internal accounting control and risk assessment;

(7) financial statement analysis;

(8) accounting research and analysis;

(9) up to 9 semester credit hours of taxation (including tax research and analysis);

(10) financial accounting and reporting for governmental and/or other nonprofit entities;

(11) up to 9 semester credit hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(12) up to 9 semester credit hours of accounting data analytics, provided the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting; business data analytics may be considered provided the courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting; (while data analytics tools may be taught in the courses, application of the tools should be the primary objective of the courses);

(13) fraud examination;

(14) international accounting and financial reporting;

(15) mergers and acquisitions;

(16) financial planning;

(17) at its discretion, the board may accept up to three semester hours of credit of accounting course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (16) of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's merit and content; and

(18) at its discretion, the board may accept up to three semester credit hours of independent study in accounting selected or designed by the student under faculty supervision. The curriculum for the course shall not repeat the curriculum of another accounting course that the student has completed.

(g) The following types of introductory courses do not meet the accounting course definition in subsections (e) and (f) of this section:

- (1) elementary accounting;
- (2) principles of accounting;
- (3) financial and managerial accounting;
- (4) introductory accounting courses; and
- (5) accounting software courses.

(h) Any CPA review course offered by an institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(i) CPE courses shall not be used to meet the accounting course definition.

(j) An ethics course required in §511.58(d) of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE) shall not be used to meet the accounting course definition in subsections (e) and (f) of this section.

(k) Accounting courses completed through an extension school of a board recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(l) The board may review the content of accounting courses and determine if they meet the requirements of this section.

(m) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

- (1) American College Education (ACE);
- (2) Prior Learning Assessment (PLA);
- (3) Defense Activity for Non-Traditional Education Support (DANTES);
- (4) Defense Subject Standardized Test (DSST); and
- (5) Straighterline.

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

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



CHAPTER 527. PEER REVIEW

22 TAC §527.5

The Texas State Board of Public Accountancy (Board) adopts an amendment to §527.5 concerning Deficient Reviews, without changes to the proposed text as published in the September 29,

2023, issue of the *Texas Register* (48 TexReg 5616) and will not be republished.

Upon a finding of deficient peer reviews, current Board rules provide for a three-year suspension of attest work by a licensee. Upon the expiration of the three years, the suspension is automatically lifted without any demonstration by the licensee they are now competent to perform attest services. The rule revision will eliminate the three-year suspension but require a licensee to have a third-party CPA review the licensee's work prior to being authorized to independently offer attest services to the public. Only upon a recommendation to the Board by the CPA performing the third-party review will the Board consider reinstating their ability to offer attest services to the public.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §531.18

The Texas Real Estate Commission (TREC) proposes adopts to 22 TAC §531.18, Consumer Information, in Chapter 531, Canons of Professional Ethics and Conduct, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4593) and will not be republished.

The amendments to 22 TAC §531.18 reflect statutory changes enacted by the 88th Legislature in HB 1363, which eliminated the real estate inspection recovery fund. As a result, references to that fund are removed from the Consumer Protection Notice form adopted by reference and the version number in the rule is updated.

No comments were received on the proposed amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151 and §1101.202. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish

standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.202 requires the Commission to prescribe a notice containing the name, mailing address, and telephone number of the Commission for the purpose of directing a complaint to the commission; and establish methods by which consumers and service recipients are provided the notice by a person regulated under Chapter 1101 or 1102.

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

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Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.4, §535.5

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.4, License Required, and §535.5, License Not Required, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4594) and will not be republished.

The amendments implement statutory changes enacted by the 88th Legislature in SB 1577, which become effective January 1, 2024. Currently, Chapter 1101, Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. SB 1577 allows certain entities-limited liability companies and s-corporations (as that term is defined by federal law)-to register with the Commission in lieu of obtaining a license. In order to be eligible for registration, these exempted entities must: (i) perform no acts of a broker, other than receiving said compensation on behalf of a license holder; and (ii) be at least 51 percent owned by the license holder on whose behalf the business entity receives compensation. The rule changes reflect this statutory change.

No comments were received for §535.5 as published. Six comments were received for §535.4. Five comments were in support of the change. One commenter expressed concern that the amendment was simultaneously not necessary and was also concerned that by not requiring a license, unlicensed individuals would reduce the integrity of the industry. TREC general counsel reviewed this comment and noted the proposed changes are in line with statute and do not authorize unlicensed brokerage activity. Because the change in this rule is required to reflect the statutory changes made by the legislature, the Commission declines to make changes to the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

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

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22 TAC §535.6

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.6, Equitable Interests in Real Property, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4596) and will not be republished.

Currently, a person may engage in "wholesaling"--that is, the practice of acquiring an option or entering into a contract to purchase real property and then selling or assigning the interest in the contract to another--without a real estate license, as long as certain disclosures are made to the buyer of the interest. The amendments implement statutory changes enacted by the 88th Legislature in SB 1577, which requires first, that disclosure also be made to the original seller, and second, that the disclosures be in writing. Subsection (c) is being removed to more closely align with the statutory language. Finally, a non-substantive change is made for consistency throughout the chapter.

No comments were received on the proposed amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted under §1101.0045, Texas Occupations Code, which establishes the statutory basis for the rule.

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

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SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

22 TAC §535.35

The Texas Real Estate Commission (TREC) adopts new 22 TAC §535.35, Registration of Certain Business Entities, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4597), and will not be republished.

New §535.35 implements statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective January 1, 2024. Currently, §1101.355(c), Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. Licensure requires certain conditions be satisfied, including, for instance, that the entity have a designated broker and payment of an initial license application fee of \$150 and a subsequent \$72 application fee to renew. SB 1577 amends §1101.355 by allowing certain entities--limited liability companies and s-corporations (as that term is defined by federal law)--to register with the Commission in lieu of obtaining a license and requires the Commission to adopt rules providing for this registration. The new rule outlines the requirements these exempt business entities must follow to register the business entity with the Commission. The changes also provide a term for the registration once issued, as well as an obligation to certify continuing compliance. Additionally, SB 1577 also amends §1101.152, Occupations Code, which specifically directs the Commission to adopt a rule to charge and collect fees in amounts reasonable and necessary to cover the costs of registering a business entity. Therefore, the changes set forth the fee obligations for such registration and certification of continued compliance. Finally, under the proposal, a license holder must also notify the Commission in writing not later than the 10th day after the date the business entity no longer qualifies for the exemption.

No comments were received on the proposed new rule as published.

The new rule is adopted under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

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

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Vanessa E. Burgess
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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.58

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.58, License for Military Service Members, Veterans, or Military Spouses, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4598) and will not be republished.

The amendments, in part, implement statutory changes enacted by the 88th Legislature in SB 422, which first, expands out-of-state occupational license recognition to include military service members, as long as certain criteria are met. SB 422 also modifies the time period within which verification of good standing occurs, as well as issuance of a license after certain conditions are satisfied, from "as soon as practicable" to no later than 30 days. The bill also addresses the term of the license in situations of divorce or other events impacting the military spouse's status. The rule amendments reflect these statutory changes.

In addition, as a result of education requirements being added for easement and right-of-way agents (ERWs) during the 87th Legislative Session, language is added making clear that ERW applicants must otherwise comply with the requirements in 22 TAC §535.400, unless excepted by §535.58. Additionally, language is being struck from the rule to better reflect the statutory framework under Chapter 55, Occupations Code. Finally, a statement of purpose is being added to the rule to make clear that this rule addresses the requirements provided under Chapter 55, Occupations Code, and not federal law.

No comments were received on the proposed amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted under §55.0041, as amended by SB 422, which requires agencies to adopt rules for the recognition of out-of-state licenses for military service members and military spouses, and §55.005, which requires expedited licenses for military service members, military veterans, and military spouse.

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

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SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.147

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.147, Splitting Fee with Unlicensed Person, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4600), and will not be republished.

The amendments implement statutory changes enacted by the 88th Legislature in SB 1577, which become effective January 1, 2024. Currently, Chapter 1101, Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. SB 1577 allows certain entities—limited liability companies and s-corporations (as that term is defined by federal law)—to register with the Commission in lieu of obtaining a license. In order to be eligible for registration, these exempted entities must: (i) perform no acts of a broker, other than receiving said compensation on behalf of a license holder; and (ii) be at least 51 percent owned by the license holder on whose behalf the business entity receives compensation. The rule changes reflect this statutory change.

No comments were received on the proposed amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

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

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SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4601), and will not be republished.

The amendments address a violation of 22 TAC §535.157 (relating to Obligation to Respond Timely), which was recently adopted by the Commission. Current rule 535.157 obligates a broker and sales agent to respond to his or her principal, a broker or sales agent representing another party to a real estate transaction, or an unrepresented party of a real estate transaction within two calendar days. Under the changes to 535.191, a violation of §535.157 could result in an administrative penalty of \$100 - \$1,500 per violation per day.

This change is recommended by the Commission's Enforcement Committee.

No comments were received on the proposed amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted under Texas Occupations Code, §1101.702, which requires the Commission adopt by rule a schedule of administrative penalties.

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

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SUBCHAPTER R. REAL ESTATE INSPECTIONS

22 TAC §535.210, §535.219

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.210, Fees and §535.219, Schedule of Administrative Penalties, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4603), and will not be republished.

The amendments reflect statutory changes enacted by the 88th Legislature in HB 1363, which eliminated the real estate inspection recovery fund. The changes to 535.210 reflect the fact that for applications submitted as of September 1, 2023, the \$10 fee will no longer be required. The changes to §535.219 replace a repealed statutory section with a related rule 22 TAC §535.220(g) (although related, this rule is authorized by another statutory provision).

No comments were received on the proposed amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted under Texas Occupations Code, §1102.403, which allows the Commission to impose an administrative penalty as provided by Subchapter O, Chapter 1101 pursuant to that section.

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

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.62

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §537.62, Standard Contract Form TREC No. OP-H, Seller's Disclosure Notice; in Chapter 537, Professional Agreements and Standard Contracts, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4605) and will not be republished.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property, although some forms--like the Seller's Disclosure Notice--are adopted by the Commission for voluntary use by license holders. Contract forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the amendments to Chapter 537 to comply with statutory changes enacted by the 88th Legislature in HB 697.

The Seller's Disclosure Notice is updated to comply with the requirements of HB 697, which add a disclosure related to fuel gas piping to the statutorily-required notice.

One comment was received. The commenter requested that an 'unknown' checkbox be added to the fuel gas piping section of the form, believing sellers will not understand what fuel gas piping is. TREC general counsel reviewed this comment and noted that the notice already allows a seller to mark "unknown." Additionally, the Commission's Seller's Disclosure Notice mirrors Section 5.008, Texas Property Code, and it is the policy of the Commission's Broker-Lawyer Committee (the committee charged with drafting and updating contract forms) to not deviate from the statute. As a result, the Commission declined to make changes as a result of this comment.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also adopted under Texas Occupations Code §1101.155, which allows the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Broker-Lawyer Committee and adopted by the Commission.

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

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Vanessa E. Burgess

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts an amendment to §1.81, concerning Recognition of Out-of-State License of a Military Service Member and Military Spouse; and new §1.91, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

The amendment to §1.81 and new §1.91 are adopted with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5617). The rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendment and new rule are adopted to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023, which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. S.B. 422 allows military service members, military spouses, and military veterans who are currently licensed by another jurisdiction to engage in a business or occupation in Texas and grants the person a verification letter or alternative license after meeting certain conditions to operate for three years. This adoption establishes requirements and procedures authorized by Texas Occupations Code Chapter 55 and does not modify or alter rights that may be provided under federal law.

COMMENTS

The 21-day comment period ended Friday October 20, 2023. During this period, DSHS did not receive any comments regarding the proposed rules.

DSHS updates §1.81(d)(2) and (e) to clarify the requirements of receiving a verification letter.

DSHS corrects punctuation errors in §1.81 and §1.91.

SUBCHAPTER F. LICENSURE EXEMPTIONS

25 TAC §1.81

STATUTORY AUTHORITY

The amendment is adopted under the Texas Occupations Code §§55.004, 55.005, and 55.0041; and Texas Government Code §531.0055(j) and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§1.81. Recognition of Out-of-State License of a Military Service Member and Military Spouse.

(a) For the purposes of this section, the definitions in Texas Occupations Code Chapter 55 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses and verifications issued by the Department of State Health Services (department) under authority granted by the Texas Health and Safety Code or Texas Occupations Code.

(c) Notwithstanding any other rule, a military service member or military spouse may engage in a business or occupation as if licensed in the State of Texas without obtaining the applicable license in Texas, if the military service member or military spouse:

(1) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state;

(2) notifies the department, in writing, of the military service member's or military spouse's intent to practice in this state;

(3) submits proof of the military service member's or military spouse's residency in this state and a copy of the military service member or military spouse's military identification card; and

(4) receives from the department a verification letter that:

(A) the department has verified the military service member's or military spouse's license in another jurisdiction; and

(B) the military service member or military spouse is authorized to engage in the business or occupation in accordance with the Texas statutes and rules for that business or occupation.

(d) To receive a verification letter, the military service member or military spouse, must submit:

(1) a request to the department for recognition of the military service member's or military spouse's license issued by the other jurisdiction, on a form prescribed by the department;

(2) proof of residency in this state, which may include a copy of the permanent change-of-station order for the military service member;

(3) a copy of the military service member's or military spouse's military identification card; and

(4) proof the military service member is stationed at a military installation in Texas.

(e) The department has 30 days from the date a military service member or military spouse submits a request complying with subsection (d) of this section to verify that the military service member or military spouse is licensed in good standing in a jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license under the statutes and regulations of this state. Upon verification, the department shall issue a verification letter recognizing the licensure as the equivalent license in this state.

(f) The verification letter will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The verification letter may not be renewed.

(g) In the event of a divorce or similar event that affects a person's status as a military spouse, the former military spouse that received a verification under subsection (d) of this section, may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the verification letter described by subsection (e) of this section.

(h) The military service member or military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code, Texas Occupations Code, and all relevant Texas Administrative Code provisions.

(i) The department may revoke the verification letter at its discretion. Grounds for revocation include:

(1) the military service member or military spouse fails to comply with subsection (h) of this section; or

(2) the military service member's or military spouse's license required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

(j) The department will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state.

(1) Whether the other jurisdiction requires an applicant to pass an examination that demonstrates competence in the field.

(2) Whether the other jurisdiction requires an applicant to meet any experience qualifications.

(3) Whether the other jurisdiction requires an applicant to meet any education qualifications.

(4) The other jurisdiction's license requirements, including the scope of work authorized by the license.

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 November 9, 2023.

TRD-202304126

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: December 1, 2023

Proposal publication date: September 29, 2023

For further information, please call: (512) 484-5470



SUBCHAPTER G. ALTERNATIVE LICENSING FOR MILITARY

25 TAC §1.91

STATUTORY AUTHORITY

The new rule is adopted under the Texas Occupations Code §§55.004, 55.005, and 55.0041; and Texas Government Code §531.0055(j) and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§1.91. Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

(a) For the purposes of this section, the definitions in Texas Occupations Code Chapter 55 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code Chapter 55 and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses issued by the Department of State Health Services (department) under authority granted by the Texas Health and Safety Code or Texas Occupations Code.

(c) Notwithstanding any other rule, a military service member, military spouse, or military veteran may apply for an occupational license offered by the department if the military service member, military spouse, or military veteran:

(1) is currently licensed by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state, and the license is in good standing; or

(2) held the same license in Texas within the preceding five years.

(d) A military service member or military spouse must provide proof of residency in this state. This requirement is satisfied by providing a copy of the permanent change-of-station order assigning the military service member to a military installation in Texas.

(e) An applicant requesting a license under this section must meet all requirements for obtaining the license, including receiving appropriate credit for training, education, and professional experience.

(f) The department will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another

jurisdiction's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state.

(1) Whether the other jurisdiction requires an applicant to pass an examination that demonstrates competence in the field.

(2) Whether the other jurisdiction requires an applicant to meet any experience qualifications.

(3) Whether the other jurisdiction requires an applicant to meet any education qualifications.

(4) The other jurisdiction's license requirements, including the scope of work authorized under the license.

(g) The department will not charge a fee for the issuance of the license. The applicant will be responsible for fees associated with a required background check.

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 November 9, 2023.

TRD-202304127

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: December 1, 2023

Proposal publication date: September 29, 2023

For further information, please call: (512) 484-5470



CHAPTER 228. RETAIL FOOD ESTABLISHMENTS

SUBCHAPTER B. MANAGEMENT AND PERSONNEL

25 TAC §228.33

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §228.33, concerning Food Allergen Awareness Poster Required.

New §228.33 is adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4986). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted new section is necessary to comply with Senate Bill (S.B.) 812, 88th Legislature, Regular Session, 2023. S.B. 812 amends the Texas Health and Safety Code to add §437.027, which requires retail food establishments display a poster relating to food allergen awareness in an area of the establishment regularly accessible to the establishment's food service employees. S.B. 812 prescribes the content of the poster at Texas Health and Safety Code §437.027(b).

COMMENTS

The 31-day comment period ended October 9, 2023.

During this period, DSHS received comments regarding the proposed rule from three commenters, including Food Allergy Re-

search & Education (FARE), San Antonio Wing-Stop, and The Kroger Company. A summary of comments relating to the rule and DSHS responses follows.

Comment: A commenter from FARE made general remarks about the importance of food allergy awareness among food establishment employees and made several suggestions regarding the content of the poster itself.

Response: DSHS will take FARE's suggestions into consideration in the development of the required sample Food Allergen Awareness poster.

Comment: Two industry commenters asked questions about implementation of the poster itself but did not comment on the proposed rule.

Response: DSHS responded directly to the individual commenters with answers to their specific questions. DSHS informed the commenters regarding when and how the allergen awareness poster will be available for self-printing from the DSHS Retail Food Safety website. DSHS also informed the commenters that an establishment can use a poster other than the DSHS sample poster if it meets the requirements of the statute. DSHS also informed the commenters the enforcement of the poster requirement cannot begin until September 1, 2024.

STATUTORY AUTHORITY

The adopted new rule is authorized by Texas Health and Safety Code §437.027(c), which directs the Executive Commissioner of HHSC to adopt rules to implement legislation; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS, and for the administration of Texas Health and Safety Code Chapter 1001.

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 November 7, 2023.

TRD-202304101

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: December 1, 2023

Proposal publication date: September 8, 2023

For further information, please call: (512) 800-5343



CHAPTER 229. FOOD AND DRUG SUBCHAPTER K. TEXAS FOOD ESTABLISHMENTS

25 TAC §§229.172, 229.176 - 229.178

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §229.172, concerning Accreditation of Certified Food Management Programs; §229.176, concerning Certification of Food Managers; §229.177, Certification of Food Managers in Areas

Under the Department of State Health Services Permitting Jurisdiction; and §229.178, concerning Accreditation of Food Handler Education or Training Programs.

The amendment to §229.177 is adopted with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5455). This rule will be republished. The amendments to §§229.172, 229.176, and 229.178 are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5455). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendments are necessary to comply with Senate Bill (S.B.) 812, 88th Legislature, Regular Session, 2023, which amends Texas Health and Safety Code §438.043 and §438.0431. S.B. 812 requires allergen training be included in DSHS-accredited Certified Food Manager (CFM) and Food Handler (FH) training. S.B. 812 also amends Texas Health and Safety Code §438.103 and requires state-approved CFM examinations to include questions testing food allergen awareness. The adopted amendments reflect the required addition of food allergen awareness to DSHS-accredited CFM and FH training programs and CFM examinations.

COMMENTS

The 21-day comment period ended October 13, 2023.

During this period, DSHS did not receive any comments regarding the proposed rules.

DSHS corrects a punctuation error in §229.177(c)(2).

STATUTORY AUTHORITY

The adopted amendments are authorized by Texas Health and Safety Code §438.0431(b), which directs the Executive Commissioner of HHSC to adopt rules to implement legislation; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§229.177. Certification of Food Managers in Areas Under the Department of State Health Services Permitting Jurisdiction.

(a) Purpose. The purpose of this section is to implement a food manager certification requirement as authorized in the Texas Health and Safety Code, Chapter 437, §437.0076(b). Certification of food managers after testing on food safety principles reduces the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

(b) Food manager certification required. One certified food manager must be employed by each food establishment permitted under Texas Health and Safety Code, §437.0055. Certification must be obtained by passing a department approved examination at an approved examination site and meeting all requirements in Texas Health and Safety Code, Chapter 438, Subchapter G, and §229.176 of this title (relating to Certification of Food Managers).

(c) Food manager certification exemptions. The following food establishments are exempt from the requirements in subsection (b) of this section:

(1) establishments that handle only prepackaged food and do not package food as exempted in Texas Health and Safety Code, §437.0076(c);

(2) child care facilities as exempted by Texas Health and Safety Code, §437.0076(f);

(3) establishments that do not prepare or handle exposed Time/Temperature Control for Safety (TCS) food--(formerly Potentially Hazardous Food (PHF)), as defined in 2017 FDA Food Code 1-201.10; or

(4) nonprofit organizations as defined in §229.371(9) of this title (relating to Permitting Retail Food Establishments).

(d) Responsibilities of a certified food manager. Responsibilities of a certified food manager include:

(1) identifying hazards in the day-to-day operation of a food establishment that provide food for human consumption;

(2) developing or implementing specific policies, procedures or standards to prevent foodborne illness;

(3) supervising or directing food preparation activities and ensuring appropriate corrective actions are taken as needed to protect the health of the consumer;

(4) training the food establishment employees on the principles of food safety; and

(5) performing in-house self-inspections of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(e) Certificate reciprocity. A certificate issued to an individual who successfully completes a department approved examination shall be accepted as meeting the training and testing requirements under Texas Health and Safety Code, §438.046(b).

(f) Certificate posting. The original food manager certificate shall be posted in a location in the food establishment that is conspicuous to consumers.

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 November 7, 2023.

TRD-202304102

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: December 1, 2023

Proposal publication date: September 22, 2023

For further information, please call: (512) 800-5343



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code §358.6 to provide technical assistance in water loss control for qualifying retail public utilities that submit water loss audits and related data to the TWDB. The proposal is adopted without changes as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5635) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

This rulemaking is to implement Senate Bill 28 (SB 28), Section 8, passed by the 88th Texas Legislature, effective September 1, 2023. SB 28 directs the TWDB to establish a program providing technical assistance to retail public utilities conducting water loss audits required by Chapter 16 of the Texas Water Code. The TWDB is required to prioritize technical assistance to retail public utilities required to submit water loss audits to the TWDB based on submitted water loss audits, the population served by the utility, and the integrity of the utility's system. SB 28 also requires the TWDB to publish certain water loss data submitted to the TWDB on its official website in addition to information related to entities receiving technical assistance established by these proposed rules.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

In 31 TAC §358.6, new §358.6(g) is adopted to provide technical assistance in water loss control and outlining the circumstances of the technical assistance offered by the TWDB.

In 31 TAC §358.6, new §358.6(h) is adopted to describe how the agency will prioritize the technical assistance offered by the TWDB to retail public utilities based on water loss audits submitted, the population served by the retail public utility, and the system integrity of the retail public utility.

In 31 TAC §358.6, new §358.6(i) is adopted to establish how the TWDB will publish on its official website certain information related to the retail public utilities receiving technical assistance in addition to other information and data related to water loss audits that the TWDB currently collects.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to establish a program to provide technical assistance to retail public water utilities in conducting required water loss audits and in applying for financial assistance from the TWDB to mitigate the utility system's water loss.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state

law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency.

This rule is adopted under the authority of Texas Water Code §16.0121, as amended by SB 28, 88th Texas Legislative Session. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to establish a program to provide technical assistance to retail public water utilities in conducting required water loss audits and in applying for financial assistance from the board to mitigate the utility system's water loss as well as to prioritize the technical assistance based on three factors. The rule also directs the TWDB to publish certain information related to its collection of water loss data and the use of this program on its official website. The rule would substantially advance this stated purpose by codifying and expanding TWDB's water loss program to better assist retail public utilities in mitigating their water loss.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that requires retail public utilities to conduct and submit water loss audits.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory, nor a constitutional, taking of private real property. Specifically, the subject regulation does not affect a landowner's rights in private real

property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, the specific purpose of this rule is to implement portions of SB 28 and expand the TWDB's water loss program to better assist retail public utilities in mitigating their water loss. The creation of this program as proposed and collection of better water loss data by the TWDB is not a statutory or constitutional taking of private real property. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The comment period ended October 30, 2023. No public comments were received; therefore, no revisions to the rule as proposed will be made and the rule as published in (48 TexReg 5635), will not be republished.

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and under the authority of Texas Water Code Section 16.0121(k) and Section 16.0121(l), as enacted by SB 28, passed during the 88th Texas Legislative Session, effective September 1, 2023. This rulemaking affects Water Code, Chapter 16, Subchapter B. §358.6 Water Loss Audits.

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 November 10, 2023.

TRD-202304175

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: November 30, 2023

Proposal publication date: September 29, 2023

For further information, please call: (512) 463-7686



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Board of Nursing

Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapter contained in Title 22, Part 11, of the Texas Administrative Code, pursuant to the 2022 rule review plan adopted by the Board at its April 2022 meeting.

Chapter 211. General Provisions, §§211.1 - 211.11

Chapter 217. Licensure, Peer Assistance, and Practice §§217.1 - 217.24

Chapter 219. Advanced Practice Nurse Education §§219.1 - 219.13

In conducting its review, the Board will assess whether the reasons for originally adopting this chapter continue to exist. Each section of this chapter will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations and current procedures and practices of the Board, and whether it is in compliance with Chapter 2001 of the Government Code (Administrative Procedure Act).

The public has thirty (30) days from the publication of this rule review in the *Texas Register* to comment and submit any response or suggestions. Written comments may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, by email to dusty.johnston@bon.texas.gov, or by fax to Dusty Johnston at (512) 305-8101. Any proposed changes to this chapter as a result of this review will be published separately in the Proposed Rules section of the *Texas Register* and will be open for an additional comment period prior to the final adoption or repeal by the Board.

TRD-202304199

James W. Johnston

General Counsel

Texas Board of Nursing

Filed: November 10, 2023



Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re-adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 560, Denial or Refusal of License

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 560, Denial or Refusal of License, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 560" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304260

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: November 14, 2023



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 5, Advisory Committees and Groups.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 86 continue to exist.

Comments regarding suggested changes to the rules in Chapter 86 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 86. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on

Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-059-005-AD. Comments must be received by January 3, 2024. For further information, please contact Susan Palachek, External Relations Division, at (512) 239-3106.

TRD-202304272

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 15, 2023



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 86, Special Provisions for Contested Case Hearings.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 86 continue to exist.

Comments regarding suggested changes to the rules in Chapter 86 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 86. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-021-086-LS. Comments must be received by January 3, 2024. For further information, please contact Harrison Malley, Environmental Law Division, at (512) 239-1439.

TRD-202304273

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 15, 2023



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 217, Design Criteria for Domestic Wastewater Systems.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 217 continue to exist.

Comments regarding suggested changes to the rules in Chapter 217 may be submitted but will not be considered for rule amendments as

part of this review. Any such comments will be considered in a future rulemaking action.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 217. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-013-217-OW. Comments must be received by January 3, 2024. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202304274

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 15, 2023



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 222, Subsurface Area Drip Dispersal Systems.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 222 continue to exist.

Comments regarding suggested changes to the rules in Chapter 222 may be submitted but will not be considered for rule amendments as part of this review. Any such comments will be considered in a future rulemaking action.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 222. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-042-222-OW. Comments must be received by January 3, 2024. For further information, please contact Shannon Gibson, Program Project Manager, Water Quality Division, at (512) 239-4284.

TRD-202304275

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 15, 2023



Adopted Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (commission) has completed its review of Texas Administrative Code, Title 13, Part 1,

Chapter 2, Policies and Procedures, consisting of Subchapter A, Principles and Procedures of the Commission, and Subchapter C, Grant Policies, in accordance with Texas Government Code §2001.039.

The commission published its Notice of Intent to Review these rules in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4867). The commission received no comments on the proposed rule review.

As a result of the review, the commission finds that the reasons for initially adopting most of the rules continue to exist and readopts the rules in accordance with the requirements of Government Code, §2001.039. However, the commission identified sections that are no longer necessary and is proposing the repeal of those sections in this issue of the *Texas Register*. In addition, the commission identified certain other sections within Chapter 2 that may be appropriate for revision. Some proposed amendments to those sections are being published in this issue of the *Texas Register*. Additional revisions, if any, will be published in the *Texas Register* at a later date.

This concludes the commission's review of Chapter 2 as required by Government Code, §2001.039.

TRD-202304165

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Filed: November 9, 2023



The Texas State Library and Archives Commission (commission) has completed its review of Texas Administrative Code, Title 13, Part 1, Chapter 7, concerning Local Records, consisting of Subchapter A, Regional Historical Resource Depositories and Regional Research Centers; Subchapter B, Microfilming Standards for Local Governments; Subchapter C, Standards and Procedures for Management of Electronic Records; Subchapter D, Records Retention Schedules; Subchapter E, Electronic Filing and Recording; and Subchapter F, Records Storage Standards; in accordance with Texas Government Code §2001.039.

The commission published its Notice of Intent to Review these rules in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4867). The commission received no comments on the proposed rule review.

As a result of the review, the commission finds that the reasons for initially adopting the rules in general continue to exist and readopts the rules in accordance with the requirements of Government Code, §2001.039. However, one subsection of one rule is no longer necessary based on legislation adopted during the 86th Legislative Session. The commission is proposing an amendment to update that rule in this issue of the *Texas Register*. In addition, the commission identified certain other sections within Chapter 7 that are appropriate for revision. Proposed amendments to those sections will be published in the *Texas Register* at a later date.

This concludes the commission's review of Chapter 7 as required by Government Code, §2001.039.

TRD-202304164

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Filed: November 9, 2023



Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund, Subchapter AA, Commissioner's Rules, pursuant to Texas Government Code, §2001.039. TEA proposed the review of Chapter 33, Subchapter AA, in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5073).

Relating to the review of Chapter 33, Subchapter AA, TEA finds that the reasons for adopting the rule continues to exist and readopts the rule. TEA received no comments related to the review. No changes are anticipated as a result of this review.

TRD-202304267

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: November 15, 2023



Department of State Health Services

Title 25, Part 1

The Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code:

Chapter 99, Occupational Diseases

Notice of the review of this chapter was published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5553). HHSC and DSHS received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 99 in accordance with §2001.039 of the Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agencies determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 99. Any amendments or repeals to Chapter 99 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 99 as required by the Government Code, §2001.039.

TRD-202304141

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: November 9, 2023



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 101, General Air Quality Rules, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intention to Review these rules in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2864).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist for the rules in Subchapter A, §§101.1 - 101.5, 101.8 - 101.10, 101.13, 101.14, 101.18 - 101.21, 101.24, and 101.26 - 101.28, Subchapters

B, C, F, and J, and Divisions 1 - 4 and 6 of Subchapter H. The rules in Chapter 101 provide the general regulatory structure for the implementation of state and federal statutes and rules regarding air quality in Texas. Chapter 101 contains definitions and sections that can apply to all sources of air contaminants in Texas, and the chapter includes the agency's policies regarding the use of discretion and the use of administrative and judicial remedies in applying and enforcing the rules.

The rules in Subchapter A include definitions for terms used in all the sections that govern the TCEQ air quality programs found in 30 TAC Chapters 101, 106, 111 - 118, and 122. The subchapter also contains rules that address prohibition of causing nuisance conditions or traffic hazards; circumvention of the Texas Clean Air Act (TCAA) or rules adopted pursuant to the TCAA; emissions inventory and sampling requirements and procedures; fee assessment; requests for single property designations; an alternate emission reduction policy; stringency determinations for federal operating permits; and the application of and compliance with federal air quality standards in Texas.

The rules in Subchapter B implement the failure to attain fee for the Houston-Galveston-Brazoria (HGB) area under the revoked 1979 one-hour ozone National Ambient Air Quality Standard (NAAQS) as required by federal Clean Air Act, §182(d)(3) and (e) and §185.

The rules in Subchapter C fulfill a state statutory requirement to implement a voluntary monitoring program for components or equipment not subject to commission rules for leak detection and repair in effect on the date of detection. The program encourages and provides incentives for voluntary monitoring using alternative leak detection technology such as optical gas imaging technology to detect and repair leaks not otherwise detectable.

The rules in Subchapter F establish the requirements for recording and reporting of exceedances of emission limits due to emissions events and scheduled maintenance, startup and shutdown activities, as well as the availability of an affirmative defense for these violations if regulatory criteria are met. In addition, the subchapter includes rules regarding variances.

The rules in Subchapter H address the generation, banking, and use of emission reduction credits (ERC) and discrete emission reduction credits (DERC); the banking and trading of emissions allowances for grandfathered electrical generating units; and the Mass Emissions Cap and Trade (MECT) Program and Highly Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) Program in the HGB area. The subchapter also includes rules associated with the federal Clean Air Interstate Rule (CAIR).

Finally, the rules in Subchapter J establish the surcharge and public notice requirements for requests for expedited permit applications.

The review resulted in a determination that the following rules are obsolete: §§101.1(116), 101.23, 101.303(d)(1)(D), 101.304(e)(1)(C), 101.336(b)(2), 101.350(1), 101.354(c), 101.359(a)(3), 101.376(f)(1), 101.400(a)(3), and all of Subchapter H, Division 7.

The definition for VOC in §101.1(116) is outdated and should be amended to reflect the most recent update made to the federal regulatory definition at 40 Code of Federal Regulations §51.100(s), which was published in the *Federal Register* (FR) on February 8, 2023 and effective April 10, 2023 (88 FR 8226).

Section 101.23 Alternate Emission Reduction (Bubble) Policy is obsolete and no longer needed because of the very limited legal and practical applicability of the rule. It is also obsolete due to changes in law and permitting practices since rule adoption in 1981 that address site-wide compliance issues. Approval of an alternate method would require issuance of an order by the commission, and no such order has been applied for or issued for at least the past 25 years. Only facilities that are

not subject to the Federal Operating Permit Program (Title V), applicable New Source Performance Standards or National Emission Standards Hazardous Air Pollutants, could possibly be eligible for requesting and obtaining approval for control of emissions from an alternate facility or from alternate facilities located on the affected property and owned or operated by or under the control of the owner or operator of the affected facility in lieu of compliance with the requirement as prescribed in the applicable rule. In addition, §101.23 is not part of the approved Texas State Implementation Plan (SIP) and thus could not be used for an alternate method of compliance of a SIP-approved rule without a companion revision to the SIP. Staff reviewed the rules that remain in the regulations cited in the rule (now known as Chapters 111, 112, 113, 115 and 117) which are not in the SIP and contain control methods. The review determined that alternative compliance methods are available for most of those rules; therefore, relief provided under §101.23 would likely not be needed or desired.

The rules in Subchapter H, Divisions 1 - 4 and 6 are still relevant; however, several specific provisions are obsolete and no longer needed. The requirements in §101.303(d)(1)(D) and §101.304(e)(1)(C) in Division 1, Emission Credit Program are no longer necessary because the application deadline exceptions made in respect to area sources and mobile sources have all expired. The requirement in Division 2, Emissions Banking and Trading Allowances to include trade summaries in annual reports in §101.336(b)(2) is no longer needed because trade summaries are readily available in the agency database. In Division 3, Mass Emissions Cap and Trade Program, the definition in §101.350(1) is unnecessary because the term adjustment period is no longer used in Division 3, and the provision in §101.354(c) is unnecessary because step downs in the MECT Program have occurred and the applicable deadlines have passed. Additionally, the requirement in §101.359(a)(3) to include trade summaries in annual reports is no longer needed because trade summaries are readily available in the agency database. Section 101.376(f)(1) of Division 4, Discrete Emission Credit Program is no longer needed because the limitation of 42.8 tons per day for use of NOX DERCs in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties only applied to the year 2015. In Division 6, Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program, the requirement in §101.400(a)(3) to include trade summaries in annual reports is unnecessary because trade summaries are readily available in the agency database.

All the rules in Subchapter H, Division 7, Clean Air Interstate Rule are obsolete and can be removed. Since the United States Environmental Protection Agency replaced CAIR with the Cross-State Air Pollution Rule in 2011, the rules in Subchapter H, Division 7 are no longer needed. These rules were adopted in 2006 to implement the federal CAIR to assist nonattainment areas in downwind states in achieving compliance with the 1997 NAAQS for particulate matter less than or equal to 2.5 micrometers.

Public Comment

The public comment period closed on July 5, 2023. A comment was received on this review by an individual.

A commenter expressed support for TCEQ's review of the rules in Chapter 101 and highlighted the importance of conducting periodic reviews of the state's rules to ensure they continue to be relevant and necessary.

The commission appreciates the comment.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 101 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review

process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202304201

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 12, 2023



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intention to Review these rules in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2864).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons still exist. The rules in Chapter 113 implement emission standards for hazardous air pollutants (HAP) and for certain designated facilities. The United States Environmental Protection Agency (EPA) has delegated the authority to administer and enforce the standards and requirements from the Code of Federal Regulations (CFR) referred to in Chapter 113 to the commission or the commission has submitted delegation requests or state plans to the EPA in accordance with 42 United States Code, §7411(d) and §7429.

The rules in Chapter 113, Subchapter A contain definitions to support the rules in this chapter. The rules in Chapter 113, Subchapter B implement emission standards for radon notification, testing, and reporting requirements from the National Emissions Standards for Radon Emissions from Phosphogypsum Stacks (40 CFR Part 61, Subpart R). The rules in Chapter 113, Subchapter C allow the commission to administer and enforce the technology-based standards intended to control HAP emissions referred to as maximum achievable control technology and generally available control technology standards from the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Source Categories established in the federal Clean Air Act, §112, as codified in 40 CFR Part 63.

The Chapter 113, Subchapter D rules implement federal emission guidelines for certain specified categories of existing facilities, including municipal solid waste landfills, hospital/medical/infectious waste incinerators, and various types of municipal, commercial and industrial solid waste incineration units. The Subchapter D rules establish emission standards, operational requirements, exemptions, monitoring requirements, and compliance schedules or deadlines for these facilities.

Lastly, the Chapter 113, Subchapter E rules allows TCEQ to implement and enforce federal requirements that consolidated major portions of several New Source Performance Standards and NESHAP applicable to storage vessels, process vents, transfer operations, equipment leaks, and closed vent systems and control devices within synthetic organic chemical manufacturing operations.

Public Comment

The public comment period closed on July 5, 2023. Comments were received on this review from an individual.

Comment

A commenter expressed support for TCEQ's review of the rules in Chapter 113 and highlighted the importance of conducting periodic reviews of the state's rules to ensure the regulatory framework remains agile and adaptive. The commenter also expressed support for TCEQ's efforts to safeguard public health and the environment.

Response

TCEQ appreciates the support. No changes to the rules were made in response to this comment.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 113 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202304195

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 10, 2023



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 291, Utility Regulations, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2864).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 291 are required because they provide TCEQ rules regarding the regulation of water and sewer utilities. The rules are necessary to assure water and sewer operations and services comply with commission requirements. Chapter 291 is divided into Subchapters A, D, F, G, I, J, L, and M, which set forth provisions related to general administration; records and reports; quality of service; certificates of convenience and necessity; wholesale water petitions; enforcement, supervision, and receivership; standards of emergency operations; and water shortage reports. These rules are necessary to implement the procedures and powers provided to TCEQ relating to water and sewer utility regulations under Texas Water Code (TWC), §§11.036 - 11.041 and Chapter 13.

Public Comment

The public comment period closed on July 5, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 291 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202304194

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 10, 2023



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 304, Watermaster Operations, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a

state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2865).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. 30 TAC Chapter 304 provides the rules concerning watermaster operations for each water division other than the Rio Grande Water Division. The rules include the regulation of the use of state water or watercourses, allocation of available waters, enforcement regarding watermaster operations, the administration of watermaster operations, appeal of watermaster actions, and financing watermaster operations. The rules are needed to implement the duties and responsibilities of watermaster operations in Texas Water Code, Chapter 11, including §§11.325 - 11.458 and §§11.551 - 11.561.

Public Comment

The public comment period closed on July 5, 2023. The purpose of the rule review is limited to assessing whether the reasons for the rules continue to exist. TCEQ received one non-substantive comment from an individual. TCEQ acknowledges the comment.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 304 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202304193

Charmaine K. Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 10, 2023



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Certification of the Single Local Use Tax Rate for Remote Sellers - 2024

The Comptroller of Public Accounts, administering agency for the collection of the Single Local Use Tax Rate for Remote Sellers, has determined, as required by Tax Code, §151.0595(e), that the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year ending August 2023 is 1.75%. This rate will be in effect for the period of January 1, 2024 to December 31, 2024.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

Issued in Austin, Texas, on November 10, 2023.

TRD-202304189

Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Filed: November 10, 2023



Office of Consumer Credit Commissioner

Correction of Error

The Office of Consumer Credit Commissioner proposed amendments to 7 TAC §83.6007 in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6516). Due to an error by the Texas Register, three of the four figures included in the amendments were published incorrectly. The figures included in subsections (a), (b) and (d) were incorrect. The figure included in subsection (c) was published correctly. The correct version of all four figures follows.

CAB NAME HERE

Payday Loan

\$_____, One Payment

Cost Disclosure

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to CAB name here	\$ _____
Total of payments (if I pay on time)	\$ _____





APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	22%	30%	89%	180%	223%	415%	Average APR
	\$1.82	\$3.55	\$13.38	\$15.00	\$19.45	\$34.14	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new single-payment payday loan:	
	5 ¼ will pay the loan on time as scheduled (typically before 30 days)
	1 ½ will renew 1 time before paying off the loan
	1 ¼ will renew 2 to 4 times before paying off the loan
	1 will renew 5 or more times or will never pay off the loan

This data is from 2022 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan *in full* when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Payday Loan

\$ _____, ____ Payments

Cost Disclosure

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to CAB name here	\$ _____
Payment amounts (payments due every _____)	Payments #1-# _____ \$ _____ (Final) Payment # _____ \$ _____
Total of payments (if I pay on time)	\$ _____




APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____
_____	\$ _____	\$ _____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	22%	30%	89%	180%	223%	415%	Average APR
	\$1.82	\$3.51	\$12.52	\$15.00	\$19.45	\$34.14	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new multi-payment payday loan:	
	6 ¼ will pay the loan on time as scheduled (typically 5 months)
	¼ will renew 1 to 4 times before paying off the loan
	2 ½ will renew 5 or more times or will never pay off the loan.

This data is from 2022 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan *in full* when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

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- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Auto Title Loan \$_____, One Payment Cost Disclosure



You can lose your car.
If you miss a payment or make a late payment, your car can be repossessed.

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to CAB name here (includes a one-time \$__ title fee)	\$ _____
Total of payments (if I pay on time)	\$ _____

APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	22%	30%	89%	180%	223%	415%	Average APR
	\$1.82	\$3.55	\$13.38	\$15.00	\$19.45	\$34.14	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new single-payment auto title loan:

	1 ¼ will pay the loan on time as scheduled (typically 30 days)
	¼ will renew 1 time before paying off the loan
	¾ will renew 2 to 4 times before paying off the loan
	7 ¾ will renew 5 or more times or will never pay off the loan

This data is from 2022 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan *in full* when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

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- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Auto Title Loan

\$_____, ___ Payments

Cost Disclosure



You can lose your car.

If you miss a payment or make a late payment, your car can be repossessed.

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: __ %)	\$ _____
Fees paid to CAB name here <small>(includes a one-time \$ _____ title fee)</small>	\$ _____
Payment amounts (payments due every _____)	Payments #1-# _____ \$ _____ (Final) Payment # _____ \$ _____
Total of payments (if I pay on time)	\$ _____

APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____
	\$ _____	\$ _____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	22%	30%	89%	180%	223%	415%	Average APR
	\$1.82	\$3.55	\$13.38	\$15.00	\$19.45	\$34.14	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new multi-payment auto title loan:

	4 ¼ will pay the loan on time as scheduled (typically 5 - 6 months)
	¾ will renew 1 time before paying off the loan
	1 will renew 2 to 4 times before paying off the loan
	4 will renew 5 or more times or will never pay off the loan

This data is from 2022 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/20/23 - 11/26/23 is 18.00% for consumer¹ credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/20/23 - 11/26/23 is 18.00% for commercial² credit.

¹ Credit for personal, family, or household use.

² Credit for business, commercial, investment, or other similar purpose.

TRD-202304270

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 15, 2023

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Credit Union Department

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Field of Membership - Approved

Members Choice Credit Union (Houston) - See *Texas Register* dated on September 29, 2023.

Merger or Consolidation - Approved

Telco Plus Credit Union (Longview) and Kilgore Shell Employees Credit Union (Kilgore) - See *Texas Register* dated on May 26, 2023.

Field of Membership - Withdrawn

Amplify Credit Union (Austin) - See *Texas Register* dated on June 30, 2023.

Amplify Credit Union (Austin) - See *Texas Register* dated on June 30, 2023.

TRD-202304276

Michael S. Riepen

Commissioner

Credit Union Department

Filed: November 15, 2023

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes,

which in this case is **December 28, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **December 28, 2023**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: BRAUNTEX MATERIALS, INCORPORATED; DOCKET NUMBER: 2022-1202-EAQ-E; IDENTIFIER: RN100853555; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: motor freight transportation facility; RULES VIOLATED: 30 TAC §213.4(j)(6) and Edwards Aquifer Aboveground Storage Tank (AST) Facility Plan Number 13-02042601, Standard Condition Number 6, by failing to obtain approval of a modification of an approved Edwards Aquifer AST Facility Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(2) COMPANY: Chris Thomas Custom Homes, Incorporated; DOCKET NUMBER: 2021-1317-WQ-E; IDENTIFIER: RN111302691; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: residential construction; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$6,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,500; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Carrizo Springs; DOCKET NUMBER: 2022-1412-MWD-E; IDENTIFIER: RN101721124; LOCATION: Carrizo Springs, Dimmit County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010145001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,062; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: City of Stephenville; DOCKET NUMBER: 2022-0871-PST-E; IDENTIFIER: RN102017308; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: airport with retail sales of aviation gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submit-

ting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for a UST system at a retail fuel facility; PENALTY: \$11,600; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Trinity; DOCKET NUMBER: 2022-0048-MWD-E; IDENTIFIER: RN101607182; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System Permit Number WQ0010617001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at intervals specified in the permit; PENALTY: \$13,200; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,560; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: N. Mays Georgetown Owner, LLC; DOCKET NUMBER: 2022-1494-EAQ-E; IDENTIFIER: RN111465373; LOCATION: Gerorgetown, Williamson County; TYPE OF FACILITY: multifamily development; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to conducting regulated activities over the Edwards Aquifer Recharge Zone; PENALTY: \$19,500; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(7) COMPANY: OLVERA REFORESTATION SERVICES LLC; DOCKET NUMBER: 2023-1554-WQ-E; IDENTIFIER: RN111798567; LOCATION: Naples, Morris County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Shane Glantz, (806) 468-0507; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Stoney River Ranch, LLC dba Wise Topsoil and Gravel; DOCKET NUMBER: 2022-0336-MLM-E; IDENTIFIER: RN111363354; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: unauthorized recycling and disposal site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the State of Texas; 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; 30 TAC §328.5(b), by failing to submit a Notice of Intent prior to the commencement of recycling activities; 30 TAC §328.5(d), by failing to establish and maintain financial assurance for the closure of a facility that stores combustible materials outdoors; and 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: \$16,232; ENFORCEMENT COORDINATOR: Eresha DeSilva, (512) 239-5084; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(9) COMPANY: Upper Leon River Municipal Utility District; DOCKET NUMBER: 2022-0647-MWD-E; IDENTIFIER: RN104343181; LOCATION: Comanche, Comanche County; TYPE

OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014544001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: \$10,875; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-202304196

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: November 10, 2023

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Notice and Comment Hearing Draft Permit No.: O3906

This is a notice for a notice and comment hearing on Federal Operating Permit Number O3906. During the notice and comment hearing informal questions on the Federal Operating Permit will be answered and formal comments will be received. The Texas Commission on Environmental Quality (TCEQ) has scheduled the notice and comment hearing regarding this application and draft permit as follows:

Date: January 11, 2024

Time: 7:00 p.m.

Location: Portland Community Center

200 Billy G. Webb Drive

Portland, Texas 78374

Location phone: (361) 777-4670

Application and Draft Permit. Enbridge Ingleside, LLC, 915 N Eldridge Pkwy Ste. 1100, Houston, Texas 77079-2703, a Petroleum Bulk Stations and Terminals facility, has applied to the TCEQ for a Renewal of Federal Operating Permit (herein referred to as permit) No. O3906, Application No. 34024 to authorize operation of the Enbridge Ingleside Oil Terminal, a Petroleum Bulk Stations and Terminals facility. The area addressed by the application is located at 1450 Lexington Blvd in Ingleside, San Patricio County, Texas 78362-6301. This application was received by the TCEQ on July 18, 2022.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, will codify the conditions under which the site must operate. The TCEQ Executive Director recommends issuance of the draft permit. The purpose of a federal operating permit is to improve overall compliance with the rules governing air pollution control by clearly listing all applicable requirements, as defined in Title 30 Texas Administrative Code (30 TAC) §122.10. The permit will not authorize new construction or new emissions.

Notice and Comment Hearing. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration and an informal discussion period with commission staff members will begin during the first 30 minutes. During the informal discussion period, the public is encouraged to ask questions and engage in open discussion with the applicant and the TCEQ staff concerning this application and draft permit. Issues raised during this discussion period **will only** be addressed in the formal response to comments if the issue is also presented during the hearing. After the conclusion of the informal discussion period, the TCEQ will conduct a notice and comment hearing regarding the application and draft permit. Individuals may present oral statements when called upon in order of registration. A

five-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal and answer questions after the hearing. The purpose of this hearing will be to receive formal public comment which the TCEQ will consider in determining whether to revise and/or issue the permit and in determining the accuracy and completeness of the permit. Any person may attend this meeting and submit written or oral comments. The hearing will be conducted in accordance with the Texas Clean Air Act § 382.0561, as codified in the Texas Health and Safety Code, and 30 TAC §122.340.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the TCEQ Public Education Program toll free at (800) 687-4040 or (800) RELAY-TX (TDD), at least five business days prior to the hearing.

Any person may also submit written comments before the hearing to the Texas Commission on Environmental Quality, Office of Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Written comments should include (1) your name, address, and daytime telephone number, and (2) the draft permit number found at the top of this notice.

A notice of proposed final action that includes a response to comments and identification of any changes to the draft permit will be mailed to everyone who submitted: written comments, and/or hearing requests, attended the hearing, or requested to be on the mailing list for this application. This mailing will also provide instructions for public petitions to the U.S. Environmental Protection Agency (EPA) to request that the EPA object to the issuance of the proposed permit. After receiving a petition, the EPA may only object to the issuance of a permit which is not in compliance with applicable requirements or the requirements of 30 TAC Chapter 122.

Mailing List. In addition to submitting public comments, a person may ask to be placed on a mailing list for this application by sending a request to the TCEQ Office of the Chief Clerk at the address above. Those on the mailing list will receive copies of future public notices (if any) mailed by the Chief Clerk for this application.

Information. For additional information about this permit application or the permitting process, please contact the Texas Commission on Environmental Quality, Public Education Program, MC-108, P.O. Box 13087, Austin, Texas 78711-3087 or toll free at (800) 687-4040. General information about the TCEQ can be found at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained for Enbridge Ingleside, LLC by calling Clayton Curtis, Director Regulatory Affairs, US Gulf Coast Terminals at (855) 385-6645.

Notice Issuance Date: November 8, 2023

TRD-202304278

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 15, 2023



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 75339

APPLICATION. Martin Marietta Texas Ready-mix LLC, 1503 LBJ Freeway Suite 400, Dallas, Texas 75234-6007 has applied to the Texas Commission on Environmental Quality (TCEQ) for

an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 75339 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 2725 Pipeline Road, Cleburne, Johnson County, Texas 76033. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.40611,32.3988&level=13>. This application was submitted to the TCEQ on September 26, 2023. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on October 24, 2023.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Tuesday, December 19, 2023, at 6:00 p.m.

Holiday Inn Express & Suites

1800 West Henderson Street

Cleburne, Texas 76033

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m.,

Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Martin Marietta Texas Ready-Mix, LLC, 1503 LBJ Freeway Suite 400, Dallas, Texas 75234-6007, or by calling Mr. Jesse Martindale, Sr. Environmental Engineer at (972) 647-3742.

Notice Issuance Date: November 10, 2023

TRD-202304280

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 15, 2023



Notice of Correction to Agreed Order Number 1

In the September 15, 2023, issue of the *Texas Register* (48 TexReg 5184), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 1, for City of Hudson; Docket Number 2021-1501-MWD-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$10,000."

For questions concerning the error, please contact Michael Parrish at (512) 239-2548.

TRD-202304198

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: November 10, 2023



Notice of Correction to Agreed Order Number 9

In the August 25, 2023, issue of the *Texas Register* (48 TexReg 4680), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 9, for Sheldon Road Municipal Utility District; Docket Number 2021-0775-MWD-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$12,751."

The reference to the Supplemental Environmental Project Offset Amount should be corrected to read: "\$12,751."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202304197

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: November 10, 2023



Notice of Water Quality Application

The following notice was issued on November 10, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (10) DAYS FROM THE DATE THIS NOTICE IS MAILED.

INFORMATION SECTION

Hudson Bend at Lake Travis, LLC has applied for a minor amendment to the TCEQ permit to authorize public access to the disposal area. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day via non-public access subsurface drip irrigation system with a minimum area of 3.2 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located at 6409 Hudson Bend Road, Austin, in Travis County, Texas 78734. The wastewater treatment facility and disposal site will be located in the drainage basin of Lake Travis in Segment No. 1404 of the Colorado River Basin.

TRD-202304279

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 15, 2023



Texas Ethics Commission

List of Delinquent Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file a required report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Dave Guilianelli at (512) 463-5800.

Deadline: Semiannual Report due July 15, 2022 for Candidates:

Uduakobong Nkanga, 501 E. Oates, P.O. Box #494812, Garland, Texas, 75049

Natalie N. Kohn, 5232 Apache Plume #114323, Fort Worth, Texas, 76109

Michael Lange, P.O. Box 2022 5350 Bellaire Blvd, Bellaire, Texas, 77401

Kate C. Ferrell, 2500 E. TC Jester #290, Houston, Texas, 77008

William Shane Nolen, 5601 Colleyville Blvd., Colleyville, Texas, 76034

Rene Rodriguez, 10268 Pritam, Socorro, Texas, 79927

Jeffrey D. Younger, 1212 Blairwood Dr., Flower Mound, Texas, 75028

Carl N. Sanders, 7 Hayes Court, Trophy Club, Texas, 76262

Rashard S. Davis Baylor, 5102 Westover St., Houston, Texas, 77033

Deauc Nash Dentaen, 2050 Aspen Glade Dr, Kingwood, Texas, 77339

Ken Morrow, P.O. Box 571, Gonzales, Texas, 78629

Fidel Castillo, P.O. Box 17271, San Antonio, Texas, 78217

Phillip J. Drake, 25424 Brushline Rd., Edinburg, Texas, 78542

Katie Farias, 1122 Par Four, San Antonio, Texas, 78221

John D. Roberson, 802 Banister Lane, Austin, Texas, 78704

Will L. Douglas, P.O. Box 113, Rowlett, Texas, 75030

Nathan E. Watkins, 9205 Eagle Dr., Suite 300-173, Mont Belvieu, Texas, 77523

Jeremy Joseph Rios, 26998 Hogan Dr, San Antonio, Texas, 78260

Lynda Nash, 3006 Sun Dance Drive, Harker Heights, Texas, 76548

Brandon L. Davis, 1117 C.R. 355, Winters, Texas, 79567

Aimee Garza Lopez, P.O. Box 262148, Plano, Texas, 75026

Elva Camacho, P.O. Box 6114, Fort Worth, Texas, 76115

Alfredo M. Ramirez, 2056 Hardee Pass, San Antonio, Texas, 78253

Alexis A. Adams, 106 Spritewood Cove, Universal City, Texas, 78148

Reginald E. Jennings, 8436 Kincaid Ln, Frisco, Texas, 75036

Raynie G. Castaneda, 10795 FM 2015, Tyler, Texas, 75708

Michael A. Matranga, P.O. Box 545, Texas City, Texas, 77590

Meghan L. Brown-Scoggins, 700 Wickham Dr., Graniteville, South Carolina, 29829

Connie G. Vasquez, 5773 Woodway Dr., Ste. 156, Houston, Texas, 77057

Alfred Molison, 7623 Candlegreen Ln, Houston, Texas, 77071

Justin W. Harper, 2101 College Dr., Victoria, Texas, 77901

Demetra Jefferson-Wysinger, 3700 Reese Dr., Dallas, Texas, 75238

Celina D. Montoya, P.O. Box 6048, San Antonio, Texas, 78209

Arnoldo A. Alonso, 3719 Rey David, Brownsville, Texas, 78521

Martha M. Gutierrez, 1110 S. Caldwell St., Falfurrias, Texas, 78355

Demetria Y. Smith, 7324 SW Fwy, Ste. 1480, Houston, Texas, 77074

Natalie N. Khon, 5232 Apache Plume #114323, Fort Worth, Texas, 76109

Jeffrey D. Younger, 1212 Blairwood Dr., Flower Mound, Texas, 75028

Kandy Kaye Horn, 3 River Hollow Ln., Houston, Texas, 77027

Matthew B Poole, 512 Lonestar Park Ln, Ponder, Texas, 76259

Susan Mellina Hayslip, 316 Brookbend Drive, Waxahachie, Texas, 75165

Larry McKinzie, 3636 Old Spanish Trail Suite B-1129, Houston, Texas, 77021

Jacinto Martinez, 1230 Duke Rd, San Antonio, Texas, 78264

Alberto A. Dominguez, P.O. Box 131861, Houston, Texas, 77019

Wayne G. Raasch, P.O. Box 644, Lissie, Texas, 77454

Victor Avila Jr., P.O. Box 92185, Southlake, Texas, 76092

Alena Berlanga, P.O. Box 1282, La Vernia, Texas, 78121

Ryan T. McConnico, 1900 W. Gray St. #130712, Houston, Texas, 77219

Rowland Garza, 212 Santa Maria Dr., Del Rio, Texas, 78840

Adalberto J. Sanchez, 100 Warden Ln. 308, San Marcos, Texas, 78666

Allan E. Meagher, 915 Colony Ridge Ct., Irving, Texas, 75061

LaDale A. Buggs, 2425 N. Central Expressway, Ste. 700, Richardson, Texas, 75080

Jonathan Sibley, 202 Cypress Court, Woodway, Texas, 76712

Barbara Jean Stalder, 11200 Fuqua Suite 100, #158, Houston, Texas, 77089

Norma J. Witherspoon, P.O. Box 14209, San Antonio, Texas, 78214

Theresa Bui Creevy, PO Box 452163, Garland, Texas, 75045

Deadline: Semiannual Report due January 17, 2023 for Candidates:

Demetra Jefferson-Wysinger, 3700 Reese Dr., Dallas, Texas, 75238

Will L. Douglas, P.O. Box 113, Rowlett, Texas, 75030

Susan Mellina Hayslip, 316 Brookbend Drive, Waxahachie, Texas, 75165

Katie Farias, 1122 Par Four, San Antonio, Texas, 78221

Jacinto Martinez, 1230 Duke Rd, San Antonio, Texas, 78264

Michael Monreal, 923 10th St. Ste. 101 PMB 288, Floresville, Texas, 78114

Denise Brown, 1300 McGowen, Ste. 250, Houston, Texas, 77004

Monica Ramirez Alcantara, 26041 Cypress Oaks, San Antonio, Texas, 78255

Jake Collier, 248 E. Southwest Pkwy, Lewisville, Texas, 75067

Laura E. Marquez, 8900 Viscount Blvd. #A-N 591, El Paso, Texas, 79925

Mike Graham, 11210 Steeplecrest Drive, Ste. 120, Houston, Texas, 77065

Rebecca Garcia, 3619 Savanno Ln #7107, Fort Worth, Texas, 76244

Andrew M. Bayley, 1225 North Loop West, Suite 900, Houston, Texas, 77008

Shannon K. McClendon, 1302 Overland Stage Rd., Ste. 200, Dripping Springs, Texas, 78620

Theresa A. Goline, 1413 E. McKinney St., Denton, Texas, 76209

Staci D. Childs, 2925 Richmond Ave., Suite 1200, Houston, Texas, 77098

Erasmus Castro, 1240 E. Madison St., Brownsville, Texas, 78520

Roy L. Owens, 4100 Hull St, Houston, Texas, 77021

Michael E. Cooper, 3910 N. Dowlen St. Ste. #12012, Beaumont, Texas, 77726

Alycia B. Harvey, 2129 FM 2920, Suite 190 #179, Spring, Texas, 77388

Tristian T.D. Sanders, 5605 Siltstone Loop, Killeen, Texas, 76542

Crystal Dillard, 6323 Creekbend, Houston, Texas, 77096

Gina N. Calanni, P.O. Box 6733, Katy, Texas, 77491

Bree Boulware-West, 320 South R. L. Thornton Fwy, Ste. 300, Dallas, Texas, 75203

James S. Burnett, P.O. Box 722363, Houston, Texas, 77272

Cameron A. Campbell, 9950 Westpark Dr., Suite 103B, Houston, Texas, 77063

John Harvey Slocum, 803 Bethpage Court, College Station, Texas, 77845

Joshua J. Tarbay, 200 S. Oakridge Dr. Ste. 101 #137, Hudson Oaks, Texas, 76087

Gerson I. Hernandez, 2355 W. Pioneer Dr., Irving, Texas, 75061
 Cary G. Moon, 5016 Exposition Way, Fort Worth, Texas, 76244
 Casey L. Gray, P.O. Box 69121, Odessa, Texas, 79769
 Yomi S. Hardison, 1905 River Rock Trail, Harker Heights, Texas, 76548
 Matthew R. Morgan, 503 FM 359 suite 130 #264, Suite 130 #226, Richmond, Texas, 77406
 Mackenzie A. Latimer, 3200 Colonial Pkwy, Apt 423, Belton, Texas, 76513
 Julie Ann Ketterman, 1004 Prairie Street, Ste 300, Houston, Texas, 77002
 Allenna Bangs, 1501 Hall Johnson Rd., P.O. Box 1363, Colleyville, Texas, 76034
 Lorenzo Sanchez, 2901 W. Parker Rd., #867104, Plano, Texas, 75086
 Lyle D. Beasley, 823 W Hickory St, Denton, Texas, 76201
 Francisco J. Puente, 122 E Lee, Harlingen, Texas, 78550
 Matthew S. Muller, 1021 Main St. #1275, Houston, Texas, 77002
 Hilda Duarte, 1413 Range Dr. #210, Mesquite, Texas, 75149
 Ruben Cortez, 1875 Los Angeles Ct., Brownsville, Texas, 78521
 Cynthia T. Cavazos, 5470 W. Military Dr., Apt. 405, San Antonio, Texas, 78242
 Danielle K. Bess, P.O. Box 8367, Houston, Texas, 77288
 Barbara Jean Stalder, 11200 Fuqua Suite 100, #158, Houston, Texas, 77089
 Daniel Davis Clayton, P.O. Box 151122, Dallas, Texas, 75315
 Jonathan Sibley, 202 Cypress Court, Woodway, Texas, 76712
 Frank A. Ramirez, 2105 Clamp Ave., San Antonio, Texas, 78221
 Katy Jewett Malone, 8503 Hatton, Houston, Texas, 77025
 Deanne Price Claire, 320 S. R. L. Thornton Fwy, Suite 300, Dallas, Texas, 75203
 Bianca Gracia, 6725 Fairmont Pkwy 102, Pasadena, Texas, 77505
 LaDale A. Buggs, 2425 N. Central Expressway, Ste. 700, Richardson, Texas, 75080
 Norma J. Witherspoon, P.O. Box 14209, San Antonio, Texas, 78214
 Osvaldo Carrasco, 11948 Pueblo Del Rio Way, El Paso, Texas, 79936
 Uduakobong Nkanga, 501 E. Oates, P.O. Box #494812, Garland, Texas, 75049
 Katharine H. Welch, P.O. Box 201, Seabrook, Texas, 77586
 George B. Garza, 406 Sligo, San Antonio, Texas, 78223
 Anthony J. Reed, P.O. Box 14575, Haltom City, Texas, 76117
 Clyde B. Bostick, P.O. Box 129, Caddo Mills, Texas, 75135
 Kimberly N. McTorry, 316 E. Main St., Suite 2B, Humble, Texas, 77338
 Sandrigrace Martinez, 1333 Buena Vista St. Ste. 106B, San Antonio, Texas, 78207
 Chad E. Prather, P.O. Box 151013, Arlington, Texas, 76016
 Marquis L. Hawkins, 123 E. Woodin Blvd., Dallas, Texas, 75216
 Samuel L. Milledge, 2500 East TJ Jester, Ste. 510, Houston, Texas, 77008
 Brittney N. Verdell, 4229 Hunt Dr. #4807, Carrollton, Texas, 75010
 Misty L. Bishop, 1106 Kanah Lane, Houston, Texas, 77090
 Jesse Ringness, 8700 Stonebrook Pkwy # 204, Frisco, Texas, 75034
 Luis H. Villarreal, P.O. Box 1, Harlingen, Texas, 78550
 Johnny Arredondo, 7518 Stagecoach, San Antonio, Texas, 78227
 Jonathan Hildner, 300 N 10th Street, P.O. Box 1554, Killeen, Texas, 76541
 Kathi A. Marvel, 1115 Gemini St, Box #14, Houston, Texas, 77058
 Nora Stephanie Morales, 1919 Shadow Bend Dr., Houston, Texas, 77043
 Desarae Lindsey, 1104 Holiday Drive, Tool, Texas, 75143
 Jonathan Mullins, 13166 Kestrel Avenue, Horizon City, Texas, 79928
 Allan E. Meagher, 915 Colony Ridge Ct., Irving, Texas, 75061
 Victor Perez, 722 King Treasure St., Alamo, Texas, 78516
 Nathan E. Watkins, 9205 Eagle Dr., Suite 300-173, Mont Belvieu, Texas, 77523
 Alberto A. Dominguez, P.O. Box 131861, Houston, Texas, 77019
 Wayne G. Raasch, P.O. Box 644, Lissie, Texas, 77454
 Victor Avila Jr., P.O. Box 92185, Southlake, Texas, 76092
 Martha M. Gutierrez, 1110 S. Caldwell St., Falfurrias, Texas, 78355
 Justin W. Harper, 2101 College Dr., Victoria, Texas, 77901
 Alfred Molison, 7623 Candlegreen Ln, Houston, Texas, 77071
 Connie G. Vasquez, 5773 Woodway Dr., Ste. 156, Houston, Texas, 77057
 Raynie G. Castaneda, 10795 FM 2015, Tyler, Texas, 75708
 Reginald E. Jennings, 8436 Kincaid Ln, Frisco, Texas, 75036
 Brandon L. Davis, 1117 C.R. 355, Winters, Texas, 79567
 Lynda Nash, 3006 Sun Dance Drive, Harker Heights, Texas, 76548
 Jeremy Joseph Rios, 26998 Hogan Dr., San Antonio, Texas, 78260
 Phillip J. Drake, 25424 Brushline Rd., Edinburg, Texas, 78542
 Fidel Castillo, P.O. Box 17271, San Antonio, Texas, 78217
 Aimee Garza Lopez, P.O. Box 262148, Plano, Texas, 75026
 Demetria Y. Smith, 7324 SW Fwy Ste. 1480, Houston, Texas, 77074
 Natalie N. Kohn, 5232 Apache Plume #114323, Fort Worth, Texas, 76109
 Meghan L. Brown-Scoggins, 700 Wickham Dr., Graniteville, South Carolina, 29829
 Alfredo M. Ramirez Jr., 2056 Hardee Pass, San Antonio, Texas, 78253
Deadline: Semiannual report due July 17, 2023 for Candidates
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 Jake Collier, 2808 Stearns Ave, Wichita Falls, Texas, 76308
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 Victor Perez, 722 King Treasure St., Alamo, Texas, 78516
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Leslie Lester Osborne, 11131 Wonderland Trail, Dallas, Texas, 75229
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Alycia B. Harvey, 2129 FM 2920 Suite 190 #179, Spring, Texas, 77388
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Walter B. Bius, 3011 Hwy 30 W 101 #231, Huntsville, Texas, 77340
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Jacorion X. Randle, 60 Ruth St., Beaumont, Texas, 77707
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Lyle D. Beasley Jr., 823 W Hickory St, Denton, Texas, 76201
Daniel Davis Clayton, P.O. Box 151122, Dallas, Texas, 75315
Frank A. Ramirez IV, 2105 Clamp Ave., San Antonio, Texas, 78221
Jennifer V. Ramos, 5910 Wales St., San Antonio, Texas, 78223
Charles J. Hasse, 132 Sally Ln., Brownsville, Texas, 78526
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Mark Watson, 5851 McCommas Blvd, Dallas, Texas, 75206
Gia Jolene Garcia, 718 Amber Knoll, San Antonio, Texas, 78251
Gabrien W. Gregory, P.O. Box 700293, San Antonio, Texas, 78270
TRD-202304200
Aidan Shaughnessy
Program Supervisor
Texas Ethics Commission
Filed: November 10, 2023

◆ ◆ ◆
Texas Commission on Fire Protection

Correction of Error

The Texas Commission on Fire Protection adopted amendments to 37 TAC §§403.3, 403.5, and 403.15 in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6742). Due to an error by the Texas Register, the name of Chapter 403 was published incorrectly. The correct name should be:

CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

TRD-202304225

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 6, 2023 to November 10, 2023. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, November 17, 2023. The public comment period for this project will close at 5:00 p.m. on December 17, 2023.

Federal Agency Activities:

Applicant: U.S. Fish and Wildlife Service

Location: The project site is located in the Gulf Intracoastal Waterway (GIWW), between Cedar Lake and Cowtrap Lake at the San Bernard National Wildlife Refuge, in Brazoria and Matagorda Counties, Texas.

Latitude and Longitude:

Begin: 28.864706, -95.469429

End: 28.822816, -95.536953

Project Description: The applicant proposes to discharge 31,301 cubic yards of concrete riprap fill material into 6.28 acres of shallow water habitat in the GIWW for the construction of a breakwater in 12 segments for the minimization of shoreline erosion. The breakwaters will have a 2:1 vertical slope and crest elevation of 3.0 feet North American Vertical Datum of 1988 (NAVD88). Riprap will be clean and free of hazardous materials and may include limestone and granite. Fish passages will be incorporated every 500 linear feet and span 30-foot-wide to minimize impacts to near-shore fish and invertebrate movements.

The applicant has stated that they have avoided and minimized the environmental impacts by using clean rock material and employing construction best management practices, including gentle rock placement methods, to limit turbidity in the water column. Breakwater placements are situated in a manner to avoid known oyster reefs. A Shallow Water Access Plan will be implemented to avoid and minimize impacts to Waters of the United States. Mitigation is not proposed.

The project site consists of the shallow, open bay bottoms of the GIWW along a section that is bordered by the San Bernard National Wildlife Refuge. The shoreline has experienced heavy erosion due to wave and wind action that has resulted in coastal marsh degradation and loss. There are no special aquatic sites within the project footprint.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2023-00077. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 24-1065-F2

Federal License and Permit Activities:

Applicant: Estes Pointe Development, LLC

Location: The project site is located adjacent to Aransas Bay, south of the intersection of TX-35 and TX-188, in Aransas Pass, Aransas County, Texas.

Latitude and Longitude: 27.956268, -97.105689

Project Description: The applicant proposes to construct a 68-lot subdivision with homesites, two marinas (Community Marina A and Community Marina B), and finger piers for boat slips. The proposed subdivision road for the subdivision would be approximately 24-foot-wide with all utilities installed in upland areas.

Community Marina A (220-foot-long by 95-foot-wide) would be dry excavated to accommodate 26 small boat slips with 13 finger piers to a fixed accessed deck. Community Marina A would be created by excavating approximately 9,000 cubic yards of uplands and would be approximately mean lower low water -5 feet. The excavated material will be spread into uplands within the review area. Proposed seawalls would be connected to the existing ones. The northern seawall would be approximately 675 linear feet. The fixed pier system would be approximately 8-foot-wide, and the finger piers would be approximately 3-foot-wide. The finger piers would be supported by 66, 10-inch pilings and would create 26 boat slips. Boat lifts would be constructed and supported by 78, 8-inch pilings (144 pilings total).

Approximately 100 cubic yards of material would be dredged from the opening of the proposed Community Marina A to connect it to the channel to Aransas Bay. The dredged material would be placed on-site on lots 50-52.

Community Marina B would be located at the existing boat ramp and would include a fixed pier system with 18 boat slips with 10 finger piers. The fixed pier system would be approximately 8-foot-wide, and the finger piers would be approximately 3-foot-wide. The finger piers would be supported by 50, 10-inch pilings and would create 26 boat slips. Boat lifts would be constructed and supported by 54, 8-inch pilings (104 pilings total). No mitigation is proposed.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2000-01591. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1064-F1

Applicant: Layton Property Company, LLC

Location: The project site is located in the Gulf Intracoastal Waterway (GIWW) and adjacent wetlands, at the northern most terminus of Lagoon Drive, in Crystal Beach, Galveston County, Texas.

Latitude and Longitude: 29.456355, -94.670713

Project Description: The applicant proposes to permanently discharge 6,080 cubic yards of fill material into 0.75 acre of waters of the U.S. for erosion control and the development of three residential lots. Specifically, 5,510 cubic yards of clean earthen fill will be discharged into 0.75 acre herbaceous shrub wetlands for residential lot development and 570 cubic yards of rock riprap will be discharged into 0.007 acre of shallow water habitat of the GIWW for erosion control and shoreline protection.

The applicant proposed to mitigate for the proposed impacts by purchasing the appropriate number of functional credit units for herbaceous shrub wetlands from the Gulf Coastal Plains Mitigation Bank. If credits become unavailable, the applicant will investigate an In-Lieu-Fee Program and review options for on- and off-site permittee responsible mitigation.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2023-00074. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1068-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202304261

Mark Havens

Chief Clerk

General Land Office

Filed: November 14, 2023



Office of the Governor

Notice of Inflation Rate for Termination of Defunding Municipality Determination during Fiscal Year 2024

Pursuant to Texas Local Government Code Section 109.006(a)(2), the Criminal Justice Division (CJD) of the Office of the Governor publishes this notice to all persons regarding the inflation rate used for termination of a defunding municipality determination during fiscal year 2024. As required by law, the CJD has computed the inflation rate using a price index that accurately reports changes in the purchasing power of the dollar for municipalities in this state. This computation is based on economic data evaluating the difference in the Consumer Price Index (CPI) between September 2023 and September 2022 and made available by the Texas Comptroller's Office available at Key Economic Indicators ([texas.gov](https://www.texas.gov)). The CJD has determined an inflation rate of 3.7% for fiscal year 2024.

TRD-202304174

Aimee Snoddy

Executive Director, Public Safety Office

Office of the Governor

Filed: November 9, 2023



Texas Health and Human Services Commission

Public Notice - Methodology for Determining Caseload Reduction Credit for the Temporary Assistance for Needy Families (TANF) Program for Federal Fiscal Year 2024

The Texas Health and Human Services Commission (HHSC) announces its intent to seek comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) Program caseload reduction credit for Federal Fiscal Year (FFY) 2024. HHSC will base the methodology on caseload reduction occurring from FFY 2005 to FFY 2023. This methodology

and the resulting estimated caseload reduction credit will be submitted for approval to the United States Department of Health and Human Services, Administration for Children and Families.

Section 407(b)(3) of the Social Security Act provides for a TANF caseload reduction credit, which gives a state credit for reducing its TANF caseload between a base year and a comparison year. To receive the credit, a state must complete and submit a report that, among other things, describes the methodology and the supporting data that the state used to calculate its caseload reduction estimates. See 45 C.F.R. §261.41(b)(5). Prior to submitting the report, the state must provide the public with an opportunity to comment on the estimate and methodology. See 45 C.F.R. §261.41(b)(6).

As the state agency that administers the TANF program in Texas, HHSC believes it is eligible for a caseload reduction credit and has developed the requisite estimate and methodology. HHSC hereby notifies the public of the opportunity to submit comments.

HHSC will post the methodology and the estimated caseload reduction credit on the HHSC website for FFY 2024 at <https://hhs.texas.gov/about-hhs/records-statistics/data-statistics/temporary-assistance-needy-families-tanf-statistics> by November 24, 2023. The public comment period begins November 24, 2023 and ends December 8, 2023.

Written Comments. Written comments may be sent by U.S. mail, fax, or email.

U.S. Mail

Texas Health and Human Services Commission

Attention: Aisha Crawford

701 W. 51st Street

MC 2106

Austin, Texas 78751

Phone number for package delivery: (512) 915-0519

Fax

Attention: Access and Eligibility Services - Program Policy, Aisha Crawford

Fax Number: (512) 438-2355

Email

aisha.crawford@hhs.texas.gov

TRD-202304262

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 14, 2023



Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of October 2023, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
THROUGHOUT TX	HIGH MOUNTAIN INSPECTION SERVICES INC	L07197	ODESSA	00	10/09/23
THROUGHOUT TX	METALLURGICAL ENGINEERING SERVICES INC	L07198	RICHARDSON	00	10/13/23

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BEAUMONT	BISON ENVIRONMENTAL SERVICES LLC	L06995	BEAUMONT	03	10/03/23
BISHOP	BASF CORPORATION	L06855	BISHOP	15	10/11/23
CONROE	CHEVRON PHILLIPS CHEMICAL COMPANY LP DBA DRILLING SPECIALTIES COMPANY A DIVISION OF CHEVRON PHILLIPS CHEMICAL COMPANY	L04825	CONROE	24	10/06/23
DALLAS	UROLOGY CLINICS OF NORTH TEXAS PLLC DBA CANCER CLINICS OF NORTH TEXAS	L07097	DALLAS	02	10/06/23
DALLAS	MEDWORKS OF ALABAMA LLC	L07023	DALLAS	05	10/13/23
DALLAS	UROLOGY CLINICS OF NORTH TEXAS PLLC DBA CANCER CLINICS OF NORTH TEXAS	L06645	DALLAS	12	10/02/23
DALLAS	UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS	L05947	DALLAS	55	10/02/23
FANNIN	COLETO CREEK POWER LLC	L06950	FANNIN	05	10/12/23

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

FRISCO	COLUMBIA MEDICAL CENTER OF PLANO SUBSIDIARY LP DBA MEDICAL CITY FRISCO A MEDICAL CENTER OF PLANO FACILITY	L06957	FRISCO	06	10/03/23
HOUSTON	HOUSTON CARDIOVASCUL AR ASSOCIATES	L05070	HOUSTON	23	10/09/23
HOUSTON	UNIVERSITY OF HOUSTON	L01886	HOUSTON	80	10/02/23
LAKE JACKSON	THE DOW CHEMICAL COMPANY	L00451	LAKE JACKSON	115	10/04/23
LUBBOCK	LUBBOCK COUNTY HOSPITAL DISTRICT OF LUBBOCK COUNTY TEXAS	L04719	LUBBOCK	175	10/11/23
MCKINNEY	BAYLOR MEDICAL CENTERS AT GARLAND AND MCKINNEY DBA BAYLOR SCOTT & WHITE MEDICAL CENTER - MCKINNEY	L06470	MCKINNEY	18	10/13/23
NACOGDOCHES	TH HEALTHCARE LTD DBA NACOGDOCHES MEDICAL CENTER	L02853	NACOGDOCHES	61	10/02/23
ODESSA	PERMIAN PREMIER HEALTH SERVICES INC	L06746	ODESSA	02	10/04/23
ODESSA	GCC PERMIAN LLC	L06964	ODESSA	03	10/03/23

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

ODESSA	TEXAS ONCOLOGY PA DBA TEXAS ONCOLOGY	L05140	ODESSA	26	10/04/23
PLANO	COLUMBIA MEDICAL CENTER OF PLANO SUBSIDIARY LP	L02032	PLANO	130	10/03/23
RICHARDSON	THE UNIVERSITY OF TEXAS AT DALLAS	L02114	RICHARDSON	71	10/04/23
SAN ANTONIO	IIA NUCLEAR SERIVICES INC	L05278	SAN ANTONIO	24	10/04/23
SAN ANTONIO	METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO LTD LLP	L05076	SAN ANTONIO	41	10/13/23
SAN ANTONIO	RLS (USA) INC	L04764	SAN ANTONIO	60	10/10/23
SUGAR LAND	FORT BEND HEART CENTER LTD LLP	L05678	SUGAR LAND	13	10/10/23
THREE RIVERS	DIAMOND SHAMROCK REFINING COMPANY LP	L03699	THREE RIVERS	32	10/05/23
THROUGHOUT TX	TEXAS MATERIALS GROUP INC	L06539	AUSTIN	11	10/06/23
THROUGHOUT TX	WEATHERFORD INTERNATIONAL LLC	L04286	BENBROOK	133	10/12/23
THROUGHOUT TX	DESERT NDT LLC DBA SUPERIOR INTEGRITY SERVICES	L06462	FORT WORTH	59	10/10/23
THROUGHOUT TX	HAIMO AMERICA INC	L06936	HOUSTON	13	10/11/23

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	ADVANCED CORROSION TECHNOLOGIES & TRAINING LLC DBA ACTT – ADVANCED CORROSION TECHNOLOGIES & TRAINING LLC	L06805	LA PORTE	28	10/05/23
THROUGHOUT TX	HOWLAND ENGINEERING AND SURVEYING CO INC	L05543	LAREDO	10	10/06/23
THROUGHOUT TX	XCEL NDT LLC	L07039	LONGVIEW	05	10/06/23
THROUGHOUT TX	TOTAL NDT LLC	L06736	LONGVIEW	12	10/10/23
THROUGHOUT TX	PROTECT LLC	L07110	MIDLAND	07	10/03/23
THROUGHOUT TX	UNIVERSAL PRESSURE PUMPING INC	L06871	PEARSALL	10	10/06/23
THROUGHOUT TX	TEXAS ONCOLOGY PA	L06240	ROUND ROCK	10	10/13/23
WACO	TEXAS ONCOLOGY PA	L05940	WACO	22	10/11/23

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
CLEBURNE	TEXAS HEALTH HARRIS METHODIST HOSPITAL CLEBURNE	L02039	CLEBURNE	51	10/11/23
FORT WORTH	FORT WORTH HEART PA	L05480	FORT WORTH	52	10/02/23
SUGAR LAND	FORT BEND HEART CENTER LTD LLP	L05678	SUGAR LAND	14	10/10/23
THROUGHOUT TX	N E TIME LLC	L06590	ROCKPORT	07	10/09/23

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AUSTIN	THERMO FINNIGAN LLC	L01186	AUSTIN	60	10/13/23
DALLAS	DALLAS NEPHROLOGY ASSOCIATES DBA DALLAS TRANSPLANT INSTITUTE	L02604	DALLAS	33	10/02/23
LUBBOCK	META ISOTOPE TECHNOLOGY LLC	L06827	LUBBOCK	08	10/03/23
PASADENA	QUANTUM TECHNICAL SERVICES LLC	L06406	PASADENA	24	10/04/23
STEPHENVILLE	TARLETON STATE UNIVERSITY DBA TEXAS INSTITUTE FOR ENVIRONMENTAL RESEARCH	L06892	STEPHENVILLE	02	10/02/23

TRD-202304282
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: November 15, 2023

◆ ◆ ◆

Texas Department of Housing and Community Affairs

HOME Single Family General Notice of Funding Availability

The Texas Department of Housing and Community Affairs (TDHCA or the Department) announces a NOFA of approximately \$20,437,314 in HOME funds for single family housing programs under the general set-aside utilizing a reservation system. These funds will be made available to HOME Reservation System Participants after a Reservation System Participation (RSP) Agreement has been ratified. Funds will be released subject to the Regional Allocation Formula (RAF) beginning Tuesday, December 5, 2023, at 10:00 a.m. Austin local time.

The availability and use of these funds are subject to the HOME rules including, but not limited to the following Texas Administrative Code (TAC) rules in effect at the time of application review or contract execution (as applicable): Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, the Single Family Programs Umbrella Rule; Chapter 21, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; Chapter 23, the Single Family

HOME Program, (State HOME Rules); and Tex. Gov't Code §2306. Other federal and state regulations include but are not limited to: 24 CFR Part 58 for environmental requirements, 2 CFR Part 200 for Uniform Administrative Requirements, 24 CFR §135.38 for Section 3 requirements, 24 CFR Part 5, Subpart A for fair housing, (Federal HOME Rules), and for units of government, the Uniform Grant and Contract Management requirements as outlined in Chapter 783 in the Texas Local Government (UGMS or TxGMS, as applicable). Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.

Eligible Activities

Homeowner Reconstruction Assistance (HRA). HRA provides funds for the reconstruction or new construction of a single family residence owned and occupied by eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, Homeowner Reconstruction Assistance Program, §§23.30 - 23.32.

Tenant-Based Rental Assistance (TBRA). TBRA provides rental subsidies to eligible low-income Households. Assistance may include rental, security, and utility deposits. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, Tenant-Based Rental Assistance Program, §§23.50 - 23.52.

Eligible Applicants include Units of General Local Government, Non-profit Organizations, Public Housing Authorities, Local Mental Health

Authorities, and Councils of Government. Funds may not be used in a Participating Jurisdiction (PJ).

Additional Information

The NOFA is available on the Department's website at <http://www.td-hca.state.tx.us/nofa.htm>.

All Application materials are available on the Department's website at <http://www.td-hca.state.tx.us/home-division/applications.htm>.

For questions regarding this NOFA, please contact the Single Family and Homeless Programs Division via email at HOME@td-hca.state.tx.us.

TRD-202304180

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: November 10, 2023

Texas Department of Insurance

Texas Windstorm Insurance Association--Declarations Pages Filings

In accordance with 28 TAC §5.4911, the Texas Windstorm Insurance Association (TWIA) has filed revised forms with the Texas Department of Insurance for approval:

--TWIA Commercial Policy - Builders Risk Declarations Page

--TWIA Commercial Policy - Business Property Only Declarations Page

--TWIA Commercial Policy - Habitational (Not Condo) Declarations Page

--TWIA Commercial Policy - Condo Building Master Declarations Page

TWIA is revising the declarations pages to reflect House Bill 3208, 88th Legislature, 2023. Under HB 3208, if an insured cancels their policy, TWIA will keep the entire annual premium unless the cancellation is for one of the reasons listed in Insurance Code §2210.204(d).

You can view the revised declarations pages, TWIA's description of the filings, and other supporting information online at www.tdi.texas.gov/submissions/indextwia.html#form. You can also get a copy of the filings from the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

Public Comment: Send comments on the revised form filings to Chief Clerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030 by 5:00 p.m., central time, on December 26, 2023.

Hearing Requests: To request a public hearing about the revised form filings, you must submit a request separately by 5:00 p.m., central time, on December 14, 2023. Send the hearing request by email to Chief Clerk@tdi.texas.gov or by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC: GC-CCO, P.O. Box 12030, Austin, Texas 78711-2030.

Reference Nos. P-1123-01, P-1123-02, P-1123-03, and P-1123-04; SERFF State Tracking Nos. S716555, S716556, S716557, and S716558

TRD-202304142

Jessica Barta

General Counsel

Texas Department of Insurance

Filed: November 9, 2023

Texas Lottery Commission

Scratch Ticket Game Number 2541 "20X POWER BLITZ"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2541 is "20X POWER BLITZ". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2541 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2541.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100, \$500 and \$5,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2541 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THR\$
\$5.00	FIV\$
\$10.00	TEN\$

\$20.00	TWY\$
\$40.00	FRTY\$
\$100	ONHN
\$500	FVHN
\$5,000	FVTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2541), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2541-0000001-001.

H. Pack - A Pack of "20X POWER BLITZ" Scratch Ticket Game contains 150 Scratch Tickets, packed in plastic shrink-wrapping and fan-folded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "20X POWER BLITZ" Scratch Ticket Game No. 2541.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "20X POWER BLITZ" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eleven (11) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the PRIZE for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eleven (11) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly eleven (11) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the eleven (11) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the eleven (11) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must

be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to five (5) times in accordance with the prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have one (1) WINNING NUMBER Play Symbol.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than one (1) time.

G. The "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols will never appear in the WINNING NUMBER Play Symbol spot.

H. The "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 03 and \$3).

2.3 Procedure for Claiming Prizes.

A. To claim a "20X POWER BLITZ" Scratch Ticket Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery.

If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "20X POWER BLITZ" Scratch Ticket Game prize of \$5,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "20X POWER BLITZ" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "20X POWER BLITZ" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "20X POWER BLITZ" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "20X POWER BLITZ" Scratch Ticket may be entered into one (1) of five (5)

promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 30,000,000 Scratch Tickets in the Scratch Ticket Game No. 2541. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2541 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1.00	2,800,000	10.71
\$2.00	1,800,000	16.67
\$3.00	400,000	75.00
\$5.00	900,000	33.33
\$10.00	150,000	200.00
\$20.00	150,000	200.00
\$40.00	11,375	2,637.36
\$100	3,500	8,571.43
\$500	63	476,190.48
\$5,000	8	3,750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2541 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2541, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202304271
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 15, 2023



Scratch Ticket Game Number 2542 "30X POWER WORD BLITZ"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2542 is "30X POWER WORD BLITZ". The play style is "other".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2542 shall be \$3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2542.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, 2X SYMBOL, 3X SYMBOL, 5X SYMBOL, 30X SYMBOL, \$3.00,

\$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$45.00, \$90.00, \$150, \$300, \$2,000 and \$60,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in

positive. Miscellaneous word style games may not have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2542 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
2X SYMBOL	DBL

3X SYMBOL	TRP
5X SYMBOL	WINX5
30X SYMBOL	WINX30
\$3.00	THR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$45.00	FRFV\$
\$90.00	NITY\$
\$150	ONFF
\$300	THHN
\$2,000	TOTH
\$60,000	60TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2542), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2542-0000001-001.

H. Pack - A Pack of "30X POWER WORD BLITZ" Scratch Ticket Game contains 125 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "30X POWER WORD BLITZ" Scratch Ticket Game No. 2542.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly seventy-eight (78) Play Symbols. GAMES 1 - 10 PLAY INSTRUCTIONS: The player will completely scratch all of the YOUR 18 LETTERS Play Symbols. The player will then scratch all of the letters found in GAMES 1 - 10 that exactly match the YOUR 18 LETTERS Play Symbols. If the player matches all the letters in the same GAME with the YOUR 18 LETTERS Play Symbols, the player wins the PRIZE for that GAME. MULTIPLIER PLAY INSTRUCTIONS: The player will scratch the MULTIPLIER play area to reveal 2 MULTIPLIER Play Symbols. If the player reveals 2 matching MULTIPLIER Play Symbols, the player multiplies the prize won in GAMES 1 - 10 by that multiplier and wins that amount. For example, revealing 2 "30X" MULTIPLIER Play Symbols will multiply the total prize won by 30 TIMES. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy-eight (78) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption; Miscellaneous word style games may not have Play Symbol Captions;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The Scratch Ticket shall be intact;
 6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
 8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The Scratch Ticket must not be counterfeit in whole or in part;
 10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-eight (78) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
 14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
 15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the seventy-eight (78) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the seventy-eight (78) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion,

refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. GENERAL: A Ticket can win up to four (4) times in accordance with the prize structure.
- B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
- C. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.
- D. GENERAL: Each Ticket consists of a YOUR 18 LETTERS play area, a GAMES 1 - 10 play area and a MULTIPLIER play area.
- E. GENERAL: Exposed words on winning Tickets must be identical to exposed words on Non-Winning Tickets, to avoid pick out of winners and non-winners.
- F. YOUR LETTERS: Each letter will appear once per Ticket in the YOUR 18 LETTERS play area.
- G. YOUR LETTERS: There will be a minimum of three (3) vowels in the YOUR 18 LETTERS play area. Vowels are A, E, I, O and U.
- H. YOUR LETTERS: A player will never find a word horizontally (in any direction), vertically (in any direction) or diagonally (in any direction) in the YOUR 18 LETTERS play area that matches a word in GAMES 1 - 10.
- I. YOUR LETTERS: A minimum of fourteen (14) YOUR 18 LETTERS will open at least one (1) letter in GAMES 1 - 10.
- J. YOUR LETTERS: None of the words from the TX_Prohibited_Words_Vers.2.042321.docx that contain three (3) or more letters will appear horizontally, vertically or diagonally (in any direction) in the YOUR 18 LETTERS play area.
- K. YOUR LETTERS: The words "VD" and "ED" will not be presented in a row horizontally or diagonally in the YOUR 18 LETTERS play area.
- L. GAMES 1 - 10: Each word will appear only once per Ticket in GAMES 1 - 10.
- M. GAMES 1 - 10: The length of the words found in GAMES 1 - 10 will range from three (3) to seven (7) letters, as shown on the artwork.
- N. GAMES 1 - 10: The \$3 and \$5 Prize Symbols will only appear in GAMES 3 - 10. The \$150 and \$300 Prize Symbols will only appear in GAMES 1 - 7. The \$2,000 and \$60,000 Prize Symbols will only appear in GAMES 1 - 4.
- O. GAMES 1 - 10: Only words from the approved word list (TX_Approved_Words_Vers.2.042321.doc) will appear in GAMES 1 - 10.
- P. GAMES 1 - 10: None of the words from the TX_Prohibited_Words_Vers.2.042321.docx that contain three (3) or more letters will appear vertically or diagonally (in any direction) in GAMES 1 - 10.
- Q. GAMES 1 - 10: The \$10.00, \$15.00, \$20.00, \$30.00, \$45.00 and \$90.00 Prize Symbols can appear in GAMES 1 - 10.
- R. MULTIPLIER: The "2X" (DBL), "3X" (TRP), "5X" (WINX5) and "30X" (WINX30) Play Symbols will only appear in the MULTIPLIER

play area and will never appear in the GAMES 1 - 10 or YOUR 18 LETTERS play areas.

S. MULTIPLIER: Two (2) matching MULTIPLIER Play Symbols of "2X" (DBL), "3X" (TRP), "5X" (WINX5) or "30X" (WINX30) will only appear on winning Tickets, as dictated by the prize structure.

T. MULTIPLIER: Tickets that do not win in the MULTIPLIER play area will display two (2) different MULTIPLIER Play Symbols.

U. MULTIPLIER: On Non-Winning Tickets and Tickets winning a prize in the GAMES 1 - 10 not multiplied by the MULTIPLIER play area, the MULTIPLIER Play Symbols will be used approximately evenly in each possible spot on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "30X POWER WORD BLITZ" Scratch Ticket Game prize of \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$45.00, \$90.00, \$150 or \$300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$45.00, \$90.00, \$150 or \$300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "30X POWER WORD BLITZ" Scratch Ticket Game prize of \$2,000 or \$60,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "30X POWER WORD BLITZ" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "30X POWER WORD BLITZ" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "30X POWER WORD BLITZ" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "30X POWER WORD BLITZ" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the

player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 24,000,000 Scratch Tickets in the Scratch Ticket Game No. 2542. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2542 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$3.00	2,496,000	9.62
\$5.00	960,000	25.00
\$10.00	912,000	26.32
\$15.00	624,000	38.46
\$20.00	192,000	125.00
\$30.00	240,000	100.00
\$45.00	24,000	1,000.00
\$90.00	20,000	1,200.00
\$150	4,800	5,000.00
\$300	800	30,000.00
\$2,000	50	480,000.00
\$60,000	10	2,400,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.38. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2542 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2542, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202304268

Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 15, 2023

in the print version of the Texas Register. The order is available in the on-line version of the November 24, 2023, issue of the Texas Register.)

TRD-202304178
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 10, 2023

◆ ◆ ◆
Supreme Court of Texas

Final Approval of Amendments to Canons 3B, 5, and 6 of the Texas Code of Judicial Conduct and the Procedural Rules for the Removal or Retirement of Judges, Now Titled the Procedural Rules for the State Commission on Judicial Conduct

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included

◆ ◆ ◆
Final Approval of Amendments to Texas Rules of Civil Procedure 221, 222, 225, and 504.2

Supreme Court of Texas

Misc. Docket No. 23-9088

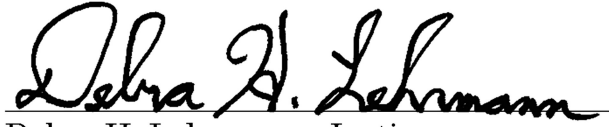
Final Approval of Amendments to Texas Rules of Civil Procedure 221, 222, 225, and 504.2

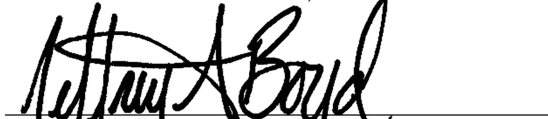
ORDERED that:

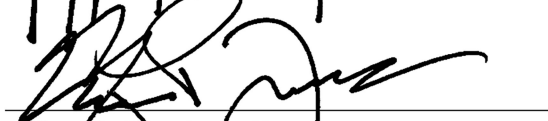
1. On July 14, 2023, in Misc. Dkt. No. 23-9044, the Court preliminarily approved amendments to Texas Rules of Civil Procedure 221, 222, 225, and 504.2 and invited public comment.
2. No comments were received, and no additional changes have been made to the rules. This Order gives final approval to the amended rules as set forth in Misc. Dkt. No. 23-9044 and reproduced below, effective September 1, 2023.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.


Dated: November 7, 2023.

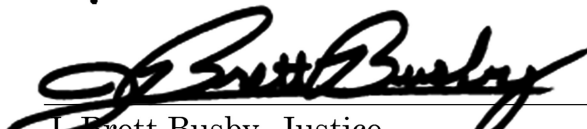

Nathan L. Hecht, Chief Justice


Debra H. Lehrmann, Justice


Jeffrey S. Boyd, Justice


John P. Devine, Justice


James D. Blacklock, Justice


J. Brett Busby, Justice


Jane N. Bland, Justice


Rebeca A. Huddle, Justice


Evan A. Young, Justice

TEXAS RULES OF CIVIL PROCEDURE

RULE 221. CHALLENGE TO THE ARRAY

When the jurors summoned have not been selected by jury commissioners or by drawing the names from a jury wheel, any party to a suit which is to be tried by a jury may, before the jury is drawn challenge the array upon the ground that the ~~officer~~sheriff or clerk summoning the jury has acted corruptly, and has wilfully summoned jurors known to be prejudiced against the party challenging or biased in favor of the adverse party. All such challenges must be in writing setting forth distinctly the grounds of such challenge and supported by the affidavit of the party or some other credible person. When such challenge is made, the court shall hear evidence and decide without delay whether or not the challenge shall be sustained.

RULE 222. WHEN CHALLENGE IS SUSTAINED

If the challenge be sustained, the array of jurors summoned shall be discharged, and the court shall order other jurors summoned in their stead, and shall direct that the ~~officer~~sheriff or clerk who summoned the persons so discharged, and on account of whose misconduct the challenge has been sustained, shall not summon any other jurors in the case.

RULE 225. SUMMONING TALESMAN

When there are not as many as twenty-four names drawn from the box, if in the district court, or as many as twelve, if in the county court, the court shall direct the sheriff or clerk to summon such number of qualified persons as the court deems necessary to complete the panel. The names of those thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding rules.

RULE 504. JURY

RULE 504.2. EMPANELING THE JURY

- (a) *Drawing Jury and Oath.* If no method of electronic draw has been implemented, the judge must write the names of all prospective jurors present on separate slips of paper as nearly alike as may be, place them in a box, mix them well, and then draw the names one by one from the box. The judge must list the names drawn and deliver a copy to each of the parties or their attorneys.

- (b) *Oath.* After the draw, the judge must swear the panel as follows: “You solemnly swear or affirm that you will give true and correct answers to all questions asked of you concerning your qualifications as a juror.”
- (c) *Questioning the Jury.* The judge, the parties, or their attorneys will be allowed to question jurors as to their ability to serve impartially in the trial but may not ask the jurors how they will rule in the case. The judge will have discretion to allow or disallow specific questions and determine the amount of time each side will have for this process.
- (d) *Challenge for Cause.* A party may challenge any juror for cause. A challenge for cause is an objection made to a juror alleging some fact, such as a bias or prejudice, that disqualifies the juror from serving in the case or that renders the juror unfit to sit on the jury. The challenge must be made during jury questioning. The party must explain to the judge why the juror should be excluded from the jury. The judge must evaluate the questions and answers given and either grant or deny the challenge. When a challenge for cause has been sustained, the juror must be excused.
- (e) *Challenges Not for Cause.* After the judge determines any challenges for cause, each party may select up to 3 jurors to excuse for any reason or no reason at all. But no prospective juror may be excused for membership in a constitutionally protected class.
- (f) *The Jury.* After all challenges, the first 6 prospective jurors remaining on the list constitute the jury to try the case.
- (g) *If Jury Is Incomplete.* If challenges reduce the number of prospective jurors below 6, the judge may direct the sheriff, ~~or constable,~~ or clerk to summon others and allow them to be questioned and challenged by the parties as before, until at least 6 remain.
- (h) *Jury Sworn.* When the jury has been selected, the judge must require them to take substantially the following oath: “You solemnly swear or affirm that you will render a true verdict according to the law and the evidence presented.”

TRD-202304177
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 10, 2023

Final Approval of Amendments to the Rule for Magistrates in
Inmate Litigation to Expand the Applicability of the Rule to
Litigation Involving Certain Civilly Committed Individuals



Supreme Court of Texas

Misc. Docket No. 23-9090

Final Approval of Amendments to the Rule for Magistrates in Inmate Litigation to Expand the Applicability of the Rule to Litigation Involving Certain Civilly Committed Individuals

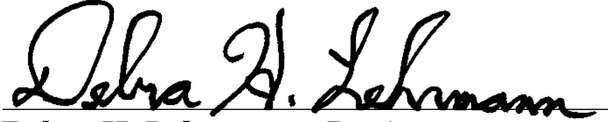
ORDERED that:

1. On July 19, 2023, in Misc. Dkt. No. 23-9045, the Court preliminarily approved amendments to the Rule for Magistrates in Inmate Litigation, now titled the Rule for Magistrates in Inmate Litigation and Litigation Involving Certain Civilly Committed Individuals, and invited public comment.
2. No comments were received, and no additional changes have been made to the amended rule. This Order gives final approval to the amended rule as set forth in Misc. Dkt. No. 23-9045 and reproduced below, effective December 1, 2023.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

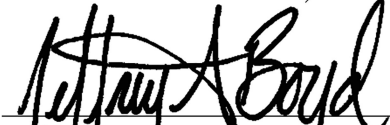
Dated: November 7, 2023.



Nathan L. Hecht, Chief Justice



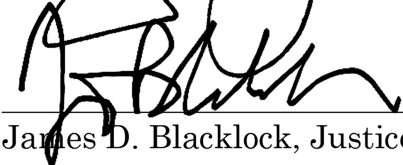
Debra H. Lehrmann, Justice



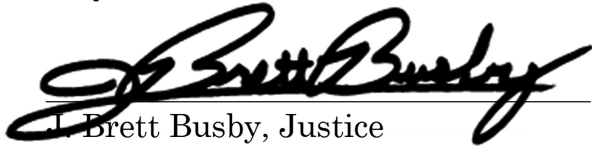
Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



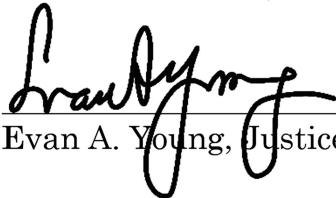
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

**RULE FOR MAGISTRATES IN INMATE LITIGATION AND LITIGATION
INVOLVING CERTAIN CIVILLY COMMITTED INDIVIDUALS**

1.01 AUTHORITY

This rule is promulgated under authority of Sections 14.013 and 14A.061, Civil Practice and Remedies Code.

2.01 APPOINTMENT

(a) A judge of a court having jurisdiction of a suit subject to Chapters 14 or 14A, Civil Practice and Remedies Code, may appoint a full-time or part-time magistrate to perform the duties authorized by ~~that~~those chapters if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a magistrate.

(b) If a court has jurisdiction in more than one county, a magistrate appointed by that court may serve only in a county in which the commissioners court has authorized the magistrate's appointment.

(c) If more than one court in a county has jurisdiction of a suit under Chapters 14 or 14A, the commissioners court may authorize the appointment of a magistrate for each court or may authorize one or more magistrates to share service with two or more courts.

(d) If a magistrate serves more than one court, the magistrate's appointment must be made with the unanimous approval of all the judges under whom the magistrate serves.

3.01 QUALIFICATIONS

To be eligible for appointment as a magistrate, a person must meet the requirements and qualifications to serve as a judge of the court or courts for which the magistrate is appointed.

4.01 COMPENSATION

(a) If funds are provided to the Supreme Court by appropriation or interagency contracts as provided by Section 14.013-(b) or 14A.061(b), Civil Practice and Remedies Code, a magistrate may be paid a salary, on an hourly basis, or on a per-case basis, ~~or on such other basis as may be specified by administrative order of the Supreme Court.~~

(b) If funds are not provided to the Supreme Court, a magistrate may be paid a salary or fees provided in the schedule of fees adopted by the judges of the county pursuant to Article 26.05, Code of Criminal Procedure, as approved by the commissioners court in which the magistrate serves.

(c) If paid a salary, the magistrate's salary is paid from the county fund available for payment of officers' salaries. If paid by fee, the magistrate's fees are paid from the general fund of the county.

5.01 TERMINATION OF MAGISTRATE

(a) A magistrate who serves a single court serves at the will of the judge of that court.

(b) The employment of a magistrate who serves more than two courts may only be terminated by a majority vote of all the judges of the courts which the magistrate serves.

(c) The employment of a magistrate who serves two courts may be terminated by either of the judges of the courts which the magistrate serves.

6.01 CASES THAT MAY BE REFERRED

Except as provided by this rule, a judge of a court may refer to a magistrate any suit brought by an inmate, as defined in section 14.001(3), Civil Practice and Remedies Code, or a civilly committed individual, as defined in section 14A.001(1), Civil Practice and Remedies Code, in a district, county, or justice of the peace, or small-claims court in which a Statement of Inability to Afford Payment of Court Costs or a similar an affidavit or unsworn declaration of inability to pay costs is filed by the inmate or civilly committed individual. This rule does not apply to an action brought under the Family Code.

7.01 ORDER OF REFERRAL

(a) In referring a case to a magistrate, the judge of the referring court ~~shall~~must render:

(1) an individual order of referral; or

(2) a general order of referral specifying the class and type of cases to be heard by the magistrate.

(b) The order of referral may limit the power or duties of a magistrate.

8.01 AUTHORITY OF MAGISTRATES

Except as limited by an order of referral, a magistrate has the same jurisdiction, authority, and power as the judge of the referring court under Chapters 14 and 14A, Civil Practice and Remedies Code, including, but not limited to the authority to:

- (1) dismiss a claim pursuant to Sections 14.003, 14.005, 14.006, ~~or~~ 14.010, 14A.051, 14A.053, 14A.054, or 14A.058, Civil Practice and Remedies Code,
- (2) order payment of costs pursuant to Sections 14.006, ~~and~~ 14.007, 14A.054, or 14A.055, Civil Practice and Remedies Code, and
- (3) hold hearings as provided in Sections 14.003, 14.008, 14A.051, or 14A.056, Civil Practice and Remedies Code.

9.01 POWERS OF MAGISTRATE

A magistrate may:

- (1) conduct a hearing;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) recommend an order to be rendered in a case;
- (11) regulate all proceedings in a hearing before the magistrate; and

- (12) take action as necessary and proper for the efficient performance of the magistrate's duties.

10.01 ATTENDANCE OF BAILIFF

A bailiff may attend a hearing by a magistrate if directed by the referring court.

11.01 COURT REPORTER

(a) A court reporter is not required during a hearing held by a magistrate appointed under this rule.

(b) A party, the magistrate, or the referring court may provide for a reporter during the hearing.

(c) The record may be preserved by any other means approved by the magistrate.

(d) The referring court or magistrate may tax the expense of preserving the record as costs.

12.01 WITNESS

(a) A witness appearing before a magistrate is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

(1) failed to appear before a magistrate after being summoned; or

(2) improperly refused to answer questions if the refusal has been certified to the court by the magistrate.

13.01 REPORT

(a) The magistrate's report may contain the magistrate's findings, conclusion, or recommendations. The magistrate's report must be in writing in the form directed by the referring court. The form may be a notation on the referring court's docket sheet.

(b) ~~After a hearing, t~~The magistrate ~~shall~~must provide the parties participating in the hearing notice of the substance of the magistrate's report.

(c) Notice ~~may~~must be given to the parties: by a method authorized by section 80.002, Government Code.

~~(1) — in open court, or an oral statement or a copy of the magistrate's written report; or~~

~~(2) — by certified mail, return receipt requested.~~

(d) If notice is given by mail, ~~T~~the magistrate shall~~must~~ certify the date of mailing of notice ~~by certified mail~~. Notice is considered given on the third day after the date of mailing.

(e) ~~After a hearing conducted by a magistrate, t~~The magistrate shall~~must~~ send the magistrate's signed and dated report and all other papers relating to the case to the referring court.

14.01 NOTICE OF RIGHT TO APPEAL

~~(a) —~~ Notice of the right of appeal to the judge of the referring court ~~shall~~must be given to ~~all~~the parties in the magistrate's report.

~~(b) —~~ The notice ~~may~~ be given:

~~(1) — by oral statement in open court;~~

~~(2) — by posting inside or outside the courtroom of the referring court;~~
or

~~(3) — as otherwise directed by the referring court.~~

15.01 ORDER OF COURT

(a) Pending appeal of the magistrate's report to the referring court, the decisions and recommendations of the magistrate are in full force and effect and are enforceable as an order of the referring court, except for orders providing for incarceration, civil commitment, or for the appointment of a receiver.

(b) If an appeal to the referring court is not filed or the right to an appeal to the referring court is waived, the findings and recommendations of the magistrate become the order of the referring court only on the referring court's signing an order conforming to the magistrate's report.

16.01 JUDICIAL ACTION ON MAGISTRATE'S REPORT

Unless a party files a written notice of appeal, the referring court may:

- (1) adopt, modify, or reject the magistrate's report;
- (2) hear further evidence; or
- (3) recommit the matter to the magistrate for further proceedings.

17.01 APPEAL TO REFERRING COURT

(a) A party may appeal a magistrate's report by filing notice of appeal not later than ~~the third~~10 days after the date the party receives notice of the substance of the magistrate's report as provided by 13.01.

(b) An appeal to the referring court must be in writing specifying the findings and conclusions of the magistrate to which the party objects. The appeal is limited to the specified findings and conclusions.

(c) On appeal to the referring court, the parties may present witnesses as in a hearing de novo on the issues raised in the appeal.

(d) Notice of an appeal to the referring court ~~shall~~must be given to the opposing attorney under Rule 21a, Texas Rules of Civil Procedure.

(e) If an appeal to the referring court is filed by a party, any other party may file an appeal to the referring court not later than the seventh day after the date the initial appeal was filed.

(f) The referring court, after notice to the parties, ~~shall~~must hold a hearing on all appeals not later than ~~the 30th~~days after the date ~~on which the magistrate's report was adopted by the referring court~~the appeal is submitted in writing.

(g) The parties may waive the right of appeal to the referring court in writing or on the record.

18.01 APPELLATE REVIEW

(a) Failure to appeal to the referring court, by waiver or otherwise, ~~the approval by the referring court of a magistrate's report~~ does not deprive a party of the right to appeal to or request other relief from a court of appeals or the ~~s~~Supreme ~~e~~Court.

(b) The date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the sSupreme eCourt.

19.01 IMMUNITY

A magistrate appointed under the subchapter has the judicial immunity of a district judge. All existing immunity granted a magistrate by law, express or implied, continues in full force and effect.

TRD-202304179
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 10, 2023



Texas Water Development Board

Request for Applications - Regional Flood Planning

Pursuant to 31 TAC 361, Subchapter F, the Texas Water Development Board (TWDB) requests submission of regional flood planning grant applications leading to the possible award of contracts to develop a regional flood plan as described in 31 TAC Chapter 361. In order to receive a grant, the applicant must be a political subdivision of the state and must have been designated a planning group sponsor by a regional flood planning group (RFPG) as set forth in 31 TAC §361.12(a)(1).

Purpose and Objectives

Activities to be performed under this Request for Applications (RFA) will be based on a scope of work developed by TWDB that supports RFPG efforts to complete their 2028 Regional Flood Plans in accordance with statute, rule, and guidance requirements.

Description of Funding Consideration

Total funding for activities related to the development or revision of a regional flood plan must not exceed 100 percent of the total cost of the planning for that flood planning region.

In the event that acceptable applications are not submitted or that insufficient funds are available to fund proposed activities, TWDB retains the right to not award and/or commit contract funds.

Applicants should review and utilize the following documents, also found online at <http://www.twdb.texas.gov/flood/planning/planning-docu/2028/index.asp>

Regional Flood Planning Grant Application Instructions

Regional Flood Planning Grant Application Checklist

Draft Regional Flood Planning Grant Scope of Work

Draft Recommended Contractor (RFPG Sponsor) Task Budget

Contact Person for Additional Information

Requests for information may be directed to Anita Machiavello at floodplanning@twdb.texas.gov or by calling (512) 463-5158.

Deadline

One complete regional flood planning grant application must be submitted electronically via email and in Portable Document Format (PDF) to **TWDB no later than 5:00 p.m. (CST) on February 22, 2024**. TWDB file limit is 100 MB.

Applications must be emailed to Bid-Room@twdb.texas.gov with a copy to floodplanning@twdb.texas.gov

TRD-202304188

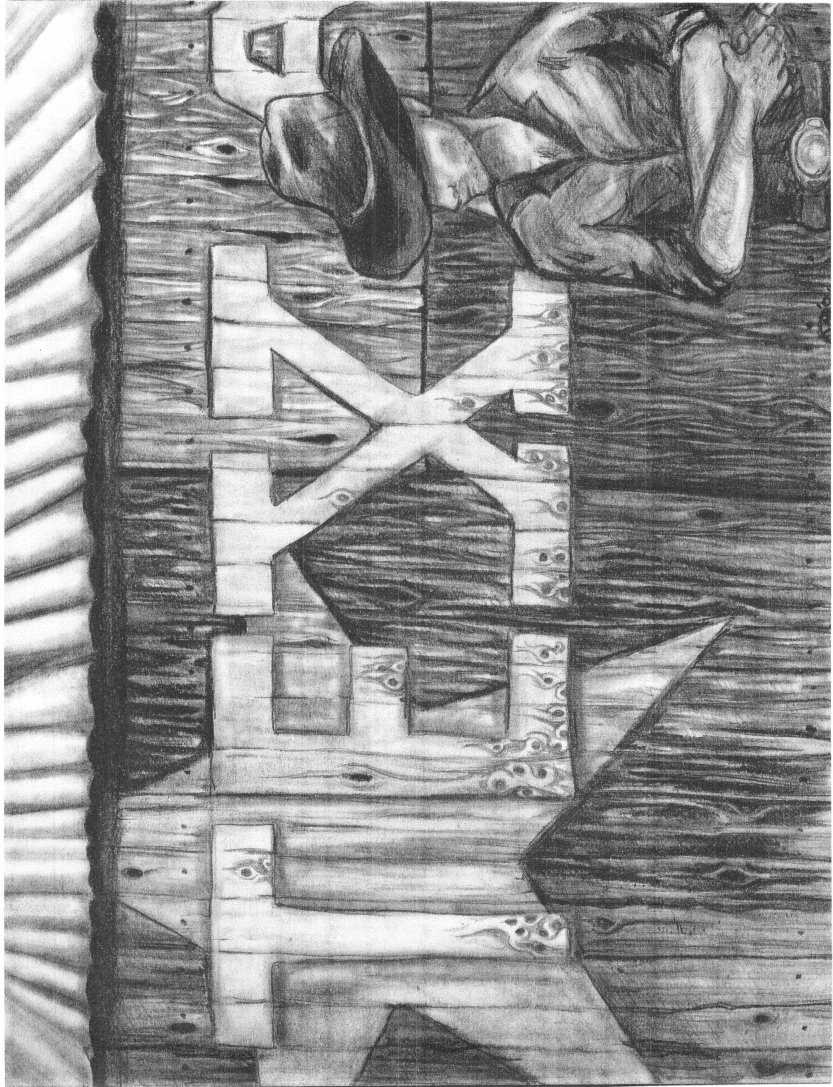
Ashley Harden

General Counsel

Texas Water Development Board

Filed: November 10, 2023





How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “48 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 48 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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