PROPOSED RULES

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 2. TEXAS ETHICS COMMISSION

CHAPTER 8. ADVISORY OPINIONS

1 TAC §§8.1, 8.3, 8.5, 8.7, 8.11, 8.13, 8.15, 8.17 - 8.19


Section 571.091 of the Government Code requires the Commission to "prepare a written opinion answering the request of a person subject to [certain identified] laws for an opinion about the application of any of these laws to the person in regard to a specified existing or hypothetical factual situation." The Commission is also required to "issue an advisory opinion not later than the 60th day after the date the commission receives the request." By Commission vote, the 60-day deadline can be extended twice by 30 days.

Section 571.097 of the Government Code provides a defense to prosecution or to the imposition of a civil penalty that the person reasonably relied on a written advisory opinion relating to the provision of the law the person is alleged to have violated or relating to a fact situation that is substantially similar to the fact situation in which the person is involved. Thus, an advisory opinion provides a useful function for the regulated community by providing assurance that a certain action is permissible. In 2019, the legislature passed Senate Bill 548, amending section 571.097 to state that a requestor of an opinion will have a similar defense if the requestor submits a written advisory opinion and the Commission does not issue an opinion within the 60-day period required by section 571.092. The defense applies only to acts giving rise to a potential violation of law occurring in the period beginning on the date the deadline passes and ending on the date the Commission issues the requested opinion. Thus, if a person requests an opinion and the Commission does not issue an opinion within the required 60-day period, or within the extended time period if the Commission votes to extend by 30 or 60 days, then the requestor has an absolute defense. The amendment is effective on September 1, 2019.

The passage of Senate Bill 548 prompted Commission staff to review the existing procedural rules for advisory opinions. Staff’s primary concern is that a person who submits a request for an advisory opinion would have a defense to prosecution if the Commission does not meet in time to meet the 60-day deadline, or if the Commission meets to consider a draft opinion but does not adopt an opinion because of insufficient votes. At the November meeting, some of the commissioners expressed support for a rule that would automatically extend the 60-day deadline by another 60 days. The draft rules that are prepared for this agenda item include a rule (§8.13(b)) that would enact automatic extensions and numerous additional changes to clarify the advisory opinion process for both requestors and staff.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed amendments and new rule are in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the amended and new rules.

The Executive Director has also determined that for each year of the first five years the proposed amendments and new rule are in effect, the public benefits will be clarity in the rules for submission of advisory opinion requests and issuance of advisory opinions. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new rule.

The Executive Director has determined that during the first five years that the proposed amendments and new rule are in effect, they 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 in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amendments and new rule from any member of the public. A written statement should be emailed to public-comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amendments and new rule may do so at any Commission meeting during the agenda item relating to the proposed amendments and new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission’s website at www.ethics.state.tx.us.
The amended and new rules are proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed amendments and new rule affect Subchapter D of Chapter 571 of the Government Code.

§8.1. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: AOR number--An advisory opinion request file number assigned by the executive director to a pending advisory opinion request in accordance with this chapter.

§8.3. Subject of an Advisory Opinion.
(a) The commission may only [will] issue a written advisory opinion on the application of any of the following laws: [laws to a person qualified to make a request under §8.5 of this title (relating to Persons Eligible To Receive an Advisory Opinion):]

   (1) Government Code, Chapter 302 (concerning Speaker of the House of Representatives);
   (2) Government Code, Chapter 303 (concerning Governor for a Day and Speaker's Reunion Day Ceremonies);
   (3) Government Code, Chapter 305 (concerning Registration of Lobbyists);
   (4) Government Code, Chapter 572 (concerning Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest);
   (5) Government Code, Chapter 2004 (concerning Representation Before State Agencies);
   (6) Local Government Code, Chapter 159, Subchapter C, in connection with a county judicial officer, as defined by Section 159.051, Local Government Code, who elects to file a financial statement with the commission;
   (7) Election Code, Title 15 (concerning Regulating Political Funds and Campaigns);
   (8) Penal Code, Chapter 36 (concerning Bribery and Corruption Influence);
   (9) Penal Code, Chapter 39 (concerning Abuse of Office);
   (10) Government Code, §2152.064 (concerning Conflict of Interest in Certain Transactions); and
   (11) Government Code, §2155.003 (concerning Conflict of Interest).

(b) The commission may [will] not issue an advisory opinion that concerns the subject matter of pending litigation known to the commission.

(c) For purposes of this section, the term litigation includes a sworn complaint proceeding before the commission only if the Government Code Subchapters C - H, Chapter 2001, apply to the proceeding.

(d) An advisory opinion cannot resolve a disputed question of fact.

§8.5. Persons Eligible to [To] Receive an Advisory Opinion.
A person who is subject to one of the laws described in §8.3(a) of this chapter [title] (relating to Subject of an Advisory Opinion [Advisory Opinions]) may request an opinion that advises how the laws apply to that person in a specific real or hypothetical factual situation.

§8.7. Request for an Advisory Opinion.
(a) A request for an advisory opinion shall describe a specified factual situation. The facts specified may be real or hypothetical. The request must provide sufficient detail to permit the commission to provide a response to the request, including the name of the person making the request and, if applicable, the name of the person on whose behalf the request is made.

(b) A request for an advisory opinion shall be:

   (1) in writing; and
   (2) mailed or hand-delivered [writing. A written request may be mailed, hand-delivered, or faxed] to the commission at the agency office or emailed to the commission's email address designated for receiving requests.

§8.11. Review and Processing of a Request.
(a) Upon receipt of a written request for an advisory opinion, the executive director shall [will] determine whether the request:

   (1) pertains to the application of a law specified [request is one the commission will answer] under §8.3 of this chapter [title (relating to Subject of an Advisory Opinions)];
   (2) meets the standing requirements of §8.5 of this chapter;
   (3) meets the form requirements of §8.7 of this chapter; and
   (4) cannot be answered by written response under §8.17 of this chapter by reference to the plain language of a statute, commission rule, or advisory opinion.

(b) If the executive director determines that a request for an opinion meets the requirements of this chapter as set forth in subsection (a)(1)-(3) of this section and that the request cannot be answered by written response under §8.17 of this chapter, [the commission will answer the request] the executive director shall [will] assign an AOR number to the request. The executive director shall notify the person making the request of the AOR number and of the proposed wording of the question to be answered by the commission.

(c) If the executive director determines that a request for an opinion does not meet the requirements of this chapter as set forth in subsection (a)(1)-(3) of this section or that the request can be answered by written response under §8.17 of this chapter, [request is one the commission cannot answer] the executive director shall notify the person making the request of the reason the person making the request is not entitled to an advisory opinion in response to the request [will not be answered].

(a) The commission shall issue an advisory opinion in response to a request that meets the requirements of this chapter not later than the 60th day after the date the commission receives the [written] request.

(b) The time available to issue an advisory opinion in response to a written request is automatically extended for 60 days pursuant to §571.092(b), Government Code. [For purposes of calculating the time period under subsection (a) of this section, an advisory opinion request is deemed to have been received on the date the executive director determines the request complies with §§8.3, 8.5, and 8.7 of this title (relating to Subject of an Advisory Opinion; Persons Eligible To Receive an Advisory Opinion; and Request for an Advisory Opinion) and assigns the request an AOR number.]

(c) The authority granted by the Act, §1.29(b), is delegated to the staff of the commission.

§8.15. Publication in Texas Register; Comments.
(a) Each request assigned an AOR number under this chapter shall be published in summary form in the Texas Register.
(b) Any [interested] person may submit written comments to the commission concerning an advisory opinion request. Comments submitted should reference the AOR number.

If the executive director determines that a request can be answered by reference to the plain language of a statute, [or a] commission rule, or advisory opinion: [if the question has already been answered by the commission, then in either case]
(1) the executive director shall [may] provide a written response to the person making the request that cites the language of the statute, [or] rule, or advisory opinion, [the prior determination,] as applicable; and
(2) the person making the request is not entitled to an advisory opinion in response to the request.

§8.18. No Defense to Prosecution or Civil Penalty.
A person who requests an advisory opinion does not obtain a defense to prosecution or to imposition of a civil penalty by requesting the opinion if any of the following apply:
(1) the commission is not authorized to answer the request because it does not pertain to the application of a law specified under §8.3 of this chapter;
(2) the request does not meet the standing requirements of §8.5 of this chapter;
(3) the request does not meet the form requirements of §8.7 of this chapter; or
(4) the executive director responds to the request by written response under §8.17 of this chapter.

(a) The name of a person who requests an advisory opinion is confidential.
(b) The original request for an advisory opinion shall be placed in a confidential file. [No original request or copy of an original request may be removed from the agency office.]
(c) Confidentiality under subsection (a) of this section may be waived only if the person making the request for an advisory opinion provides a verified, written waiver of confidentiality to the executive director.
(d) If a request for a copy of an advisory opinion request is received, the executive director shall prepare a redacted version of the advisory opinion request by deleting any information that is likely to identify the person making the request. The redacted version of the request shall be provided to the person who requested a copy of the advisory opinion request.

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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Anne Temple Peters
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES
1 TAC §12.29, §12.30

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 12 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposes amending §12.29, regarding Subpoenas Issued by Commission, and adding new §12.30, regarding Subpoenas Issued by Counsel for the Respondent. The amendment and new rule are proposed to implement Senate Bill 548 from the 86th Texas Legislature.

Section 571.137 of the Government Code authorizes the Commission to issue subpoenas in connection with a preliminary review (on application by Commission staff) or a formal hearing. The 2019 regular legislative session passed Senate Bill 548, which made the following amendments:

"(f) Counsel for the respondent may subpoena a witness to a preliminary review hearing in the same manner as an attorney may issue a subpoena in a proceeding in a county or district court."

Section 571.130. Formal Hearing: Subpoenas and Witnesses.
"(f) Counsel for the respondent may subpoena a witness to a formal hearing in the same manner as an attorney may issue a subpoena in a proceeding in a county or district court."

The bill provides no further guidance regarding the form, scope, or enforcement of such subpoenas. However, it is likely that any such subpoena must be issued in accordance with the form, service, and notice requirements of the Texas Rules of Civil Procedure ("TRCP").

In response to the bill, Commission staff considered the need for any rules to clarify such subpoenas. Staff have expressed concerns about subpoenas being issued without receiving any notice. To address these concerns, staff drafted this rule that would require any subpoena and proof of service to be filed with the Commission within three days of service. The rule also includes an enforcement mechanism authorizing the Commission's presiding officer to essentially sanction a respondent for noncompliance by excluding evidence obtained with the subpoena.

The statute specifically authorizes a respondent's counsel to "subpoena a witness to [a hearing] in the same manner as an attorney may issue a subpoena in a proceeding in a county or district court." This appears, at the very least, to authorize a subpoena commanding a person to "attend and give testimony at a ... hearing." It is not entirely clear whether this would authorize a subpoena to compel a person to produce documents or other tangible items at a hearing. The subpoena and discovery rules in the TRCP often use the term "witness" broadly to refer to a person served with or responding to a subpoena.

Senate Bill 548 applies only to a complaint filed on or after September 1, 2019.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed amendment and new rule
are in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the amended and new rule.

The Executive Director has also determined that for each year of the first five years the proposed amendment and new rule are in effect, the public benefits will be clarity in the rules for issuance of a subpoena by a respondent's attorney. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and new rule.

The Executive Director has determined that during the first five years that the proposed amendment and new rule are in effect, they 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 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 rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amendment and new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amendment and new rule may do so at any Commission meeting during the agenda item relating to the proposed amendment and new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission’s website at www.ethics.state.tx.us.

The amended and new rule are proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed amendment and new rule affect §§571.125 and 571.130 of the Government Code.

§12.29.  Subpoenas Issued by Commission.
(a)  A subpoena issued under section 571.137 of the Government Code shall specify the date, time, place, and manner for execution of the subpoena.

(b)  A subpoena issued under section 571.137 of the Government Code that requires a person to provide testimony shall be served on that person at least 10 business days before the date the subpoena is to be executed.

(a)  This section applies only to subpoenas issued by a respondent's counsel under section 571.125(f) (concerning the issuance of a subpoena for a witness in a preliminary review hearing) or 571.130(f) (concerning the issuance of a subpoena for a witness in a formal hearing) of the Government Code.

(b)  A subpoena must be issued in the name of "The State of Texas" and must:

(1)  state the sworn complaint numbers for the sworn complaints at issue in the hearing at which the witness is summoned to appear;

(2)  state that the subpoena pertains to a sworn complaint proceeding before the Texas Ethics Commission;

(3)  state the date on which the subpoena is issued;

(4)  identify the person to whom the subpoena is issued;

(5)  state the time and place of the preliminary review hearing or formal hearing at which the subpoena directs the person to appear;

(6)  identify the respondent at whose instance the subpoena is issued and the respondent's attorney of record;

(7)  specify with reasonable particularity any documents with which the person to whom the subpoena is directed shall appear;

(8)  state the text of §12.31(i) of this chapter; and

(9)  be signed by the attorney issuing the subpoena.

c)  A subpoena must command the person to whom it is directed to appear and give testimony at:

(1)  a preliminary review hearing; or

(2)  a formal hearing.

d)  A subpoena may only direct a person to appear, with or without documents, and give testimony at a preliminary review hearing or formal hearing before the commission.

e)  A subpoena may be issued only by the counsel of record for a respondent in a sworn complaint proceeding before the commission against that respondent.

(f)  Service.

(1)  Manner of service. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the sworn complaint proceeding, the subpoena may be served on the witness's attorney of record.

(2)  Deadline for service. A subpoena must be served upon the person required to appear at least 21 days before the preliminary review hearing or formal hearing at which the person is required to appear. The subpoena and proof of service must be filed with the commission within three days of its service on the person required to appear.

(3)  Proof of service. Proof of service must be made by filing either:

(A)  the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(B)  a statement by the person who made the service stating the date, time, manner of service, and the name of the person served.

(g)  Response.

(1)  Except as provided in this subsection, a person served with a subpoena must comply with the command stated therein unless discharged by the commission or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of hearing from day to day until discharged by the commission or the party summoning the witness.

(2)  If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must desig-
(3) A person commanded to appear with documents must produce the documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

(4) A person commanded to appear at a hearing must file any motion to quash the subpoena or objection to a requirement to appear with certain documents with the commission no later than the 14th day before the hearing at which the person is directed to appear. Commission staff may move to quash a subpoena or object to appearance with certain documents in the same manner as the person commanded to appear by the subpoena. The filer of a motion to quash or objection to a requirement to appear with certain documents must serve the motion or objection on the proponent of the subpoena in person, by mail, by commercial delivery service, by fax, by email, or by other such manner as the presiding officer of the commission may direct, no later than the deadline for filing the motion to quash or objection to appearance with documents with the commission. After affording commission staff and the person commanded to appear an opportunity to move to quash the subpoena or object to appearance with certain documents, and affording the proponent of the subpoena an opportunity to respond to the motion to quash or objection to appearance with documents, the commission's presiding officer shall rule on a motion to quash or objection to appearance with documents.

(5) A person commanded to attend and give testimony, or to produce documents or things, at a preliminary review hearing or formal hearing may object to giving testimony or producing documents at the time and place specified for the hearing, rather than under subsection (g)(4) of this section.

(6) A party's appearance with a document in response to a subpoena directing the party to appear with the document authenticates the document for use against that party in any proceeding before the commission unless the party appearing with the document objects to the authenticity of the document, or any part of it, at the time of the party's appearance, stating the specific basis for objection. An objection must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity. The requirement that the commission provide a reasonable opportunity to establish the document's authenticity may be satisfied by the opportunity to present a witness to authenticate the document at a subsequent hearing before the commission.

(h) A counsel for a respondent issuing a subpoena must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on a motion to quash or objection to appearance with documents, the presiding officer must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The presiding officer may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

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

Anne Temple Peters
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 463-5800

1 TAC §12.34

The Texas Ethics Commission (the Commission) proposes new Texas Ethics Commission Rules §12.34, regarding Agreed Orders, of Subchapter A of Chapter 12, of Title 1, Part 2, of the Texas Administrative Code.

Historically, the Commission has entered into three types of agreed orders to resolve sworn complaints filed with the Commission: (1) an assurance of voluntary compliance or "AVOC," (2) a notice of reporting error or "NORE," and (3) an agreed order and resolution. Most agreed orders are AVOCs or resolutions. Staff consensus is that a rule setting out the types of agreed orders that are typically issued by the Commission would help in the process of negotiating with respondents to settle complaints and would help ensure consistency in proposing agreed orders.

The rule does not limit the Commission to proposing only these three types of agreed orders, but merely lists the three types of orders that the Commission has historically issued. The rule does not address dismissal orders or other final orders that do not require an agreement between the Commission and a respondent.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the new rule.

The Executive Director has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits will be clarity in the types of agreed orders issued by the Commission in response to a sworn complaint. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The Executive Director has determined that during the first five years that the proposed new rule is in effect, they 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 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 rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed new rule may do so at any Commission meeting during the agenda item relating to the proposed new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission’s website at www.ethics.state.tx.us.
Statutory authority

The new rule is proposed under Texas Government Code §§571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed new rule affects Subchapter E of Chapter 571 of the Government Code.

§12.34. Agreed Orders:

(a) The commission may enter into an agreed order with a respondent to resolve and settle a complaint filed against the respondent, including an assurance of voluntary compliance, a notice of reporting error, or an agreed order and resolution.

(b) An assurance of voluntary compliance:

(1) resolves a sworn complaint:

(A) with no determination that a violation within the jurisdiction of the commission has occurred, if entered into before a preliminary review hearing is completed; or

(B) with a determination that all violations within the jurisdiction of the commission, when viewed as a whole in consideration of any mitigating action taken by the respondent, are technical or de minimis; and

(2) may include a civil penalty.

(c) A notice of reporting error resolves a complaint with a determination that all violations within the jurisdiction of the commission are reporting errors that do not materially defeat the purpose of disclosure and may include a civil penalty in the form of an assessment fee.

(d) An agreed order and resolution resolves a sworn complaint with a determination that one or more violations within the jurisdiction of the commission occurred and may include a civil penalty.

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 April 14, 2020.

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Anne Temple Peters
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800

CHAPTER 12. SWORN COMPLAINTS

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 12 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposed amending §12.83, regarding Preliminary Review in Subchapter C, and §12.84, regarding Notice of Preliminary Review Hearing, in Subchapter D.

These amended rules address the Commission's sworn complaint procedures in response to Senate Bill 548 (SB 548), enacted in the 2019 legislative session. Section 571.1242, Texas Government Code, as amended by SB 548, requires the Commission to either propose an agreement to settle a complaint or dismiss the complaint within 120 days after receiving the respondent's response to a notice of a complaint or the respondent's response to written questions, whichever is later. Section 571.1242 also requires the Commission to set a complaint for a preliminary review hearing "at the next [C]ommission meeting for which notice has not yet been posted" if a respondent rejects a proposed settlement during preliminary review.

The bill repealed the previous requirement that the Commission set a complaint for a preliminary review hearing if it is not resolved within 30 or 75 business days, depending on the category of the alleged violations in the complaint, of the respondent receiving the notice of the complaint.

The proposed amended rules are intended to clarify how these new requirements apply.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed amended rules are in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the amended rules.

The Executive Director has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefits will be clarity in the sworn complaint process. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The Executive Director has determined that during the first five years that the proposed amended rules are in effect, they 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 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 rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070.

A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.83

The amended rule is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.


§12.83. Preliminary Review.

(a) A complaint or respondent must respond to written questions [submitted to the respondent pursuant to section 571.1243 of the Government Code] not later than 15 business days after receiving [the
respondent receives] the written questions. The executive director may grant an extension of the time period for good cause shown.

(b) If the commission staff submits written questions to a respondent [pursuant to section 571.1243 of the Government Code], the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled [time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code, as applicable, is increased by the number of business days during the period] beginning on the date the commission sends the written questions and resets [ending] on the date the commission receives the respondent’s written response.

(c) If the commission staff applies to the commission for the issuance of a subpoena pursuant to section 571.137(a-1) of the Government Code, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled [time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code as applicable, is increased by the number of business days during the period] beginning on the date the staff applies to the commission for the subpoena and resets [ending] on either:

1. the date the commission rejects the staff’s application for a subpoena;
2. the date the person to whom the subpoena is directed complies with the subpoena; or
3. the date the commission receives a final ruling on a person’s failure or refusal to comply with a subpoena that is reported [reports] to a district court pursuant to section 571.137(c) of the Government Code.

(d) If the commission staff proposes to a respondent an agreement to settle a complaint that would be effective upon approval by the commission and the respondent, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is met. If a respondent approves a proposed agreement, commission staff must submit the proposed agreement to the commission to seek final approval at the next scheduled commission meeting. If a respondent rejects a proposed agreement, the matter shall be set for a preliminary review hearing at the next commission meeting for which notice has not yet been posted. If a respondent rejects a proposed agreement within 45 days before the date of a commission meeting, the matter shall be set for a preliminary review hearing at the next commission meeting thereafter.

(e) [44] During a preliminary review, commission staff may present documents or evidence, make recommendations, or otherwise communicate with commissioners outside the presence of the respondent for the purpose of investigating and resolving a sworn complaint.

(f) [43] Commission staff may not communicate with a commissioner outside the presence of the respondent for the purpose of influencing a decision on a pending sworn complaint after the complaint has been scheduled for a preliminary review hearing and notice of the hearing has been sent to the respondent.

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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Anne Temple Peters
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800
CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES
SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 24 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposes amending §20.1, regarding Definitions. The amendment is proposed to implement House Bill 2586 ("HB 2586") from the 86th Texas Legislature, which allows, under certain circumstances, "hybrid" political committees to accept corporate or labor organization contributions to fund direct campaign expenditures.

House Bill 2586 from the 86th legislative session, which went into effect on September 1, 2019, allows, under certain circumstances, "hybrid" political committees to accept corporate or labor organization contributions to fund direct campaign expenditures.

The rule amendments address "hybrid" and "direct campaign expenditure-only" committees, which are concepts introduced by the new legislation. To simplify the rules, definitions for each type of committee would be helpful. The definitions of "hybrid committee" and "direct campaign expenditure-only committee" merely copy the statutory language that describes these types of committees.

The proposed amended rule should be read in conjunction with an amendment to Ethics Commission §24.18 and new §22.35 and §24.19, which are proposed contemporaneously with this amendment.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the amended rule.

The Executive Director has also determined that for each year of the first five years the proposed amendment is in effect, the public benefits will be clarity in the definitions used in campaign finance law. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The Executive Director has determined that during the first five years that the proposed amendment is in effect, it 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 in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; expand, repeal or limit an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amendment may do so at any Commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amended rule is proposed under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed amendment affects Title 15 of the Election Code. §20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (21) (No change.)

(22) Hybrid committee—A political committee that, as provided by section 252.003(a)(4) (relating to contents of a general-purpose committee's campaign treasurer appointment) or 252.0031(a)(2) (relating to a specific-purpose committee's campaign treasurer appointment) of the Election Code, as applicable, has filed a campaign treasurer appointment that includes an affidavit stating that:

(A) the committee is not established or controlled by a candidate or an officeholder; and

(B) the committee will not use any political contribution from a corporation or a labor organization to make a political contribution to:

(i) a candidate for elective office;

(ii) an officeholder; or

(iii) a political committee that has not filed an affidavit in accordance with this section.

(23) Direct campaign expenditure-only committee—A political committee, as authorized by section 253.105 of the Election Code (relating to political contributions to direct campaign expenditure-only committees) to accept political contributions from corporations or labor organizations, that:

(A) is not established or controlled by a candidate or an officeholder;

(B) makes or intends to make direct campaign expenditures;

(C) does not make or intend to make political contributions to:

(i) a candidate;

(ii) an officeholder;

(iii) a specific-purpose committee established or controlled by a candidate or an officeholder; or

(iv) a political committee that makes or intends to make political contributions to a candidate, an officeholder, or a specific-purpose committee established or controlled by a candidate or an officeholder; and

(D) has filed an affidavit with the commission stating the committee's intention to operate as described by subparagraphs (B) and (C) of this paragraph.
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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Anne Temple Peters
Executive Director
Texas Ethics Commission
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CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.35

The Texas Ethics Commission (the Commission) proposes an addition to Texas Ethics Commission rules in Chapter 24 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposes new §22.35, regarding Corporate Contributions to Certain Political Committees. The new rule is proposed to implement House Bill 2586 ("HB 2586") from the 86th Texas Legislature, which allows, under certain circumstances, "hybrid" political committees to accept corporate or labor organization contributions to fund direct campaign expenditures.

HB 2586 allows for the creation of what is referred to in campaign finance law as a hybrid political action committee, which may accept unlimited contributions from corporations and labor organizations to make direct campaign expenditures (i.e. independent expenditures), while using other non-corporate contributions to contribute to candidates.

Proposed §22.35 would require hybrid PACs, direct campaign expenditure-only committees, and general-purpose committees that accept contributions for administrative or solicitation expenses, to keep corporate or labor organization contributions in a separate account, to ensure that corporate contributions given to political committees, including hybrid PACs, are not given to candidates, officeholders, or their specific-purpose committees. The proposed rule also clarifies that corporate and labor organization contributions generally may not be used to make a political contribution.

This new rule should be read in conjunction with new Ethics Commission §24.19 and amendments to Ethics Commission §20.1 and §24.18, which are proposed contemporaneously with this new rule.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the rule.

The Executive Director has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits will be clarity in how to report contributions to hybrid political action committees. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The Executive Director has determined that during the first five years that the proposed new rule is in effect, it 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 in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules’ applicability; or positively or adversely affect this state's economy. This proposal does create a new regulation; political committees would be required to keep corporate and labor organization contributions in a separate bank account.

The Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed new rule may do so at any Commission meeting during the agenda item relating to the proposed new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The new rule is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Title 15 of the Election Code.

The proposed new rule affects Title 15 of the Election Code.

§22.35. Corporate Contributions to Certain Political Committees. (a) A political committee that accepts a monetary political contribution from a corporation or labor organization shall maintain the contribution in a separate account for political contributions from corporations and labor organizations.

(b) A political committee that accepts a political contribution from a corporation or labor organization shall not use the contribution to make a political contribution to:

(1) a candidate for elective office;

(2) an officeholder; or

(3) a political committee other than a hybrid committee, a direct campaign expenditure-only committee, or a political committee that supports or opposes measures exclusively.

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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Anne Temple Peters
Executive Director
Texas Ethics Commission
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CHAPTER 24. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES APPLICABLE TO CORPORATIONS AND LABOR ORGANIZATIONS

PROPOSED RULES May 1, 2020 45 TexReg 2785
The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 24 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposes amending §24.18, regarding Designation of Contribution for Administrative Purposes, and adding new §24.19, regarding Affidavit Required by a Political Committee Making a Direct Campaign Expenditure from a Political Contribution Accepted from a Corporation or Labor Organization. The amendment and new rule are proposed to implement House Bill 2586 ("HB 2586") from the 86th Texas Legislature, which allows, under certain circumstances, "hybrid" political committees to accept corporate or labor organization contributions to fund direct campaign expenditures.

The proposed amendment to Ethics Commission §24.18 creates a presumption in most cases that corporate money given to a political committee is deemed designated "as restricted to the establishment, administration, maintenance, or operation of a general-purpose committee." The proposed amendment exempts hybrid PACs from this rule so that hybrid PACs may also use corporate contributions to fund direct campaign expenditures, as allowed by HB 2586. The proposed amendment also adds a presumption that a corporate contribution to a political committee is deemed designated for permissible administrative purposes if it is deposited in a separate segregated account.

The proposed new Ethics Commission rule, §24.19, is added primarily for clarity. It restates the new statutory requirement that the affidavit must be included in a political committee's campaign treasurer appointment before using a political contribution from a corporation or labor organization to make a direct campaign expenditure in connection with a campaign for an elective office. The second sentence is the substance of the rule, which states that the requirement to file a "Hybrid PAC affidavit" also applies to a direct campaign expenditure only committee. It should be read in conjunction with amendments to Ethics Commission §20.1 and §24.18, and new rule §22.35, which are proposed contemporaneously with this amendment.

The proposed amended and new rule should be read in conjunction with an amendment to Ethics Commission §20.1 and new §22.35, which are proposed contemporaneously with this amendment and new rule.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed amendment and new rule are in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the amended and new rule.

The Executive Director has also determined that for each year of the first five years the proposed amendment and new rule are in effect, the public benefit will be clarity in how hybrid political action committees should handle receipt of corporate or labor organization contributions. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and new rule.

The Executive Director has determined that during the first five years that the proposed amendment and new rule are in effect, it 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 in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amendment and new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amendment and new rule may do so at any Commission meeting during the agenda item relating to the proposed amendment and new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

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

The amended and new rule are proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Title 15 of the Election Code.

The proposed amendment and new rule affect Title 15 of the Election Code.


(a) Any of the following will serve to designate a political expenditure in the form of a political contribution made by a corporation or labor organization [corporate expenditure] as restricted to the establishment, administration, maintenance, or operation of a general-purpose committee:

(1) A contemporaneous written instruction that the contribution [expenditure] is restricted to the administration, maintenance, or operation of the committee accepting the contribution [expenditure].

(2) The negotiable instrument conveying the contribution contains language indicating that the entity is a corporation, including but not limited to "Inc.," "Incorporated," "Corp.," or "Corporation;" [or]

(3) The general-purpose committee acceptance the contribution reports the contribution as monetary contribution or monetary support from a corporation or labor organization on the committee's campaign finance report; [or]

(4) The general-purpose committee accepting the contribution deposits the contribution into a separate segregated account for political contributions from corporations and labor organizations.

(b) Subsection (a) of this section shall not be read to restrict a hybrid committee, a direct campaign expenditure-only committee, or a political committee that supports or opposes measures exclusively from using a contribution from a corporation or labor organization to make a direct campaign expenditure.

§24.19. Affidavit Required by a Political Committee Making a Direct Campaign Expenditure from a Political Contribution Accepted from a Corporation or Labor Organization.

A political committee, including a direct campaign expenditure-only committee, must include in its campaign treasurer appointment the affidavit described by section 252.003(a)(4) (relating to contents of a general-purpose committee's campaign treasurer appointment) or 252.0031(a)(2) (relating to contents of a specific-purpose committee's campaign treasurer appointment) of the Election Code, as applicable, before using a political contribution from a corporation or labor
organization to make a direct campaign expenditure in connection with a campaign for an elective office.

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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Anne Temple Peters
Executive Director
Texas Ethics Commission
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TITLE 7. BANKING AND SECURITIES
PART 2. TEXAS DEPARTMENT OF BANKING
CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.27
The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.27, concerning fees that must be paid in connection with a proposed change of control of a money transmission or currency exchange business. The amended rule is proposed to correct an error by replacing language that was inadvertently deleted in a previous rule action.

House Bill 2458, which was passed in the 86th Regular Session of the Texas Legislature, removed all statutory references to licensed depository agents of the Texas Bullion Depository. In August 2019, the department recommended amendments to multiple rules within Title 7, Texas Administrative Code Chapter 33 to implement HB 2458 by deleting all references to depository agents. The language proposed and approved for deletion in §33.27 inadvertently included all of subsection (g), concerning fees that are required for change of control applications submitted by all money services businesses, not just for applications submitted by depository agents. The Finance Commission approved the amendments for publication in the Texas Register, and the amendments were published August 30, 2019. No comments were received during the 30-day comment period. The amendments were adopted on the consent agenda at the Finance Commission meeting on October 18, 2019, and became effective on November 7, 2019. This action is necessary to reinstate the portion of §33.27 that was inadvertently deleted in that prior rule action.

Mark Largent, Director of Corporate Activities, Texas Department of Banking, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Largent also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that the department will be able to appropriately allocate resources necessary to process change of control applications for money services businesses.

For each year of the first five years that the rule will be in effect, there will be minimal economic costs to persons required to comply with the rule as proposed; these costs will be the same as before the rule was inadvertently deleted.

For each year of the first five years that the rule will be 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; and
-- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amended section must be submitted no later than 5:00 p.m. on June 1, 2020. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Texas Finance Code (Finance Code), §151.102, which provides that the commission may adopt rules to administer and enforce Chapter 151, including rules necessary or appropriate to recover the cost of maintaining and operating the department and the cost of administering and enforcing this chapter and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to achieve the purposes of the chapter.

Finance Code, §151.605(c)(3), is affected by the proposed amended section.

§33.27. What Fees Must I Pay to Get and Maintain a License?

(a) - (f) (No change.)

(g) What fees must I pay in connection with a proposed change of control of my money transmission or currency exchange business?

(1) You must pay a non-refundable $1,000 fee at the time you file an application requesting approval of your proposed change of control.

(2) You must pay a non-refundable $500 fee to obtain the department's prior determination of whether a person would be considered a person in control and whether a change of control application must be filed. If the department determines that a change of control application is required, the prior determination fee will be applied to the fee required under paragraph (1) of this subsection.

(3) If the department's review of your change of control application or prior determination request requires more than eight em-
ployee hours, you must pay an additional review fee of $75 per employee hour for every hour in excess of eight hours.

(4) The commissioner may reduce the filing fees described in paragraph (1) or (2) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 151, and this chapter.

(h) [44] What other fees must I pay?
   (1) - (4) (No change.)

(i) [44] How and when do I need to pay for the fees required by this section?
   (1) - (3) (No change.)

(4) You must pay the filing fees required by subsection (g) of this section at the time you file your proposed change of control or prior determination request. You must pay any required additional fees within 10 days of receipt of the department's written invoice.

(5) [44] You or another person must pay the investigation fee required under subsection (f) of this section within 10 days of receipt of the department's written invoice.

(6) [45] If you owe a late fee as provided by subsection (h)(1) [(44)] of this section, you must pay this fee immediately upon receipt of the department's written invoice.

(7) [46] The department will bill you for any additional examination fees required under subsection (h)(2), (3) or (4) [(44)(2), (3) or (44)] of this section by written invoice. You must pay this additional examination fee within 10 days of receipt of the department's written invoice.

(8) [47] A fee is considered paid as of the date the department receives payment.

(j) [44] What if I cannot afford the annual assessment?
   (1) - (2) (No change.)

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

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Catherine Reyer
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1301

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.73

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to 7 Tex Admin Code §77.73.

Background and Purpose

Section 77.73 governs when a state savings bank must perform an appraisal or evaluation of real estate it acquires in satisfaction or partial satisfaction of indebtedness. The proposed amendments, if adopted, would raise the threshold for which a state savings bank may elect to perform an evaluation in lieu of a formal appraisal by a certified or licensed appraiser. Specifically, the proposed amendments, if adopted, would allow a state savings bank to conduct an evaluation on real property valued at $400,000 or less, raising the existing threshold amount from $250,000. The amendments are proposed to mirror and conform to similar amendments adopted jointly by the United States Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve (Board), and the Federal Deposit Insurance Corporation (FDIC; the OCC, Board, and FDIC, collectively, the federal banking agencies; the amendments, collectively, the federal amendments) to their regulations at 12 C.F.R. §§34.43, 225.63, and 323.3, respectively. The department incorporates by reference the extensive analysis and discussion by the federal banking agencies in adopting the federal amendments, published in the Federal Register (Real Estate Appraisals, 84 Fed. Reg. 53,579 (October 8, 2019)). The federal amendments became effective on January 1, 2020. Until the federal amendments were adopted, the previous federal appraisal/evaluation threshold amount of $250,000 stood unchanged since 1994. The similar requirements of existing §77.73, meanwhile, have not changed since January 6, 2011. As was aptly discussed by the federal banking agencies in adopting the federal amendments, since 1994, residential real estate prices have risen significantly. In adopting the federal amendments, the federal banking agencies cited data from the Standard & Poor's Case-Shiller Home Price Index (Case-Shiller), estimating that a residential property sold for $250,000 on June 30, 1994 would have sold for $643,750 on March 31, 2019. Meanwhile, according to data from the Federal Housing Finance Agency (FHFA), a residential property sold for $250,000 on June 30, 1994 would have sold for $621,448 in March 2019. The federal banking agencies also reviewed how the 1994 $250,000 appraisal/evaluation threshold amount compared to general measures of inflation according to the Consumer Price Index (CPI) and concluded that $250,000 of consumer cost as of July 1, 1994 would equate to a relative consumer cost of $429,240 as of March 2019. The federal banking agencies also considered estimates for the most recent low point in housing prices in 2011 and determined that a residential property sold for $250,000 on June 30, 1994 would have sold for $445,152 if instead sold on December 31, 2011, according to Case Shiller, and $414,629, according to the FHFA. Under the CPI, meanwhile, a consumer cost of $250,000 on July 1, 1994 would equate to a relative consumer cost of $379,997 in December 2011. Depending on its loans and investments, a state savings bank could acquire real estate subject to the rule that is located in Texas or outside of the state. However, the majority of regulated state savings banks have branches strictly in Texas with operations concentrated in Texas. As a result, for additional context, the department also considered available datasets specific to Texas. According to the FHFA's data specific to the entirety of Texas, a home sold for $250,000 on June 30, 1994 would have sold for $735,950 on December 31, 2019; and, on December 31, 2011, $441,025. According to
the Case-Shiller index specific to the Dallas, Texas metropolitan statistical area (the only dataset of Case-Shiller pertaining to Texas), a home sold for $250,000 in January 2000 (the oldest available data point) would have sold for $482,025 in December 2019. The department also considered the Texas A&M Real Estate Center’s Texas Home Price Index (HPI), which measures home price appreciation within nine metropolitan statistical areas around Texas. The HPI datasets have different initial report dates for each metropolitan statistical area (MSA), none of which relates back to 1994. As a result, the department performed a hybrid analysis of HPI’s data and of FHFA’s data specific to each MSA (or the closest proximity thereto) by first calculating the estimated appreciation of costs from June 30, 1994 to the initial report date for each of the HPI’s MSAs utilizing the FHFA’s data, and then carrying that figure forward utilizing the HPI’s appreciation figures. Both the FHFA and HPI utilize a geometric modeling format but, according to the Texas A&M Real Estate Center, the HPI tends to have a flatter curve due to differences in the underlying data from which the modeling is performed (the FHFA is limited to data from conventional loans while the HPI is not so limited). As a result, when considering the following results, the farther back in time the HPI data extends, the flatter and less appreciated the result, and, conversely, a more recent start date of HPI data resulted in higher appreciation figures due to increased reliance on FHFA data. The results of the department's hybrid analysis of how much a home initially sold in Texas on June 30, 1994 for $250,000 would have sold for on December 31, 2019, are as follows: (i) Amarillo MSA (oldest HPI data point March 31, 2004) - $448,106; (ii) Austin/Round Rock MSA (oldest HPI data point March 31, 1999) - $573,592; (iii) Dallas/Fort Worth/Arlington MSA (oldest HPI data point March 31, 2005) - $522,020; (iv) Dallas/Plano/Irving MSA (oldest HPI data point March 31, 2005) - $536,889; (v) El Paso MSA (oldest HPI data point March 31, 2004) - $407,030; (vi) Fort Worth/Arlington MSA (oldest HPI data point March 31, 2005) - $523,425; (vii) Houston/The Woodlands/Sugar Land MSA (oldest HPI data point March 31, 2000) - $493,827; (viii) San Antonio/New Braunfels MSA (oldest HPI data point March 31, 2013) - $525,153; (ix) Sherman/Denison MSA (oldest HPI data point March 31, 2014) - $609,033. Taking the foregoing into consideration, the department concurs with the federal banking agencies in asserting that the proposed amendments. The department welcomes comments and feedback in response to this proposal concerning the potential costs to regulated state savings banks (including cost savings), and specifically requests information concerning the cost of an evaluation versus an appraisal performed by a third party fee appraiser’s office, and the potential impact on staff resources for those state savings banks utilizing staff to conduct appraisals.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed amendments are in effect, the department has determined the following: (1) the rule does not create or eliminate a government program; (2) implementation of the rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency; (5) the rule does not create a new regulation; (6) the rule does not expand or eliminate an existing regulation but does limit an existing regulation; (7) the rule does not increase or decrease the number of individuals subject to the rule’s applicability; and (8) the rule does not positively or adversely affect this state’s economy.
Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The deputy commissioner has determined the rule will not have an adverse economic effect on small or micro-businesses, or rural communities because there are no costs or other adverse economic effects to persons who are required to comply with the rule. As a result, the department asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

The deputy commissioner has determined the proposed amendments, if adopted, may indirectly have an adverse economic impact on small and micro-businesses that conduct real estate appraisals. Given that the proposed amendments, if adopted, have the potential to reduce the number of real estate appraisals performed by regulated state savings banks the proposed amendments may, if adopted, result in lost business opportunities for small or micro-businesses conducting such appraisals; including, potentially, persons regulated by the Texas Appraiser Licensing Certification Board (TALCB). However, the deputy commissioner, acting in accordance with guidelines established by the Office of the Attorney General as provided by Government Code §2006.002(g), has determined that such potential adverse economic impact concerns persons not regulated by the department and thus is only indirectly related to the rule, and does not require the additional analysis for a direct adverse economic effect contemplated by Government Code §2006.002(c). However, the deputy commissioner further determined that, while there is the potential for an adverse economic impact on small or micro-businesses conducting appraisals for regulated state savings banks due to lost business opportunity, such loss in opportunity is unrelated to the businesses' status as small or micro-businesses, and businesses other than a small or micro-business performing appraisals will be similarly affected proportionate to the amount of work derived from appraisals performed for regulated state savings banks. The very nature and purpose of the rule is to afford greater flexibility for regulated state savings banks to conduct evaluations in lieu of appraisals which entails a potential reduction in the number of appraisals performed that cannot be avoided entirely. Moreover, any potential alternative methods to reduce the potential adverse economic impact on small or micro-businesses would inherently involve an appraisal/evaluation threshold amount lower than the amount proposed; but, the department asserts the purposes of the rule are best achieved by mirroring and conforming to the appraisal/evaluation threshold adopted by the federal banking agencies, which has the tendency to reduce regulatory complexity in the broader banking industry. The department further asserts the public benefits of the proposed rule, as discussed supra, outweigh any potential adverse impact on small and micro-businesses.

Local Employment Impact Statement

The deputy commissioner has determined no local economies are substantially affected by the rule and, as such, the department is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Takings Impact Assessment

The department has determined there are no private real property interests affected by the rule; thus, the department asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Public Comments

Written comments regarding the amendments may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to sminfo@smi.texas.gov with the subject line "Public Comment - Real Estate Appraisals." All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302 which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a) which authorizes the commission to adopt rules necessary to supervise and regulate state savings banks and to protect public investment in state savings banks, including for those specific subject matters outlined in paragraphs (4), (11), and (16) of that subsection.

This proposal affects the statutes administered and enforced by the department's commissioner, Caroline C. Jones, with respect to state savings banks, contained in Finance Code, Subtitle C. No other statute is affected by this proposal.

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

(a) - (d) (No change.)

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings bank must substantiate the market value of the real estate by obtaining an appraisal within sixty (60) days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is [less than] $400,000 [$250,000] or less. The commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) (No change.)

(g) An evaluation shall be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal shall be made at least once every three years on real estate with a recorded book value in excess of $400,000 [$250,000].

(h) (No change.)

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

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

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Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1350

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER
CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

The Finance Commission of Texas (commission) proposes amendments to §90.104 (relating to Non-Standard Contract Filing Procedures), §90.202 (relating to Contract Provisions), §90.203 (relating to Model Clauses), §90.204 (relating to Permissible Changes), §90.302 (relating to Contract Provisions), §90.303 (relating to Model Clauses), §90.304 (relating to Permissible Changes), §90.404 (relating to Permissible Changes), §90.504 (relating to Permissible Changes), and §90.604 (relating to Permissible Changes), in 7 TAC, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

In general, the purpose of the proposed amendments to 7 TAC Chapter 90 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 90 was published in the Texas Register on January 31, 2020 (45 TexReg 775). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft. The OCCC appreciates the thoughtful input provided by stakeholders.

The proposed amendments are intended to clarify requirements for submitting a non-standard plain language contract, and to provide additional model clauses that licensees may use in contracts for regulated loans under Texas Finance Code, Chapter 342, Subchapter E or F.

The proposed amendments to §90.104(c) provide clarity on the process for submitting a non-standard plain language contract for a regulated loan. These amendments specify that the contract must be submitted in accordance with the OCCC's instructions, and that PDF submissions must be text-searchable, must meet a size requirement, and may not be locked in a manner that prohibits comparison of different versions of the contracts. These amendments are intended to enable OCCC staff to efficiently and effectively review non-standard plain language contract submissions. If a PDF submission is not text-searchable (e.g., scanned paper contract or image-only PDF), or if the PDF has security restrictions that prohibit comparison, this prevents OCCC staff from efficiently and effectively reviewing contracts.

Proposed amendments at §90.202(22) and §90.302(22) would specify that the contract for a Subchapter E or Subchapter F loan may include a credit reporting clause. Proposed amendments at §90.203(28) and §90.303(23) include the text of the model credit reporting clause. This text is based on Model Notice B-1 in the Consumer Financial Protection Bureau’s Regulation V, 12 C.F.R. pt. 1022, app’x B, which states: "We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report." Proposed amendments would also add this clause to the model Subchapter E and Subchapter F model contracts attached as figures to §90.204 and §90.304.

In §90.203(b)(7), proposed amendments would update rate bracket amounts for loans under Subchapter E. These amounts are updated annually in the Texas Credit Letter, as provided by Texas Finance Code, §341.203 and §342.201. The updated dollar amounts in the proposed amendments are the amounts that will be in effect starting July 1, 2020, as described in the February 4, 2020 issue of the Texas Credit Letter. In addition, a proposed amendment at §90.203(28)(A) specifies that the clauses in paragraph (A) are for transactions using the add-on method and the scheduled installment earnings method.

Proposed amendments to §90.204, §90.304, §90.404, §90.504, and §90.604 would add the phrase "Model Contracts" to the rule titles. These rules include model plain language contracts as attached figures. The amendments to the rule titles will help readers locate model contracts.

When the OCCC circulated a precomment draft of these rule amendments, the precomment draft included a model servicing and collection contact clause for Subchapter E and F loans, stating: "You may try to contact me at any mailing address, e-mail address, or phone number I give you, as the law allows. You may try to contact me in writing (including mail, e-mail, and text messages) and by phone (including prerecorded or artificial voice messages and automatic telephone dialing systems)." This clause was based on the federal Telephone Consumer Protection Act (TCPA), 47 U.S.C. §227(b)(1)(A) - (B), which generally prohibits creditors and other persons from calling a residential telephone line using an automatic telephone dialing system or an artificial or prerecorded message without the prior express consent of the called party. In response to the precomment draft, a precommenter expressed concern about whether this clause would be sufficient to constitute prior express consent under the TCPA and its implementing rule that defines the term "prior express consent," 47 C.F.R. §64.1200(f)(8). The precommenter stated that consent under the TCPA is not suited to be included in the promissory note, and that this model clause could lead to risk and liability for lenders. The precommenter also noted that the TCPA is an area of significant litigation, with "certain federal guidance and varying court opinions across the country." In response to this precomment, the servicing and collection contacts clause is not included in this proposal. However, the OCCC and the commission invite further comments from stakeholders about whether a TCPA consent would be appropriate as a model clause for plain language contracts, and if so, what the content of the consent should be.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules and will aid licensees in preparing contracts that clearly disclose information to borrowers in plain language.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. All new model contract clauses added by the amendments are optional, and licensees may continue using currently compliant plain language contracts if they choose to do so. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not re-

PROPOSED RULES

May 1, 2020

45 TexReg 2791
quire an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the OCCC. The proposed rule changes do not create a new regulation. The proposal would expand existing regulations by specifying requirements for submitting contracts, and providing additional model clauses that lenders may use at their option. The proposed rule changes do not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule’s applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state’s economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the Texas Register. At the conclusion of business on the 31st day after the proposal is published in the Texas Register, no further written comments will be considered or accepted by the commission.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §90.104

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.


(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be reviewed to determine that the contract is written in plain language.

(b) Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the licensee or the entity submitting the form on behalf of the licensee. The certification must state that the contract is written in plain language and that the contract can be easily understood by the average consumer. The certification must also state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted in accordance with the OCCC’s instructions and the following requirements:

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid Grade Level score of the contract must be based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

(2) PDF format. One copy must be submitted in a text-searchable PDF format so that the contract may be visually reviewed in its entirety. The page size must be 8.5 inches by 11 inches or 8.5 inches by 14 inches. The PDF may not be locked or restricted in a way that prohibits comparison of different versions of the contract.

(3) No other formats permitted. The OCCC will not accept paper filings or any other unlisted formats for non-standard contract filings.

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level scores for Chapter 342 contract filings are:

- (a) grade 8 for Subchapter F (signature loans);
- (b) grade 9 for Subchapter E (secured installment loans);
- (c) grade 10 for Subchapter G, computed by scoring the note and security document in one continuous Microsoft Word document (home equity loans, second lien purchase money loans, and second lien home improvement contracts).

(d) Contact person. One person shall be designated as the contact person for each filing submitted. Each submission should provide the name, address, phone number, and fax number, if available, of the contact person for that filing. If the contracts are submitted by anyone other than the licensee itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

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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Matthew Nance
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SUBCHAPTER B. SECURED CONSUMER INSTALLMENT LOANS (SUBCHAPTER E)

7 TAC §§90.202 - 90.204

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.


A Chapter 342, Subchapter E contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the
contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter E contract may contain the following provisions:

1. (1) - (21) (No change.)
2. (22) A credit reporting clause;
3. (23) [23] A savings clause stating that if any part of the contract is invalid, the rest of the contract remains valid; and
4. (24) [23] OCCC notice.

§90.203. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) Model clauses for a Chapter 342, Subchapter E secured consumer installment loan contract.

1. (1) - (6) (No change.)
2. (7) Finance charge earnings and refund method. The model finance charge earnings and refund method clauses include rate bracket amounts that are updated annually in the Texas Credit Letter. The model finance charge earnings and refund method clause options read:

   (A) For contracts using the add-on interest method and the scheduled installment earnings method, Texas Finance Code, §342.201(a):

   (i) For use when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:
   Figure: 7 TAC §90.203(b)(7)(A)(i)
   [Figure: 2 TAC §90.203(b)(7)(A)(i)]

   (ii) For use when the administrative fee is financed:
   Figure: 7 TAC §90.203(b)(7)(A)(ii)
   [Figure: 2 TAC §90.203(b)(7)(A)(ii)]

   (B) (No change.)

   (C) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(c):

   (i) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:
   Figure: 7 TAC §90.203(b)(7)(C)(i)
   [Figure: 2 TAC §90.203(b)(7)(C)(i)]

   (ii) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is financed:
   Figure: 7 TAC §90.203(b)(7)(C)(ii)
   [Figure: 2 TAC §90.203(b)(7)(C)(ii)]

   (iii) - (iv) (No change.)

   (D) (No change.)

(E) For contracts using the true daily earnings method, Texas Finance Code, §342.201(e):

   (i) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:
   Figure: 7 TAC §90.203(b)(7)(E)(i)
   [Figure: 2 TAC §90.203(b)(7)(E)(i)]

   (ii) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is financed:
   Figure: 7 TAC §90.203(b)(7)(E)(ii)
   [Figure: 2 TAC §90.203(b)(7)(E)(ii)]

   (iii) - (iv) (No change.)

   (8) - (27) (No change.)

(28) Credit reporting. The Fair Credit Reporting Act, 15 U.S.C. §1681s-2(a)(7), generally requires a creditor to provide a notice to a consumer before furnishing negative information to a credit bureau. The model clause for credit reporting reads: “You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.”

§90.204. Model Contracts: Permissible Changes.

(a) A licensee may consider making the following types of changes to the secured consumer installment loans plain language model clauses:

1. (1) - (6) (No change.)
2. (7) A sample model contract using the scheduled installment earnings method is presented in the following example.
   Figure: 7 TAC §90.204(a)(7)
   [Figure: 2 TAC §90.204(a)(7)]

3. (8) A sample model contract using the true daily earnings method is presented in the following example.
   Figure: 7 TAC §90.204(a)(8)
   [Figure: 2 TAC §90.204(a)(8)]

4. (9) (No change.)

(b) (No change.)

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

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SUBCHAPTER C. SIGNATURE LOANS (SUBCHAPTER F)

7 TAC §§302-304
The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules
governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.


A Chapter 342, Subchapter F contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A Chapter 342, Subchapter F contract may contain the following provisions.

1. - (21) (No change.)
2. (22) A credit reporting clause;
3. (23) OCCC notice;
4. (24) An arbitration agreement; and
5. (25) A savings clause stating that if any part of the contract is invalid, all other parts remain valid.

§90.303. Model Clauses.

(a) (No change.)
(b) Model clauses for a Chapter 342, Subchapter F signature loan contract.

1. - (22) (No change.)
2. - (22) (No change.)
3. (23) Credit reporting. The Fair Credit Reporting Act, 15 U.S.C. §1681s-2(a)(7), generally requires a creditor to provide a notice to a consumer before furnishing negative information to a credit bureau. The model clause for credit reporting reads: “You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.”

§90.304. Model Contracts: Permissible Changes.

(a) A licensee may consider making the following types of changes to the signature loans plain language model clauses:

1. - (6) (No change.)
2. (7) A sample model contract using the add-on method is presented in the following example:

   7 TAC §90.304(a)(7)

3. (8) A sample model contract using the scheduled installment earnings method is presented in the following example:

   7 TAC §90.304(a)(8)

4. (9) A sample model contract using the true daily earnings method is presented in the following example:

   7 TAC §90.304(a)(9)

5. (10) (No change.)
6. (b) (No change.)

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SUBCHAPTER D. SECOND LIEN HOME EQUITY LOANS (SUBCHAPTER G)

7 TAC §90.404

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.

§90.404. Model Contracts: Permissible Changes.

(a) - (b) (No change.)

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

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SUBCHAPTER E. SECOND LIEN PURCHASE MONEY LOANS (SUBCHAPTER G)

7 TAC §90.504

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.

§90.504. Model Contracts: Permissible Changes.

(a) - (b) (No change.)
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

7 TAC §90.604

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.

§90.604. Model Contracts; Permissible Changes.

(a) - (b) (No change.)

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

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

The Public Utility Commission of Texas (commission) proposes the repeal of 16 TAC §24.41, relating to Cost of Service, and the adoption of new 16 TAC §24.41, relating to Cost of Service, adoption of new 16 TAC §24.238, relating to Fair Market Value, and amendments to 16 TAC §24.239, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental, and 16 TAC §24.243, relating to Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility. Proposed new rule §24.238 will implement House Bill 3542, passed in the 86th Legislature, Regular Session, and effective on September 1, 2019, which established a fair market valuation process that may be used by a Class A or Class B water or sewer utility that is acquiring another utility or the facilities of another utility. Proposed new rule §24.41 incorporates relevant aspects of proposed new rule §24.238 and will replace existing §24.41. New rule §24.41 also includes clarifying changes. The proposed amendments to §24.239 incorporate relevant aspects of proposed new rule §24.238. The commission proposes additional clarification revisions to §§24.239 and 24.243.

Growth Impact Statement

The commission provides the following governmental growth impact statement for the proposed repeal, new rules and amendments, as required by Texas Government Code §2001.0221. The commission has determined that for each year of the first five years that the proposed repeal, new rules and amendments are in effect, the following statements will apply:

1) the proposed repeal, new rules and amendments will not create a government program and will not eliminate a government program;

2) implementation of the proposed repeal, new rules and amendments will not require the creation of new employee positions and will not require the elimination of existing employee positions;

3) implementation of proposed repeal, new rules and amendments will not require an increase and will not require a decrease in future legislative appropriations to the agency;

4) the proposed repeal, new rules and amendments will not require an increase and will not require a decrease in fees paid to the agency;

5) the proposed repeal, new rules and amendments will not create a new regulation;

6) the proposed repeal, new rules and amendments will not repeal any existing regulation;

7) the proposed repeal, new rules and amendments will not change the number of individuals subject to the rules’ applicability; and

8) the proposed repeal, new rules and amendments will not affect this state’s economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed repeal, new rules and amendments. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takeings Impact Analysis

The commission has determined that the proposed repeal, new rules and amendments will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government
Heidi Graham, Director of Water Utility Engineering Section, Infrastructure Division, has determined that for the first five-year period the proposed repeal, new rules and amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

**Public Benefits**

Ms. Graham has also determined that for each year of the first five years of the proposed repeal, new rules and amendments are in effect, the anticipated public benefits expected as a result of the adoption of the proposed repeal, new rules and amendments will be implementation of recent legislation and the addition of a new process for valuing certain utility acquisitions. Ms. Graham has further determined that the probable economic cost to persons required to comply with the proposed repeal, new rules and amendments will be negligible under Texas Government Code §2001.024(a)(5).

**Local Employment Impact Statement**

For each year of the first five years of the proposed repeal, new rules and amendments are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

**Costs to Regulated Persons**

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded under subsection §2001.0045(c)(7).

**Public Hearing**

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on June 23, 2020. The request for a public hearing must be received by June 15, 2020. If no request for hearing is filed, Commission staff will cancel the public hearing and make a filing in this project.

**Public Comments**

Comments on the proposed new section and amendments may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, Texas 78711-3326, by June 1, 2020. Sixteen copies of comments to the proposed new rule and amendments are required to be filed by 16 TAC §22.71(c); however, interested persons should submit comments in accordance with applicable orders issued by the commission in Project 50664, Issues Related to the State of Disaster for Coronavirus Disease 2019. Comments should be organized in a manner consistent with the organization of the proposed rule and amendments. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rules. All comments should refer to Project No. 49813.

**SUBCHAPTER B. RATES AND TARIFFS**

**16 TAC §24.41**

Statutory Authority

The repeal is proposed under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §13.305, which establishes a voluntary process for the valuation of utilities or facilities acquired by Class A or Class B utilities.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.305.

**§24.41. Cost of Service.**

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 April 17, 2020.

TRD-202001503

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 31, 2020

For further information, please call: (512) 936-7244

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**16 TAC §24.41**

Statutory Authority

The new rule is proposed under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §13.305, which establishes a voluntary process for the valuation of utilities or facilities acquired by Class A or Class B utilities.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.305.

**§24.41. Cost of Service.**

(a) Components of cost of service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on rate base.

(b) Allowable expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayer may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's test year expenses as adjusted for known and measurable changes will be considered. A change in rates must be based on a test year as defined in §24.3(37) of this title, relating to Definitions of Terms. Payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense are not allowed as an expense for cost of service except as provided in Texas Water Code (TWC) §13.185(e).

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, may include, but are not limited to, the following general categories:

(A) Operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service.

(B) Depreciation expense based on original cost and computed on a straight-line basis over the useful life of the asset as approved by the commission.

(i) Depreciation expense is allowed on all currently used and useful depreciable utility property owned by the utility and
depreciable utility plant, property and equipment retired by the utility, subject to the requirements of subparagraph (c)(2)(C) of this section. Depreciation expense is not allowed for property provided under explicit customer agreements or funded by customer contributions in aid of construction. Depreciation expense is allowed for all currently used and useful developer or governmental entity contributed property. A utility must calculate depreciation on a straight-line basis over the expected or remaining life of the asset, but is not required to use the remaining life method if salvage value is zero. A utility that does not use group depreciation and proposes to change the useful life of an asset with an accumulated depreciation balance must not change the accumulated depreciation balance and must adjust depreciation expense going forward based on the changed useful life.

(ii) The depreciation accrual for all assets must account for expected net salvage value in the calculation of the depreciation rate and actual net salvage value related to retired plant. The utility must submit sufficient evidence with the application establishing that the estimated salvage value, including removal costs, is reasonable. For a utility that uses group accounting, salvage value will be applied to the asset group in depreciation studies. For a utility that uses itemized accounting, salvage value will be applied to specific assets.

(C) Assessments and taxes other than income taxes.

(D) Federal income taxes on a normalized basis. Federal income taxes must be computed according to the provisions of TWC §13.185(f), if applicable.

(E) Funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership.

(F) Advertising, contributions and donations. The actual test year expenditures for advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service must not exceed three-tenths of 1.0% (0.3%) of the gross receipts of the utility for services rendered to the public. The following expenses are the only expenses that may be included in the calculation of the three-tenths of 1.0% (0.3%) maximum:

(ii) funds expended advertising methods of conserving water;

(ii) funds expended advertising methods by which the consumer can achieve a savings in total utility bills; and

(iii) funds expended advertising water quality protection.

(G) Credit card and electronic payment processing fees. Expenditures or fees charged by banks or companies for accepting and processing credit card, debit card or other forms of electronic payment from customers for water and sewer utility service may be allowed as a cost of service.

(2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A) - (F) of this paragraph;

(H) interest expense of processing a refund or credit of sums collected in excess of the rate ordered by the commission;

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and

(J) the costs of purchasing groundwater from any source if:

(i) the source of the groundwater is located in a priority groundwater management area; and

(ii) a wholesale supply of surface water is available.

(c) Return on rate base. The return on rate base is the rate of return times rate base.

(1) Rate of return. The commission will allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and will fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

(B) The commission will consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt, plus adjustments for premiums, discounts, and refunding and issuance costs.

(ii) Equity capital. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital must be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(C) The commission will consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.

(D) The commission may consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital.

(2) Rate base. The rate of return is applied to the rate base. Assets retired before June 19, 2009, must be removed from rate base before the rate of return is applied to the rate base. Components to be included in determining the rate base are as follows:
§13.305, 45 TexReg

(A) If a utility or its facilities were valued using the process for establishing fair market value in Texas Water Code (TWC) §13.305, the dollar value of the "ratemaking rate base," as defined in TWC §13.305(a)(2) and §24.238(b)(4) of this title, relating to Fair Market Valuation, less accumulated depreciation.

(i) The installation date of the ratemaking rate base is the filing date of the commission's final order approving the acquisition of the ratemaking rate base in an application filed under TWC §13.301.

(ii) The ratemaking rate base will include an accrual for Allowance for Funds Used During Construction (AFUDC), as defined in §24.238(b)(2) of this title, relating to Fair Market Valuation, for any post-acquisition improvements to the ratemaking rate base. The accrual will begin on the date the improvement cost was incurred and end on the earlier of:

(I) the fourth anniversary of the date the improvement was placed in service; or

(II) the filing date of the commission order in which the ratemaking rate base is first approved by the commission as part of the rate base set in a base rate proceeding.

(iii) For book and ratemaking purposes, depreciation on any post-acquisition improvement to the ratemaking rate base will be deferred and considered in the utility's next base rate proceeding.

(iv) Transaction and closing costs associated with the acquisition will be reviewed in the acquiring utility's first base rate proceeding after the transaction has been concluded.

(B) Original cost, less accumulated depreciation, of utility plant, property, and equipment used by and useful to the utility in providing service.

(C) Original cost, less net salvage and accumulated depreciation at the date of retirement, of depreciable utility plant, property and equipment retired by the utility.

(i) For original cost under this subparagraph or subparagraph (B) of this paragraph, the commission may adjust rate base and the rate of return on equity associated with the cost of plant and equipment that has been estimated by trending studies or other methods not based on or verified by historical records.

(ii) Original cost in this subparagraph or subparagraph (B) of this paragraph is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it was dedicated to public use, whether by the utility that is the current owner or by a predecessor. Assets may be booked in itemized or group accounting, but all accounting for assets and their retirements must be supported by an approved accounting system.

(iii) On all assets retired from service, the original cost of an asset must be the book cost less net salvage value. If a utility calculates annual depreciation expense for an asset with allowance for salvage value, then it must account for the actual salvage amounts when the asset is actually retired. The utility must include the actual salvage calculation in its net plant calculation in the first full rate change application, excluding alternative rate method applications as described in §24.75 of this title, relating to Alternative Rate Methods, if it files after the date on which the asset was removed from service, even if it was not retired during the test year. Recovery of investment on assets retired from service before the estimated useful life or remaining life of the asset must be combined with over-accrual of depreciation expense for those assets retired after the estimated useful life or remaining life and the net amount must be amortized over a reasonable period of time taking into account prudent regulatory principles.

(iv) Accelerated depreciation is not allowed.

(v) For a utility that uses group accounting, all mortality characteristics, both life and net salvage, must be supported by an engineering or economic based depreciation study for which the test year for the depreciation is no more than five years old in comparison to the rate case test year. The engineering or economic based depreciation study must include:

(I) investment by homogenous category;

(II) expected level of gross salvage by category;

(III) expected cost of removal by category;

(IV) the accumulated provision for depreciation as appropriately reflected on the company's books by category;

(V) the average service life by category;

(VI) the remaining life by category;

(VII) the Iowa Dispersion Pattern by category; and

(VIII) a detailed narrative identifying the specific factors, data, criteria and assumptions that were employed to arrive at the specific mortality proposal for each homogenous group of property.

(vi) Reserve for depreciation under this subparagraph or subparagraph (B) of this paragraph is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life or remaining life of the asset. Depreciation must be computed on a straight-line basis over the expected useful life or remaining life of the item or facility regardless of whether the salvage value is zero or not zero.

(I) If individual accounting is used, the following requirements apply to retirements:

(-a-) Accumulated depreciation must be calculated based on book cost less net salvage value of the asset.

(-b-) The utility must provide evidence establishing the original cost of the asset, the cost of removal, salvage value, any other amounts recovered; the useful life of the asset, or remaining life as may be appropriate; the date the asset was taken out of service; and the accumulated depreciation up to the date it was taken out of service.

(-c-) The utility must show that it used due diligence in recovering maximum salvage value of a retired asset.

(-d-) The utility must continue booking depreciation expense until the asset is actually retired, and the reserve for depreciation must include any additional depreciation expense accrued past the estimated useful or remaining life of the asset.

(-e-) The retirement of a plant asset from service is accounted for by crediting the book cost to the utility plant account in which it is included. Accumulated depreciation must also be debited with the original cost and the cost of removal and credited with the salvage value and any other amounts recovered.

(-f-) Retired assets must be specifically identified.

(-g-) The requirements relating to the accounting for the reasonableness of retirement decisions for individual assets and the net salvage value calculations for individual assets apply only to a utility using itemized accounting.

(II) For a utility that uses group accounting, the depreciation study must provide the information in subclause (I) except
that retirements may be accounted for by category. Retired assets must be reported for the asset group in depreciation studies.

(III) TWC §13.185(e) applies to utility business transactions with affiliated interests involved in the retirement, removal, or recovery of assets.

(IV) For assets retired after June 19, 2009, the retired assets must be included in the utility's first application for a rate change after the date the asset was retired and must be specifically identified if the utility uses itemized accounting.

(vii) the original cost of plant, property, and equipment acquired from an affiliated interest may not be included in invested capital except as provided in TWC §13.185(e);

(viii) utility property funded by written customer agreements or customer contributions in aid of construction such as surcharges must not be included in original capital or invested capital.

(D) Working capital allowance to be composed of, but not limited to the following:

(i) reasonable inventories of materials and supplies held specifically for purposes of permitting efficient operation of the utility in providing normal utility service.

(ii) reasonable prepayments for operating expenses. Prepayments to affiliated interests are subject to the standards set forth in TWC §13.185(e); and

(iii) a reasonable allowance for cash working capital. The following will apply in determining the amount to be included in invested capital for cash working capital:

(I) Cash working capital for utilities must not exceed one-eighth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.

(II) For Class C and Class D utilities, one-eighth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass-through provision or through charges other than base rate and gallonage charges, and prepayments will be considered a reasonable allowance for cash working capital.

(III) For Class B utilities, one-twelfth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass-through provision or charges other than base rate and gallonage charges, and prepayments will be considered a reasonable allowance for cash working capital.

(IV) For Class A utilities, a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

(a) The lead-lag study will use the cash method. All non-cash items, including but not limited to depreciation, amortization, deferred taxes, prepaid items, and return, including interest on long-term debt and dividends on preferred stock, will not be considered.

(b) Any reasonable sampling method that is shown to be unbiased may be used in performing the lead-lag study.

(c) The check clear date, or the invoice due date, whichever is later, will be used in calculating the lead-lag days used in the study. In those cases where multiple due dates and payment terms are offered by vendors, the invoice due date is the date corresponding to the terms accepted by the utility.

(d) All funds received by the utility except electronic transfers will be considered available for use no later than the business day following the receipt of the funds in any repository of the utility, e.g., lockbox, post office box, branch office. All funds received by electronic transfer will be considered available the day of receipt.

(e) The balance of cash and working funds included in the working cash allowance calculation will consist of the average daily bank balance of all non-interest bearing demand deposits and working cash funds.

(f) The lead on federal income tax expense must be calculated by measurement of the interval between the midpoint of the annual service period and the actual payment date of the utility.

(g) If the cash working capital calculation results in a negative amount, the negative amount must be included in rate base.

(V) If cash working capital is required to be determined by the use of a lead-lag study under subclause (IV) of this clause and either the utility does not file a lead-lag study or the utility's lead-lag study is determined to be unreliable, in the absence of persuasive evidence that suggests a different amount of cash working capital, zero will be presumed to be the reasonable level of cash working capital.

(VII) A lead lag study completed within five years of the application for a rate or tariff change is adequate for determining cash working capital unless sufficient persuasive evidence suggests that the study is no longer valid.

(VIII) Operations and maintenance expenses do not include depreciation, other taxes, or federal income taxes, for purposes of subclauses (I), (II), (III) and (V) of this clause.

(3) Deduction of certain items from rate base. In the consideration of applications filed under TWC §13.187 or §13.187, the commission will deduct certain items from rate base, including but not limited to the following:

(A) accumulated reserve for deferred federal income taxes;

(B) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(C) contingency and property insurance reserves;

(D) contributions in aid of construction; and

(E) other sources of cost-free capital, as determined by the commission.

(4) Construction work in progress (CWIP). The inclusion of CWIP is an exceptional form of relief. Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public. Under exceptional circumstances, the commission may include CWIP in rate base to the extent that the utility has proven that:

(A) the inclusion is necessary to the financial integrity of the utility; and

(B) major projects under construction have been efficiently and prudently planned and managed.

(5) Requirements for post-test year adjustments.

(A) A post-test year adjustment to test year data for known and measurable rate base additions may be considered only if:
(i) the addition represents a plant which would appropriately be recorded for investor-owned utilities in National Association of Regulatory Utility Commissioners (NARUC) account 101 or 102;

(ii) the addition comprises at least 10% of the utility's requested rate base, exclusive of post-test year adjustments and CWIP;

(iii) the addition is in service before the rate year begins; and

(iv) the attendant impacts on all aspects of a utility's operations, including but not limited to, revenue, expenses and invested capital, can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(B) Each post-test year plant adjustment described by subparagraph (A) of this paragraph will be included in rate base at the reasonable test year-end CWIP balance, if the addition is constructed by the utility, or the reasonable price, if the addition represents a purchase, subject to original cost requirements, as specified in TWC §13.185.

(C) Post-test year adjustments to historical test year data for known and measurable rate base decreases will be allowed only if:

(i) the decrease represents:

   (I) plant which was appropriately recorded in NARUC account 101 or 102;
   
   (II) plant held for future use;
   
   (III) CWIP, not including mirror CWIP; or
   
   (IV) an attendant impact of another post-test year adjustment.

(ii) the decrease represents a plant that has been removed from service, sold, or removed from the utility's books prior to the rate year; and

(iii) the attendant impacts on all aspects of a utility's operations, including but not limited to, revenue, expenses and invested capital, can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(d) Recovery of positive acquisition adjustments.

(1) When a utility acquires plant, property, or equipment for which commission approval is required under §24.239 of this title, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental, a positive acquisition adjustment will be allowed to the extent that the acquiring utility proves that:

   (A) the property is used and useful in providing retail water or sewer service at the time of the acquisition or as a result of the acquisition;
   
   (B) reasonable, prudent, and timely investments will be made, if required, to bring the system into compliance with all applicable rules and regulations;
   
   (C) as a result of the transaction:

   (i) the customers of the system being acquired will receive higher quality or more reliable retail water or sewer service or that the acquisition was necessary so that customers of the acquiring utility's other systems could receive higher quality or more reliable retail water or sewer service;
   
   (ii) regionalization of retail public utilities, meaning a pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service, was achieved; or
   
   (iii) the acquiring utility will become financially stable and technically sound as a result of the acquisition, or the system being acquired that is not financially stable and technically sound will become a part of a financially stable and technically sound utility;

   (D) any and all transactions between the buyer and the seller entered into as a part or condition of the acquisition are fully disclosed to the commission and were conducted at arm's length;

   (E) the actual purchase price is reasonable in consideration of the condition of the plant, property, and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and the amount of contributions in aid of construction in the system being acquired; and

   (F) the rates charged by the acquiring utility to its pre-acquisition customers will not increase unreasonably because of the acquisition.

(2) The owner of the acquired retail public utility and the final acquiring utility must not be affiliated. In a multi-stage transaction in which a purchase of voting stock or acquisition of controlling interest transaction under §24.243 of this chapter, relating to Purchase of Voting Stock or Acquisition of Controlling Interest in a Utility, is followed by a transfer of assets in what is essentially a single sales transaction, a positive acquisition adjustment is allowed only where the multi-stage transaction was fully disclosed to the commission in the application for approval of the initial stock or change of controlling interest transaction.

(3) The amount of the acquisition adjustment approved by the regulatory authority must be amortized using a straight-line method over a period equal to the weighted average remaining useful life of the acquired plant, property, and equipment, at an interest rate equal to the rate of return determined under subsection (c) of this section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.

(4) The authorization for and the amount of an acquisition adjustment will be determined only as a part of a rate change application.

(5) The acquisition adjustment will be included in rates only as a part of a rate change application.

(e) Negative acquisition adjustment. When a utility acquires plant, property, or equipment under §24.239 of this chapter, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental, and the original cost of the acquired property less depreciation exceeds the actual purchase price, the utility must record the negative acquisition adjustment separately from the original cost of the acquired property. For purposes of ratemaking, the following will apply:

(1) If a utility acquires plant, property, or equipment from a nonfunctioning retail public utility through a sale, transfer, or merger, receivership, or the utility is acting as a temporary manager, a negative acquisition adjustment must be recorded and amortized on the utility's books with no effect on the utility's rates.

(2) If a utility acquires plant, property, or equipment from a retail public utility through a sale, transfer, or merger and paragraph (1) of this subsection does not apply, the commission may recognize the negative acquisition adjustment in the ratemaking proceeding, by or-
dering the amortization of the negative acquisition adjustment through a bill credit for a defined period of time or by other means determined appropriate by the commission. Except for good cause found by the commission, the negative acquisition adjustment will not be used to reduce the balance of invested capital.

(3) Notwithstanding paragraph (2) of this subsection, the acquiring utility may show cause as to why the commission should not account for the negative acquisition adjustment in the ratemaking proceeding.

(f) Subsections (d) and (e) of this section do not apply to plant, property, or equipment acquired through a transaction based on the fair market valuation process set forth in §24.238 of this title, relating to Fair Market Valuation.

(g) Intangible assets will not be allowed in rate base unless the requirements in paragraphs (1), (2) and (3) of this subsection are met. If the requirements in paragraphs (1) and (2) of this subsection are met, but the requirement in paragraph (3) of this subsection is not met, the amount will be amortized over a reasonable period and the amortization will be allowed in the cost of service as a non-recurring expense. Amortized amounts will not be included in rate base. The requirements are as follows:

(1) The amount requested has been verified by documentation as to amount and exact nature;

(2) Testimony establishes the reasonableness and necessity and benefit of the expense to the customers; and

(3) Testimony establishes how the amount is properly considered an actual asset purchased or installed, or a source of supply, such as water rights.

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 April 17, 2020.
TRD-202001504
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 936-7244

SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.238, 24.239, 24.243

Statutory Authority

The new rule and amendments are proposed under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §13.305, which establishes a voluntary process for the valuation of utilities or facilities acquired by Class A or Class B utilities.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.305.


(a) Applicability. This section applies to a voluntary arm’s length transaction between an acquiring utility and a retail public utility under TWC §13.305 for which approval is required under TWC §13.301. This section does not apply to a transaction between a utility and its affiliate.

(b) Definitions. In this section, the following words and terms have the following meanings, unless the context indicates otherwise:

(1) Acquiring utility—A Class A or Class B utility that is acquiring a selling utility, or the facilities of a selling utility.

(2) Allowance for funds used during construction (AFUDC)—An accounting practice that recognizes the capital costs, including debt and equity funds, that are used to finance a transferee's construction costs of an improvement to a purchased asset.

(3) Fair Market Value—The average of the three appraisals conducted under subsection (f) of this section.

(4) Ratemaking rate base—The dollar value of the selling utility or the sold facilities of a selling utility that is incorporated into the rate base of the acquiring utility for post-acquisition purposes. The ratemaking rate base is the lesser of the purchase price negotiated by an acquiring utility and a selling utility or the fair market value. The ratemaking rate base does not include transaction and closing costs.

(5) Selling utility—A retail public utility that is being purchased by an acquiring utility or is selling facilities to an acquiring utility.

(c) List of qualified utility valuation experts. The commission will maintain a list of qualified utility valuation experts to perform appraisals to determine a fair market value of a selling utility or facilities of a selling utility.

(1) A utility valuation expert may request to be included on the commission's list by submitting, under the control number designated for that purpose, the required information:

(2) The request filed by the utility valuation expert must include:

(A) The expert's name, mailing address, telephone number, and email address;

(B) The name of the company with which the expert is employed or associated, or the name under which the expert conducts business;

(C) The names of the principal officers of the company with which the expert is employed or associated, if applicable;

(D) The name and mailing addresses of any affiliates of the company with which the expert is employed or associated, if applicable; and

(E) A detailed description of the utility valuation expert's qualifications, such as professional licensing, certifications, training or past experience conducting economic evaluations of water and sewer utilities.

(3) The utility valuation expert must update the information in its request on file with the commission within 10 working days of a material change to the information.

(4) A utility valuation expert who wishes to be removed from the list maintained by the commission under this subsection must file a letter with the commission requesting to be removed from the list. This letter must be filed under the control number designated for that purpose. The commission will acknowledge the removal request in writing.

(d) Notice of intent to determine fair market value.
praisal, including the amount of the service fee, the acquiring utility or utility valuation expert may submit a request for selection of a different utility valuation expert under the control number designated for that purpose. If the commission's executive director or the executive director's designee selects a different utility valuation expert, the time period for all utility valuation expert to submit a report under subsection (f)(5) of this section begins when the different utility valuation expert is selected.

(f) Determination of fair market value.

(1) The three utility valuation experts selected under subsection (e) of this section jointly must retain a licensed engineer to conduct an assessment of the tangible assets of the selling utility or the facilities to be sold to the acquiring utility.

(A) The engineer may not be or have been within one year preceding the date the service contract is executed a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(B) The engineer must provide the following information to the valuation experts:

(i) Qualifications that demonstrate the engineer's ability to provide the requested assessment;

(ii) The engineer's fees for other similar assessments; and

(iii) Other relevant information requested by the utility valuation experts.

(C) The engineer's assessment must include a separate assessment for each type of facility based on the applicable National Association of Regulatory Utility Commissioners (NARUC) account for the facility.

(D) The fee charged by the engineer must be shared and paid equally by the three utility valuation experts and may be included as part of the utility valuation expert compensation under subsection (k) of this section.

(2) Each utility valuation expert must perform an independent appraisal of the selling utility in compliance with Uniform Standards of Professional Appraisal Practice, using the cost, market, and income approaches in accordance with subsections (g) - (i) of this section.

(3) The appraisal must not take into account the original sources of funding, including developer contributions or customer contributions in aid of construction, for any of the utility plant that is assessed by the engineer or the utility valuation experts.

(4) The appraisal must not take into account the purchase price negotiated by the acquiring utility and the selling utility.

(5) Each utility valuation expert must submit a completed report to the acquiring utility and the selling utility no later than 120 days after the date the commission's executive director or the executive director's designee selects the utility valuation expert under subsection (e) of this section.

(6) The ratemaking rate base established under this section will be the rate base for the system or facilities acquired in the transaction. Nothing in this section alters the requirements for multiple system consolidation in §24.25(k) of this title, relating to Form and Filing of Tariffs.

(g) Cost Approach.
(1) A cost approach appraisal performed under this section must be based on one of the following:

   (A) the investment required to replace or reproduce future service capability; or
   (B) the original cost of the facilities as adjusted for depreciation.

(2) A cost approach appraisal performed under this section must:

   (A) incorporate the results of the assessment performed by the engineer selected under subsection (f)(1) of this section;
   (B) exclude from consideration overhead costs, future improvements, and going concern value; and
   (C) use a consistent rate of inflation for all classes of assets unless use of different rates is reasonably justified.

(h) Income Approach.

(1) An income approach appraisal performed under this section must be based on one of the following:

   (A) capitalization of earnings or cash flow; or
   (B) the discounted cash flow method.

(2) An income approach appraisal performed under this section must exclude consideration of the following:

   (A) going concern value;
   (B) future capital improvements; and
   (C) erosion of cash flow or erosion on return.

(3) An income approach appraisal performed under this section must be supported by the following:

   (A) an explanation of how the capitalization rate was calculated, if a capitalization rate was used;
   (B) an explanation of the basis for the discount rates used; and
   (C) an explanation of the capital structure, cost of equity and cost of debt used.

(i) Market Approach.

(1) A market approach appraisal performed under this section must be based on the following:

   (A) the current connection count of the selling utility at the time of the appraisal;
   (B) use of a proxy group that includes companies that have made acquisitions that were not based on a fair market valuation methodology; or
   (C) comparable sales that did not include the value of future capital improvement projects in the selling price.

(2) A market approach appraisal performed under this section must not consider the following:

   (A) a net book financials multiplier or speculative growth adjustments;
   (B) the value of future capital improvement projects; or
   (C) a value or adjustment for the goodwill of the selling utility.

(j) Contents of Utility Valuation Expert Report. A report submitted under paragraph (f)(5) of this section must include:

   (1) a copy of the service contract executed by the utility valuation expert and the acquiring and selling utilities;
   (2) the fee charged by the utility valuation expert along with documentation supporting the amount of the fee;
   (3) a detailed list of the utility plant assessed by the engineer;
   (4) an explanation of how the cost, market, and income approaches were incorporated into the calculation of the fair market value of the selling utility or the selling utility’s facilities; and
   (5) a notarized affidavit stating that:

   (A) the appraisals described in the report were conducted in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice;
   (B) the utility valuation expert will not derive material or financial benefit from the sale other than the fee for services rendered; and
   (C) the utility valuation expert is not currently and was not within the year preceding the date of the contract for service executed between the utility valuation expert and the acquiring and selling utilities, a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(k) Transaction and closing costs.

(1) A fee paid to a utility valuation expert to perform an appraisal under subsection (f) of this section may be included in the transaction and closing costs associated with a transaction approved under §24.239 of this title, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental.

   (2) The commission will review the transaction and closing costs, including fees paid to utility valuation experts, in the rate case in which the acquiring utility requests rate recovery of those costs. The fee amounts included in transaction and closing costs that are recoverable in the acquiring utility’s rates may not exceed the lesser of:

   (A) five percent of the fair market value; or
   (B) the fee amounts approved by the commission in the rate case in which the acquiring utility requests rate recovery of the transaction and closing costs.

§24.239. Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental.

(a) Application for approval of transaction. Any water supply or sewer service corporation, or water and sewer utility, owned by an entity required by law to possess a certificate of convenience and necessity (CCN) must file a written application with the commission and give public notice of any sale, transfer, merger, consolidation, acquisition, lease, or rental at least 120 days before the effective date of the transaction. The 120-day period begins on the most recent of:

   (1) the last date the applicant mailed the required notice as stated in the applicant’s affidavit of notice; or
   (2) the last date of the publication of the notice in the newspaper as stated in the affidavit of publication, if required.

(b) Intervention period. The intervention period for an application filed under this section must not be less than 30 days. The presiding officer may order a shorter intervention period for good cause.
shown. [The notice shall be on the form required by the commission and the intervention period shall not be less than 30 days unless good cause is shown. Public notice may be waived by the commission for good cause shown.]

(c) Notice.

(1) Unless notice is waived by the commission, proper notice must be given to affected customers and to other affected parties as required by the commission on the form prescribed by the commission. The notice must include the following:

(A) the name and business address of the utility currently holding the CCN (transferor) and the retail public utility or person that will acquire the facilities or CCN (transferee);

(B) a description of the requested area;

(C) the following statement: "Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is 30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer. You must send a letter requesting intervention to the commission which is received by that date."

(D) if the transferor is a nonfunctioning utility with a temporary rate in effect and the transferee is requesting that the temporary rate remain in effect under TWC §13.046(d), the following information:

(i) the temporary rates currently in effect for the nonfunctioning utility; and

(ii) the duration of time for which the transferee is requesting that the temporary rates remain in effect.

(2) The transferee must mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles from the outer boundary of the requested area, and any city with an extraterritorial jurisdiction that overlaps the requested area.

(3) The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located. The commission may allow published notice in lieu of individual notice as required by paragraph (2) of this subsection.

(4) The commission may waive published notice if the requested area does not include unserved area, or for good cause shown.

[ec] Unless notice is waived by the commission for good cause shown, proper notice shall be given to affected customers and to other affected parties as determined by the commission and on the form prescribed by the commission which shall include the following:

(A) the name and business address of the current utility holding the CCN (transferor) and the retail public utility or person which will acquire the facilities or CCN (transferee);

(B) a description of the requested area; and

(C) the following statement: "Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is 30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer. You must send a letter requesting intervention to the commission which is received by that date."

(d) Requirements for application for fair market valuation.

(1) An application filed under this section for approval of a transaction that includes a fair market valuation of the transferee's facilities that was determined using the process established in §24.238 of this title, relating to Fair Market Valuation must include:

(A) copies of the three appraisals performed under §24.238(f);

(B) the purchase price agreed to by the transferor and transferee;

(C) the transaction and closing costs incurred by the transferee that will be requested to be included in the transferee's rate base; and

(D) if applicable, a copy of the transferee's commission-approved tariff that contains the rates in effect at the time of the acquisition.

(2) The commission will review the transaction and closing costs, including fees paid to appraisers, in the rate case in which the transferee requests rate recovery of those costs.

[dd] The commission may waive notice under this subsection if the requested area does not include unserved area, or for good cause shown: If notice is not waived by the commission, the transferee shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles from the outer boundary of the requested area, and any city with an extraterritorial jurisdiction that overlaps the requested area.

[ee] The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located.

[ee] The commission may allow published notice in lieu of individual notice as required in this subsection.

[f] [eh] A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system [transferee] must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee's certificated service area as required by §24.227(a) of this title, [erelating to Criteria for Granting or Amending a Certificate of Convenience and Necessity[er].

[f] [eh] If the transferee cannot demonstrate adequate financial capability, the commission may require that the transferee provide financial assurance to ensure continuous and adequate retail water or [and/or] sewer utility service is provided to both the requested area and any area already being served under the transferee's existing CCN. The commission will [shall] set the amount of financial assurance. The form of the financial assurance must meet the requirements of [shall be as specified in] §24.11 of this title, [erelating to Financial Assurance[er]. The obligation to obtain financial assurance under this title does not relieve an applicant from any requirements to obtain financial assurance to satisfy [in satisfaction of] another state agency's rules.

[gh] [eh] The commission will [shall], with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisi-
tion, lease, or rental to determine whether the transaction will serve the public interest. If the commission decides to hold a hearing, or if the transferee fails either to file the application as required or to provide public notice, the transaction proposed in the application may not be completed unless the commission determines that the proposed transaction serves the public interest.

(h) [¶4] Before [Prior to] the expiration of the 120-day period described in subsection (a) of this section, the commission will determine whether to [shall either approve the sale administratively or] require a public hearing to determine if the transaction will serve the public interest. The commission will notify the transferee, the transferor, all intervenors, and the Office of Public Utility Counsel whether a hearing will be held. The commission may require a hearing if:

(1) the application filed with the commission or the public notice was improper;
(2) the transferee has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any area already being served under the transferee's existing CCN;
(3) the transferee has a history of:
   (A) noncompliance with the requirements of the Texas Commission on Environmental Quality (TCEQ) [TCEQ], the commission, or the Texas Department of State Health Services; or
   (B) continuing mismanagement or misuse of revenues as a utility service provider;
(4) the transferee cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the requested area; or
(5) there are concerns that the transaction does not serve the public interest based on consideration [it is in the public interest to investigate] the following factors:

   [(A) whether the transferor or the transferee has failed to comply with any commission or TCEQ order. The commission may refuse to approve a sale, transfer, merger, consolidation, acquisition, lease, or rental if conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met]
   (B) the adequacy of service currently provided to the requested area;
   (C) the need for additional service in the requested area;
   (D) the effect of approving the transaction on the transferee, the transferor, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area;
   (E) the ability of the transferee to provide adequate service;
   (F) the feasibility of obtaining service from an adjacent retail public utility;
   (G) the financial stability of the transferee, including, if applicable, the adequacy of the debt-equity ratio of the transferee if the transaction is approved;
   (H) [¶H] [the] environmental integrity; [and]
   (I) the probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction; and[·]
The requirements of TWC §13.301 do not apply to:

(1) the purchase of replacement property;
(2) a transaction under TWC §13.255; or
(3) foreclosure on the physical assets of a utility.

If a utility's facility or system is sold and the utility's facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its CCN, or a controlling interest in an incorporated utility, unless the utility provides a written disclosure relating to the contributions to both the transferee and the commission before the date of the sale or transfer. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings. This subsection does not apply to a utility facility or system sold as part of a transaction where the transferee or transferee elected to use the fair market valuation process set forth in §24.238 of this title relating to Fair Market Valuation.

For any transaction subject to this section, the retail public utility that proposes to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest must [shall] provide the other party to the transaction a copy of this section before signing an agreement to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest.

§24.243. Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility.

(a) A utility may not purchase voting stock, and a person may not acquire a controlling interest, in a utility doing business in this state unless the utility or person files a written application with the commission no later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as:

(1) a person or a combination of a person and the person's family members that possess at least 50% of a utility's voting stock; or
(2) a person that controls at least 30% of a utility's voting stock and is the largest stockholder.

(b) A person acquiring a controlling interest in a utility is [shall be] required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and to the person's certificated service area, if any.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require the person to provide financial assurance to ensure continuous and adequate utility service is provided to the service area. The commission will [shall] set the amount of financial assurance. The form of the financial assurance must [shall] be as specified in §24.11 of this title [relating to Financial Assurance].

(d) The commission may require a public hearing on the transaction if a criterion prescribed by §24.239(k) [§24.239(a)] of this title [relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental] applies.

(e) Unless the commission requires that a public hearing be held, the purchase or acquisition may be completed as proposed:

1. at the end of the 60 day period; or
2. at any time after the commission notifies the person or utility that a hearing will not be required [requested].

(f) If a hearing is required or if the person or utility fails to make the application to the commission as required, the purchase of voting stock or acquisition of a controlling interest may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

(g) The utility or person must [shall] notify the commission within 30 days after the date that the transaction is completed.

(h) Within 30 days of the commission order that allows a utility's purchase of voting stock or a person's acquisition of a controlling interest to proceed as proposed, the utility purchasing voting stock or the person acquiring a controlling interest must [shall] file a written update on the status of the transaction. A written update must [shall] also be filed every 30 days thereafter, until the transaction has been completed.

(i) The commission's approval of a utility's purchase of voting stock or a person's acquisition of a controlling interest in a utility expires 180 days after the date of the commission order approving the transaction as proposed. If the transaction has not been completed within the 180-day time period, and unless the utility purchasing voting stock or the person acquiring a controlling interest has requested and received an extension for good cause from the commission, the approval is void.

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 April 20, 2020.
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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

TITLE 19. EDUCATION
PART 2. TEXAS EDUCATION AGENCY
CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE
19 TAC §61.1008

The Texas Education Agency (TEA) proposes new §61.1008, concerning the school safety allotment. The proposed new rule would reflect changes made by Senate Bill (SB) 11, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §42.168, added by SB 11, 86th Texas Legislature, 2019, directs the commissioner to adopt rules and take action as necessary to implement and administer the school safety allotment. The allotment provides additional funding for a school district in the amount provided by appropriation for each
student in average daily attendance. Funds allocated for that purpose must be used to improve school safety and security, including costs associated with: (1) securing school facilities; (2) providing security for the district; (3) school safety and security training and planning; and (4) providing programs related to suicide prevention, intervention, and postvention.

House Bill 3, 86th Texas Legislature, 2019, passed independently of SB 11, transferred many Foundation School Program formulas to TEC, Chapter 48. Proposed new 19 TAC §61.1008 would implement TEC, §42.168, by explaining that the school safety allotment will be treated as if it is located in TEC, Chapter 48. It is anticipated that the legislature will transfer TEC, §42.168, to TEC, Chapter 48, when it convenes in 2021.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal beyond what the authorizing statute requires. The rulemaking itself would not require an increase in future legislative appropriations to the agency, but SB 11 does require an increase in future legislative appropriations to the agency estimated to be $49,672,915 in fiscal year 2020 and $50,327,085 in fiscal year 2021 by the General Appropriations Act.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, the proposed rule would create a new regulation to implement the school safety allotment. The rulemaking itself would not require an increase in future legislative appropriations to the agency, but SB 11 does require an increase in future legislative appropriations to the agency estimated to be $49,672,915 in fiscal year 2020 and $50,327,085 in fiscal year 2021 by the General Appropriations Act.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require a decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state’s economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be implementation of legislative changes that help school districts provide a safe and secure environment through the school safety allotment. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 1, 2020, and ends June 15, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on May 1, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §42.168, as added by Senate Bill 11, 86th Texas Legislature, 2019, authorizes the school safety allotment.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §42.168, as added by Senate Bill 11, 86th Texas Legislature, 2019.

§61.1008. School Safety Allotment.

The school safety allotment calculated under Texas Education Code (TEC), §42.168, is treated as an allotment under TEC, Chapter 48, Subchapter C.

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

Filed with the Office of the Secretary of State on April 20, 2020.
TRD-202001512
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 475-1497

CHAPTER 74. CURRICULUM REQUIREMENTS
SUBCHAPTER AA. COMMISSIONER’S RULES ON COLLEGE AND CAREER READINESS
19 TAC §74.1005

PROPOSED RULES  May 1, 2020  45 TexReg 2807
The Texas Education Agency (TEA) proposes new §74.1005, concerning college and career funding and reimbursements. The proposed new rule would address the career and technology education allotment, the college preparation assessment reimbursement, and the industry-based certification examination reimbursement.

BACKGROUND INFORMATION AND JUSTIFICATION: House Bill (HB) 3, 86th Texas Legislature, 2019, added Texas Education Code (TEC), §48.155 and §48.156, which establish reimbursements for school districts for college preparation assessments and certification examinations. In addition, HB 3 established in TEC, §48.106(a)(1), a weighted annual allotment for approved career and technical education (CTE) courses.

Proposed new 19 TAC §74.1005 would implement HB 3, as follows.

The proposed new rule would describe the eligibility of school districts and charter schools to receive career and technology education allotment funding under TEC, §§48.106(a)(1) and (2)(A)-(C), for approved CTE courses, advanced CTE courses, Pathways in Technology Early College High School (P-TECH) campuses, and New Tech Network campuses.

The proposed new rule would also detail eligibility for certain district reimbursements. The certification examination reimbursement would apply to certifications identified on the TEC industry-based certification list for public school accountability for students in Grades 9-12 who pass an examination beginning in the 2019-2020 school year. The college preparation assessment reimbursement would allow districts to be reimbursed for the amount of fees paid by the district for the state negotiated rate for the SAT®, ACT®, or Texas Success Initiative Assessment. Under the proposed new rule, a district would only be reimbursed for one industry-based certification examination per student and one college preparation assessment per student.

FISCAL IMPACT: Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would require the creation of new employee positions, would create a new regulation, and would positively affect the state's economy. In order to comply with new TEC, §§48.155 and §48.156, TEA will need one new full-time employee to monitor, process, and reconcile reimbursements for college preparation assessments and industry-based certifications. The proposal would create a new regulation to implement the requirements of recently enacted legislation. The Texas economy will be positively affected as a result because more students will earn industry-based certifications, which will lead to a more skilled and prepared labor force.

The proposed rulemaking would not create or eliminate a government program; would not require the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be implementing newly enacted legislation and providing school districts with support to monitor, process, and reconcile reimbursements for college preparation assessments and industry-based certifications. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact; however, school districts and open-enrollment-charter schools would be required to follow Public Education Information Management System (PEIMS) reporting requirements to be eligible for funding and reimbursements. The PEIMS data collection element related to industry-based certifications is E1632. The PEIMS data collection element related to New Tech campus designations is E1647.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 1, 2020, and ends June 15, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on May 1, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY: The new section is proposed under Texas Education Code (TEC), §29.190(a)(2) and (a-1), as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that a student is entitled to one subsidy for a certification examination if the student passes a certification examination to qualify for a license or certificate that is an industry certification for purposes of TEC, §§39.053(c)(1)(B)(v); TEC, §39.0261(a)(3), as amended by HB 3, 86th Texas Legislature, 2019, which defines the time period for a student to take the college preparation assessment at state cost and includes the proposal compliance.
the assessment instruments designated by the Texas Higher Education Coordinating Board under TEC, §51.334; TEC, §48.106(a)(1), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which establishes an annual allotment for approved career and technical education courses equal to the basic allotment multiplied by a weight of 1.35; TEC, §48.155, as added by HB 3, 86th Texas Legislature, 2019, which establishes the college preparation assessment reimbursement for a school district in the amount of fees paid by the district for the administration of one assessment instrument per student under TEC, §39.0261(a)(3); and TEC, §48.156, as added by HB 3, 86th Texas Legislature, 2019, which establishes the certification examination reimbursement for school districts in the amount of a subsidy paid by the district for one certification examination per student under TEC, §29.190(a)(2) and (a-1).

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§29.190(a)(2) and (a-1) and §39.0261(a)(3), as amended by House Bill (HB) 3, 86th Texas Legislature, 2019; §48.106(a)(1), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019; and §48.155 and §48.156, as added by HB 3, 86th Texas Legislature, 2019.

§74.1005. College and Career Funding and Reimbursements.

(a) Applicability. The provisions of this section apply to school districts and open-enrollment charter schools.

(b) Eligibility for funding.

(1) A district is eligible to receive funding under Texas Education Code (TEC), §48.106(a)(1), for students in Grades 7-12 who take an approved career and technical education (CTE) course designated with an “H” in the CTE Course column of the Texas Education Data Standards, Section 4, Service-ID (CO22) code table.

(2) A district is eligible to receive funding under TEC, §48.106(a)(2)(A), for an advanced CTE course identified as Level 3 or Level 4 in a statewide CTE program of study.

(3) A district is eligible to receive funding under TEC, §48.106(a)(2)(B), for a campus that has been designated by Texas Education Agency (TEA) as a Pathways in Technology Early College High School (P-TECH) for the current school year.

(4) A district is eligible to receive funding under TEC, §48.106(a)(2)(C), for a campus that has an agreement with the New Tech Network as defined by the New Tech Network for the current school year.

(c) Eligibility for reimbursement.

(1) A district is eligible to receive a certification examination reimbursement for a certification identified on the TEA list of industry-based certifications (IBCs) for public school accountability, pursuant to §74.1003 of this title (relating to Industry-Based Certifications for Public School Accountability).

(A) A district is eligible to receive the certification examination reimbursement for students in Grades 9-12 who pass an examination beginning in the 2019-2020 school year.

(B) Examinations must be taken between September 1 and August 31 of any school year.

(C) A district is eligible for reimbursement for a student's first examination reported in the Texas Student Data System Public Education Information Management System with an associated dollar amount.

(2) A district is eligible to receive a reimbursement for a college preparation assessment administered under TEC, §39.0261(a)(3)(A), for the amount of fees paid by the district for the state negotiated rate for the SAT® or ACT® for students in spring of their junior year or during their senior year.

(A) Assessment reimbursement only includes the basic SAT® and ACT® tests. Other additional costs or fees such as writing tests, subject area tests, or late fees are not eligible for reimbursement.

(B) A student must take the assessment between January of Grade 11 through graduation.

(3) A district is eligible to receive a reimbursement for a college preparation assessment administered under TEC, §39.0261(a)(3)(B), for the amount of fees paid by the district for the Texas Success Initiative Assessment for students in spring of their junior year or during their senior year.

(A) Assessment reimbursement includes both the reading and mathematics portions of the examination. Neither portion is eligible for reimbursement on its own, and additional costs and fees such as writing tests and late fees are not eligible for reimbursement.

(B) A student must take the assessment between January of Grade 11 through graduation.

(4) A district may only be reimbursed under this subsection for one IBC examination per student and one college preparation assessment per student.

(5) A district must submit reimbursement requests and data in accordance with instructions provided by TEA within the published timeline.

(d) Final decisions. Reimbursement decisions are final and may not be appealed.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 475-1497

CHAPTER 97. PLANNING AND ACCOUNTABILITY
SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING
19 TAC §97.1001
(3) Other costs and fees such as writing tests, subject area tests, or late fees are not eligible for reimbursement.

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning the accountability rating system. The
proposed amendment would adopt in rule applicable excerpts of the 2020 Accountability Manual.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The proposed amendment to 19 TAC §97.1001 would adopt excerpts of the 2020 Accountability Manual into rule as a figure. The excerpts, Chapters 1-11 of the 2020 Accountability Manual, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.057.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered would be updated to align with 2020 accountability and present tense would be applied throughout.

Chapter 1 gives an overview of the entire accountability system. The description of the Accountability Policy Advisory Committee would be updated to note that the committee makes their own recommendations to address policy issues. The description of a Not Rated rating would be moved from the Single-Campus Districts section to the Rating Labels section and expanded upon. The label Not Rated: Declared State of Disaster would be added to indicate that due to extraordinary public health and safety circumstances, the closure of schools during the state's testing window inhibited the ability of the state to accurately measure district and campus performance. The school types chart would be updated to reflect numbers for 2020.

Chapter 2 describes the Student Achievement domain. The section describing the inclusion of substitute assessments would be updated to state that results from fall 2019 and spring 2020 would not be included. Unschooled asylee, refugee, and students with interrupted formal education (SIFE) inclusion language would be updated to note that these results are included beginning with the student's second year of enrollment in U.S. schools. Clarifying language regarding rounding within the State of Texas Assessment of Academic Readiness (STAAR®) component would be added. The list of College, Career, and Military Readiness (CCMR) indicators would be reorganized to align with other Performance Reporting products. The list of career and technical education courses aligned with an industry-based certification (IBC) would be updated in response to the expansion of the IBC list.

Chapter 3 describes the School Progress domain. Language referencing House Bill 22, 85th Texas Legislature, 2017, would be removed. Unschooled asylee, refugee, and SIFE inclusion language would be updated to note that these results are included beginning with the student's second year of enrollment in U.S. schools. The language describing small numbers analysis for the Academic Growth domain would be updated to indicate that three years would be used. The section describing the inclusion of substitute assessments would be updated to state that results from fall 2019 and spring 2020 would not be included. A sentence reiterating that English learners in their second year in U.S. schools are included would be removed, as it is redundant.

Chapter 4 describes the Closing the Gaps domain. The construction of this domain is based on the need to align to the language of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESSA). Clarifying language would be added to the minimum size section, noting that a district or campus must meet minimum size for at least five indicators in the Academic Achievement component to be evaluated. Clarifying language would be added to the Current and Former Special Education Students and Current and Monitored English Learners sections regarding the sources used to identify students as such. Unschooled asylee, refugee, and SIFE inclusion language would be updated to note that these results are included beginning with the student's second year of enrollment in U.S. schools. The section describing the inclusion of substitute assessments would be updated to state that results from fall 2019 and spring 2020 would not be included. A sentence describing the minimum number of indicators needed to be evaluated would be added to each section describing the minimum size criteria. The language describing small numbers analysis for the Academic Growth domain would be updated to indicate that three years would be used. Language would be added to note changes to the graduation rate methodology if the amendment submitted to the U.S. Department of Education is approved. Texas English Language Proficiency Assessment System (TELPAS) Alternate would be added to the English Language Proficiency component descriptions as well as a shift to use 2018 TELPAS composite ratings if 2019 composite ratings are not available. The list of CCMR indicators would be reorganized to align with other Performance Reporting products. Clarifying language would be added to note that only summer 2019 substitute assessments would be included as participants. Additional language would be added to the middle school example calculation to illustrate how to proportionally distribute component weights.

Chapter 5 describes how the overall ratings are calculated. Language would be added to note that the following provision would not apply if the triggering campus is an alternative education accountability campus with a domain or overall rating of D. A district may not receive an overall or domain rating of A if the district includes any campus with a corresponding overall or domain rating of D or F. In this case, the highest scaled score a district can receive for the overall or in the corresponding domain is an 89. The formatting would be updated for the campus School Progress, Part B: Relative Performance Lookup Tables.

Chapter 6 describes distinction designations. Clarifying language would be added stating that a campus may earn a distinction based on a sole indicator other than attendance. An indicator that evaluates Grade 8 Algebra I end-of-course performance would be added to the mathematics distinction section. The Top 25 Percent distinction methodology language would be updated to state the use of the raw score rather than the scaled score.

Chapter 7 describes the pairing process and the alternative education accountability (AEA) provisions. The Pairing section would be updated to state that traditional campuses may not be paired with AEA campuses. A section regarding magnet campuses and programs would be added to detail the attribution of assessment results. Clarifying language would be added to the AEA of choice description. Language describing the AEA
registration process would be revised to note that if a campus was registered in 2019 using the at-risk safeguard and it does not meet the at-risk enrollment criterion in 2020, the campus would not be eligible for AEA and would not be re-registered in 2020. Language would be added stating that campuses that were not registered in 2019 but meet eligibility requirements for AEA in 2020 would be automatically registered along with the requirement for a district to rescind the registration if they do not wish for the campus to be evaluated under AEA provisions. The number of at-risk criteria would be updated from thirteen to fourteen to reflect statutory changes.

Chapter 8 describes the process for appealing ratings. A deadline of June 5, 2020, for TELPAS rescore requests and a deadline of June 19, 2020, for STAAR® rescore requests would be added. Additionally, rescore requests submitted after the deadline would not be considered during the appeals process. Language would be added stating that all preliminary ratings are subject to change due to an investigation or an appeal. The Local Accountability System Manual would be changed to Local Accountability System Guide. A paragraph describing special program campuses would be added to the Special Circumstance Appeals section, and a paragraph describing rescoring would be removed. Clarifying language would be added to note that distinction designations would not be reprocessed for districts and campuses that receive a granted appeal for an A-D rating. The example of a satisfactory appeal would be updated to reflect a satisfactory appeal recently received. A sentence would be added to state that certain appeal requests may lead to audits and/or investigations.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. The reference to House Bill 22, 85th Texas Legislature, 2017, would be removed. Language would be added stating that due to the lack of 2020 accountability ratings, the campuses identified for Public Education Grant (PEG) based on 2019 ratings would remain on the 2021-2022 PEG List. The Campus Intervention Requirements under the TEC, Chapter 39A, section would be revised to reference TEC, Chapter 39A, rather than TEC, §39A.101, and to address campuses with a D rating. The Actions Required Due to Low Ratings or Low Accreditation Status sections would be updated to include D ratings along with F ratings. Language would be added to the Campus Intervention Requirements section and the Actions Required Due to Low Ratings section noting that when a district or campus receives a rating of Not Rated, Not Rated: Declared State of Disaster, or Not Rated: Data Integrity Issues, the district or campus shall continue to implement the previously ordered sanctions and interventions. If a campus has been ordered to prepare a turnaround plan and then receives a rating of Not Rated, Not Rated: Declared State of Disaster, or Not Rated: Data Integrity Issues, that campus is strongly encouraged, but not required, to implement the approved turnaround plan. Language would be revised to clarify the policy for updating campus identification numbers.

Chapter 10 provides information on the federally required identification of schools for improvement. Language and charts would be revised to detail changes to additional targeted support, targeted support and improvement, and comprehensive support and improvement identification methodology, if the submitted ESSA amendment is approved. Language would be revised to note that all students, former education, continuously enrolled, and non-continuously enrolled student groups would not be evaluated for additional targeted and targeted support and improvement. For targeted support and improvement and additional targeted support sections, minimum size requirement language would be removed for all student groups, as it would not be evaluated. Language regarding the exit criteria for comprehensive support and improvement would be revised to clarify that campuses must have an improved Closing the Gaps domain letter grade by the end of the second year.

Chapter 11 describes local accountability systems. Language would be added to clarify that local accountability plans may vary by campus type and by school group but must apply equally to all campuses by type and group. Language noting that an independent panel consisting of representatives from current participating districts would participate in the review process would be removed. The Local Accountability System Manual would be replaced with the Local Accountability System Guide. References to a “what if” rating would be removed. Language indicating that districts must submit scaled scores for each component would be added.

FISCAL IMPACT: Jeff Cottrill, deputy commissioner for academics standards and engagement, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by providing for an additional rating type related to disasters.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state’s economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Cottrill has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be continuing to inform the public of the existence of annual manuals specifying rating procedures for the

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 39.205; and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

(1) indicators, standards, and procedures used to determine district ratings;
(2) indicators, standards, and procedures used to determine campus ratings;
(3) indicators, standards, and procedures used to determine distinction designations; and
(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2020 are based upon specific criteria and calculations, which are described in excerpts sections of the 2020 Accountability Manual provided in this sub-section.

Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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 April 20, 2020.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.3

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.3, concerning the requirements for licensure by credentials. This amendment will remove the requirement that an applicant must submit an application to
the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and wellfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §101.3, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§101.3. Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for licensure by credentials must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Is currently licensed as a dentist in good standing in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board;

(3) Has practiced dentistry:

(A) For a minimum of three years out of the five years immediately preceding application to the Board, pursuant to section 256.101(a-1) of the Dental Practice Act; or

(B) As a dental educator at a CODA-accredited dental or dental hygiene school for a minimum of five years immediately preceding application to the Board;

(4) Is endorsed by the state board of dentistry in the jurisdiction in which the applicant practices at the time of the application. Such endorsement is established by providing a copy under seal of the applicant's current license and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations;

(6) Has met the requirements of §101.8 of this title (relating to Persons with Criminal Backgrounds) and has completed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action[. Additionally, no more than six months before submitting an application to the Board, an applicant under this section shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification]; and

(7) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) Practice experience described in subsection (a)(3) of this section must be subsequent to applicant having graduated from a CODA-accredited dental school.

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 April 20, 2020.

TRD-202001520

PROPOSED RULES May 1, 2020 45 TexReg 2813
22 TAC §101.4

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.4, concerning the requirements for temporary licensure by credentials. This amendment will remove the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. The amendment also clarifies that biennial not annual renewals are required. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §101.4, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicable will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§101.4. Temporary Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for temporary licensure by credentials must present proof that the applicant:

(1) has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations;

(3) is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board;

(4) is endorsed by the state board of dentistry in the jurisdiction in which the applicant practices at the time of the application. Such endorsement is established by providing a copy under seal of the applicant's current license, and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action. For applications filed after August 31, 2002, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification;

(6) is currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement; and

(7) has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) A license granted under this section is valid only for practice as an employee of a non-profit corporation. If a dentist holding a temporary license under this section becomes employed by a non-profit corporation other than the non-profit corporation named in the application, the licensee must notify the Board of the change in employment within fifteen days of such change.
(c) A dentist holding a temporary license issued under this section may renew the license by submitting an [annual] application and paying all required fees.

(d) A dentist holding a temporary license may obtain a license under the provision of §101.3 of this chapter (relating to Licensure by Credentials) when the dentist meets the practice requirements set forth in that section, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under §101.3 of this chapter and the application fee charged under 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.

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Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

22 TAC §101.14
The State Board of Dental Examiners (Board) proposes new rule §101.14 concerning Exemption from Licensure for Certain Military Spouses. The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §101.14, Exemption from Licensure for Certain Military Spouses regarding dentists, allows qualified military spouses to practice dentistry without obtaining a license to practice dentistry during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's implementation of legislative direction for the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed new rule may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

This rule implements the requirements of SB 1200 of the 86th Legislature and Texas Occupations Code §55.0041.


(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military spouse to practice dentistry in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active license to practice dentistry in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).
(c) While authorized to practice dentistry in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) Once the board receives the form containing notice of a military spouse’s intent to practice in Texas, the board will verify whether the military spouse’s dental license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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 April 20, 2020.
TRD-202001524
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

22 TAC §101.15
The State Board of Dental Examiners (Board) proposes new rule 22 TAC §101.15, concerning Reinstatement of a Cancelled License. This rule will clarify the Board’s considerations when reviewing an application for licensure for an applicant who previously held a Texas license that expired and was subsequently cancelled.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state’s economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov’t. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§101.15. Reinstatement of a Cancelled License

(a) The Board may reinstate a cancelled Texas dental license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection:

(1) An applicant who, at the time of application for reinstatement, is practicing dentistry in another state, or territory outside of the United States, or had practiced dentistry actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support;

(E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) An applicant who has not actively practiced for at least two years immediately preceding the request for reinstatement of a cancelled license must submit proof that the applicant has taken and passed the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board as required by §101.2 of this chapter (relating to Licensure by Examination) pursuant to §257.002(d) of the Dental Practice Act.
(3) An applicant who applies to reinstate a cancelled license must comply with all other applicable provisions of the Dental Practice Act and Board rules.

(4) An applicant who applies to reinstate a cancelled license must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time the license was cancelled.

(5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reinstate a cancelled 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.

Filed with the Office of the Secretary of State on April 20, 2020.

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Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.3

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §103.3, concerning the requirements for licensure by credentials. This amendment will remove the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. This rulemaking resulted from Board staff’s effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §103.3, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicable will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state’s economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov’t. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§103.3. Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for dental hygienist licensure by credentials must present proof that the applicant:

(1) Is currently licensed as a dentist or dental hygienist in good standing in another state, the District of Columbia, or territory of the United States, provided that such license followed successful completion of a dental hygiene clinical examination administered by another state or regional examining board;

(2) Has practiced dentistry or dental hygiene:

(A) For a minimum of three years out of the five years immediately preceding application to the Board; or

(B) As a dental educator at a CODA-accredited dental or dental hygiene school for a minimum of five years immediately preceding application to the Board;

(3) Is endorsed by the state board of dentistry that has jurisdiction over the applicant’s current practice. Such endorsement is established by providing a copy under seal of the applicant’s current license and by a certified statement that the applicant has current good standing in said jurisdiction;

(4) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and
GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply:

1. the rule does not create or eliminate a government program;
2. implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state’s economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov’t. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§103.4. Temporary Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for temporary dental hygienist licensure by credentials must present proof that the applicant:

1. Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a dental hygiene clinical examination administered by another state or regional examining board;

2. Is endorsed by the state board of dentistry that has jurisdiction over the current practice. Such endorsement is established by providing a copy under seal of the applicant’s current license, and by a certified statement that the applicant has current good standing in said jurisdiction;

3. Is currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement;

4. Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

5. Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB)
Clearinghouse for Disciplinary Action. [Additionally, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification.]

(b) A license granted under this section is valid only for practice as an employee of the non-profit corporation named on the application.

(c) A dental hygienist holding a temporary license issued under this section may renew the license by submitting an annual renewal application and paying all required fees.

(d) A dental hygienist holding a temporary license may obtain a license under the provisions of §103.3 of this chapter (relating to Licensure by Credentials) when the dental hygienist meets the practice requirements set forth in that section, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under §103.3 of this chapter and the application fee charged under 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.

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Casey Nichols
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-9380

22 TAC §103.10

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §103.10, concerning Exemption from Licensure for Certain Military Spouses. The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule 22 TAC §103.10, Exemption from Licensures for Certain Military Spouses, regarding dental hygienists, allows qualified military spouses to practice as a dental hygienist without obtaining a dental hygienist license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure in Texas.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency’s implementation of legislative direction for the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state’s economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov’t. Code §2001.0045.

Comments on the proposed new rule may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

This rule implements the requirements of SB 1200 of the 86th Legislature and Texas Occupations Code §55.0041.

§103.10. Exemption from Licensure for Certain Military Spouses

(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military spouse to practice as a dental hygienist in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active dental hygienist license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for certification in Texas; and

PROPOSED RULES  May 1, 2020  45 TexReg 2819
(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice as a dental hygienist in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board shall verify whether the military spouse's license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board shall determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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 April 20, 2020.
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Casey Nichols
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-9380

22 TAC §103.11

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §103.11 concerning Reinstatement of a Cancelled License. This rule will clarify the Board's considerations when reviewing an application for licensure for an applicant who previously held a Texas license that expired and was subsequently cancelled.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply:

(1) the rule does not create or eliminate a government program;
(2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the Texas Register. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

Legal counsel for the Board has reviewed the proposed rule and has found it to be within the Board's authority to adopt.

§103.11 Reinstatement of a Cancelled License

The Board may reinstate a cancelled Texas dental hygiene license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection:

(1) An applicant who, at the time of application for reinstatement, is practicing dental hygiene in another state, or territory outside of the United States, or had practiced dental hygiene actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support;

(E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the
requirements for continuing education as mandated by Chapter 104 of
this title (relating to Continuing Education); and

(E) proof of submission of fingerprints for the retrieval
of criminal history record information.

(2) An applicant whose license has been expired for one
year or more, who has not actively practiced for at least two years
immediately preceding the request for reinstatement of a cancelled li-
cense, must submit proof that the applicant has taken and passed the
appropriate clinical examination administered by a regional examining
board designated by the Board as required by §103.2 of this chapter
(relating to Licensure by Examination) pursuant to §257.002(d) of the
Dental Practice Act.

(3) An applicant who applies to reinstate a cancelled li-
cense must comply with all other applicable provisions of the Dental
Practice Act and Board rules.

(4) An applicant who applies to reinstate a cancelled li-
cense must have been in compliance or satisfied all conditions of any
Board order that may have been in effect at the time the license was
cancelled.

(5) The Board may, in its discretion as necessary to safe-
guard public health and safety, require compliance with other reason-
able conditions in considering a request to reinstate a cancelled license.

The agency certifies that legal counsel has reviewed the prop-
osal and found it to be within the state agency’s legal authority
to adopt.

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Casey Nichols
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-9380

CHAPTER 114. EXTENSION OF DUTIES
OF AUXILIARY PERSONNEL--DENTAL
ASSISTANTS

22 TAC §114.7

The State Board of Dental Examiners (Board) proposes new rule
22 TAC §114.7 concerning Exemption from Licensure for Cer-
tain Military Spouses. The proposed new rule is mandated by
the passage of SB 1200 (86th Regular Legislative Session) and
relates to exemption from licensure for certain military spouses.

New rule 22 TAC §114.7, Exemption from Licenses for Cer-
tain Military Spouses regarding dental assistants, allows qual-
ified military spouses to practice as a dental assistant without
obtaining a registration to practice as a dental assistant during
the time the military service member to whom the military spouse
is married is stationed at a military installation in Texas. The ex-
emption cannot exceed three years, and practice must be au-
thorized by the Board after verifying that the military spouse holds
an active registration in good standing in another state with sub-
stantially equivalent requirements for registration as Texas.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director,
has determined that for the first five-year period the proposed
rule is in effect, the proposed rule does not have foreseeable
implications relating to cost or revenues of the state or local gov-
ernments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also
determined that for the first five-year period the proposed rule
is in effect, the public benefit anticipated as a result of this rule
will be the agency’s implementation of legislative direction for the
protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush,
Jr. has also determined that the proposed rule does not affect
local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IM-
PACT STATEMENT: W. Boyd Bush, Jr. has determined that no
economic impact statement and regulatory flexibility analysis
for small businesses, micro-businesses, and rural communities
is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board
has determined that for the first five-year period the proposed rule
is in effect, the following government growth effects apply:
(1) the rule does not create or eliminate a government program;
(2) implementation of the proposed rule does not require the cre-
ation or elimination of employee positions; (3) the implementa-
tion of the proposed rule does not require an increase or de-
crease in future appropriations; (4) the proposed rule does not
require an increase in fees paid to the agency; (5) the proposed
rule does not create a new regulation; (6) the proposed rule does
not expand an existing regulation; (7) the proposed rule does not
increase or decrease the number of individuals subject to it; and
(8) the proposed rule does not positively or adversely affect the
state’s economy.

COST TO REGULATED PERSONS: This proposed rule is nec-
essary to implement legislation and, therefore, is not subject to

Comments on the proposed new rule may be submitted to
W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe
Street, Suite 3-800, Austin, Texas 78701, by fax to (512)
305-9364, or by email to official_rules_comments@ts-
bde.texas.gov for 30 days following the date that the proposed
rule is published in the Texas Register. To be considered for pur-
oposes of this rulemaking, comments must be: (1) postmarked
or shipped by the last day of the comment period; or (2) faxed
or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code
§254.001(a), which gives the Board authority to adopt rules
necessary to perform its duties and ensure compliance with
state laws relating to the practice of dentistry to protect
the public health and safety. The new rule is also proposed under
Texas Occupations Code §55.0041, which mandates the Board
to adopt rules to implement that section.

This rule implements the requirements of SB 1200 of the 86th
Legislature and Texas Occupations Code §55.0041.

§114.7. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas State Board of Dental
Examiners must authorize a qualified military spouse to practice as a
dental assistant in Texas without obtaining a registration in accordance
with §55.0041(a), Texas Occupations Code. This authorization to prac-
tice is valid during the time the military service member to whom the
military spouse is married is stationed at a military installation in Texas,
but is not to exceed three years.
(b) In order to receive authorization to practice the military spouse must:

(1) hold an active registration to practice as a dental assistant in another state, territory, Canadian province, or country that:

(A) has registration requirements that are determined by the board to be substantially equivalent to the requirements for registration in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice as a dental assistant in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board shall verify whether the military spouse's dental assistant registration in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board shall determine whether the registration requirements in that jurisdiction are substantially equivalent to the requirements for registration in Texas.

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 April 20, 2020.
TRD-202001531
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

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