

# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 1. GENERAL PROCEDURES

##### SUBCHAPTER C. MINORITY PURCHASING

###### 4 TAC §§1.71, 1.73 - 1.75, 1.78

The Texas Department of Agriculture (Department) proposes amendments to 4 TAC §1.71, concerning Statement of Purpose; §1.73, concerning Identification of Historically Underutilized Businesses (HUBs); §1.74, concerning Certification Requirements; §1.75, concerning Outreach; and §1.78, concerning Historically Underutilized Business Program. The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The Department also re-adopts with no changes 4 TAC §1.76, concerning In-House Training; and §1.77, concerning Tracking of Progress.

The proposed amendments to §1.71, concerning Statement of Purpose, consist of nonsubstantive changes to clarify language related to internal references for ease of the reader.

The proposed amendment to §1.73 provides additional information concerning the state agency responsible for establishing the Texas Historically Underutilized Business Certification Directory and makes an editorial change for clarity.

The proposed amendment to §1.74 provides additional information concerning the state agency responsible for certifying historically underutilized businesses and makes an editorial change for clarity.

The proposed amendment to §1.75 provides additional information concerning the state agency responsible for sponsoring forums for historically underutilized businesses and makes an editorial change for clarity.

The proposed amendments to §1.78 provide nonsubstantive edits by updating a legal citation to administrative rules of another state agency adopted by reference.

Mr. Jack Hammond, Coordinator for Historically Underutilized Business/Minority and Women-owned Business Enterprise Programs, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rules.

Mr. Hammond has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be improved readability and clarity of the rules.

Mr. Hammond has determined there are no anticipated economic costs to persons required to comply with the proposed amendments.

Mr. Hammond has provided the following government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposed amendments are in effect:

- (1) no government programs will be created or eliminated;
- (2) no employee positions will be created or eliminated;
- (3) there will be no increase or decrease in future legislative appropriations to the Department;
- (4) there will be no increase or decrease in fees paid to the Department;
- (5) no new regulations will be created by the proposal;
- (6) there will be no expansion, limitation, or repeal of existing regulation;
- (7) there will be no increase or decrease in the number of individuals subject to the rules; and
- (8) there will be no positive or adverse effect on the Texas economy.

The Department has determined the proposed rules will not affect a local economy within the meaning of Texas Government Code §2001.022 and will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

Written comments on the proposal may be submitted to Ms. Susan Maldonado, Lead Deputy General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: Susan.Maldonado@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed pursuant to Section 2161.003 of the Texas Government Code, which provides that all state agencies, including the Department, must adopt the rules of the Texas Comptroller of Public Accounts associated with Texas Government Code, Chapter 2161, Subchapters B and C, as its own rules; and Section 12.016 of the Texas Agriculture Code, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties.

The code affected by the proposal is Texas Government Code, Chapter 2161 and Texas Agriculture Code, Chapter 12.

§1.71. *Statement of Purpose.*

The purpose of this subchapter [these sections] is [to provide a procedure] to encourage historically underutilized businesses (HUBs) to bid for contract and open market purchases of the department [Texas Department of Agriculture] and to maximize contracting opportunities for HUBs [these businesses].

§1.73. *Identification of Historically Underutilized Businesses (HUBs).*

(a) The department will obtain the Texas Historically Underutilized Business Certification Directory from the Texas Comptroller of Public Accounts to identify minority and female-owned businesses certified as HUBs in the state.

(b) The department will use the directory to solicit bids from such businesses on all contract and open market purchases for which it has jurisdiction to contract pursuant to the Texas Government Code, Chapter 2155.

§1.74. *Certification Requirements.*

(a) All HUBs must be certified under the historically underutilized business program of the Texas Comptroller of Public Accounts to be eligible to participate in contract and open market purchases of the department.

(b) The department will assist HUBs to become eligible for certification and participation in bidding on contracts to be awarded by the department.

§1.75. *Outreach.*

(a) The department will attend forums sponsored by the Texas Comptroller of Public Accounts relating to HUBs to improve its efforts in soliciting these businesses for bidding on department contracts.

(b) The department will actively pursue opportunities to distribute brochures, pamphlets, and other literature regarding the department's HUB recruitment program to the public.

§1.78. *Historically Underutilized Business Program.*

The department adopts by reference the rules of the Texas Comptroller of Public Accounts in [34] Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D [B], Division 1, (relating to [concerning] Historically Underutilized Businesses) [Business Program] to administer and implement the department's HUB program in accordance with Texas Government Code, Chapter 2161, Subchapters B and C. [Copies of the Comptroller of Public Accounts' rules are filed at the department, located at the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, 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 November 17, 2022.

TRD-202204634

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 936-9360



## CHAPTER 17. MARKETING AND PROMOTION

The Texas Department of Agriculture (the Department) proposes the repeal of Title 4, Part 1, Chapter 17, Subchapter G, concerning GO TEXAN Partner Program Rules and Subchapter J, concerning GO TEXAN Certified Retirement Community Program.

The Department identified the need for the proposed repeals during its rule review of these subchapters conducted pursuant to Texas Government Code, §2001.039 (Agency Review of Existing Rules), the adoption for which can be found in the Review of Agency Rules section of this issue of the *Texas Register*.

The proposed repeals are necessary because the Department has determined that the business necessity for these subchapters no longer exists after completion of its review of the GO TEXAN Program in accordance with recommendations of the Texas Sunset Commission.

**FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT:** Mrs. Karen Reichek, Administrator for Trade and Business Development, has determined that for each year of the first five years the proposed repeals are in effect, enforcing or administering the repeals does not have foreseeable implications relating to cost or revenues of the state or local governments.

**PUBLIC BENEFITS:** Mrs. Reichek has also determined that for each year of the first five years the proposed repeals are in effect, the public benefit will be improved clarity of procedures related to the Department's current administration and operation of its GO TEXAN Program.

**PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL:** Mrs. Reichek has determined that for each year of the first five years the proposed repeals are in effect, there will be no costs to persons who are required to comply with the proposed repeals.

**LOCAL EMPLOYMENT IMPACT STATEMENT:** The Department has determined that the proposed repeals will not affect a local economy, so a local employment impact statement under Texas Government Code, §2001.022 is not required.

**GOVERNMENT GROWTH IMPACT STATEMENT:** Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed repeals will be in effect, the Department has determined the following:

1. the proposed repeals will not create or eliminate a government program;
2. implementation of the proposed repeals will not require the creation or elimination of existing employee positions;
3. implementation of the proposed repeals will not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed repeals will not require an increase or decrease in fees paid to the Department;
5. the proposed repeals does not create a new regulation;
6. the proposed repeals will repeal an existing regulation;
7. the proposed repeals will not increase or decrease the number of individuals subject to the rules; and
8. the proposed repeals will not affect this state's economy.

**FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES:** The Department has

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

Comments on the proposed repeal may be submitted by mail to Mrs. Karen Reichek, Administrator for Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to Karen.Reichek@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

## SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

### 4 TAC §§17.300 - 17.305, 17.307 - 17.310

The repeal of Subchapter G of Texas Administrative Code, Title 4, Part 1, Chapter 17 is proposed under Texas Agriculture Code, Sections 12.016 and 12.0175(c), which authorize the Department to enact rules as necessary to administer the Department's powers and duties, as well as to administer the GO TEXAN Program, respectively.

The code affected by the proposal is Texas Agriculture Code, Chapters 12 and 46.

§17.300. *Statement of Purpose.*

§17.301. *Definitions.*

§17.302. *Administration.*

§17.303. *Eligibility.*

§17.304. *Requirements for Participation.*

§17.305. *Filing Requirements; Consideration of Project Requests; Grant Awards.*

§17.307. *Selection Criteria.*

§17.308. *Use of Funds.*

§17.309. *Use of GO TEXAN and Design Mark.*

§17.310. *Administrative Penalties; Other Enforcement Remedies.*

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

Filed with the Office of the Secretary of State on November 18, 2022.

TRD-202204650

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 936-9360



## SUBCHAPTER J. GO TEXAN CERTIFIED RETIREMENT COMMUNITY PROGRAM

### 4 TAC §§17.600 - 17.604

The repeal of Subchapter J of Texas Administrative Code, Title 4, Part 1, Chapter 17 is proposed under Texas Agriculture Code, Sections 12.016 and 12.0175(c), which authorize the Department to enact rules as necessary to administer the Department's powers and duties, as well as to administer the GO TEXAN Program, respectively.

The code affected by the proposal is Texas Agriculture Code, Chapters 12 and 46.

§17.600. *Definitions.*

§17.601. *Statement of Purpose.*

§17.602. *Application; Review; Fees.*

§17.603. *Providing Assistance to Certified Communities.*

§17.604. *Certification and Use of the "Texas Certified Retirement Community" or Other Department Marks; Expiration and Renewal of Certificate.*

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

Filed with the Office of the Secretary of State on November 18, 2022.

TRD-202204651

Skyler Shafer

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Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 936-9360



## TITLE 10. COMMUNITY DEVELOPMENT PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

### CHAPTER 1. ADMINISTRATION

#### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

##### 10 TAC §1.9

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, §1.9 Housing Finance Corporation Reporting Requirements. The purpose of the proposed rule is to provide guidance concerning the requirement that the annual activity of housing finance corporations (HFCs) in Texas be reported to the Department. While this is a new rule, the reporting requirement has been in place since 1995, and many housing finance corporations have responded to the Department's annual request to provide information to the Department. A rule regarding the form of the report, as directed by Tex. Local Gov't Code §394.027(a), is now being proposed.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action under category (c)(9), because the rule is necessary to implement legislation, specifically Tex. Local Gov't Code Chapter 394. However, it has been determined that no costs are associated with this action, as HFCs are already collecting the information required by this statute, and therefore no costs warrant being offset.

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

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

1. Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed rule would be in effect, the proposed rule does not create or eliminate a government program, but relates to the implementation of a new rule to provide compliance with Tex. Local Code §394.027 and provide the format by which HFCs submit reports to the Department.

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

3. The proposed rule does not require additional future legislative appropriations.

4. The proposed rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed rule is creating a new regulation, however the activities required by the rule are already occurring. The rule will moderately augment the extent of information required to be submitted.

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

7. The proposed rule will increase the number of individuals subject to the rule's applicability, however those subject to the rule are already required to submit reporting to the Department in accordance with Tex. Local Gov't Code §394.027.

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

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

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

2. This rule relates to the procedures for the submission of reports to the Department by HFCs. As HFCs are not generally small or micro-businesses, they are subject to the rule. There are not likely to be rural communities subject to the proposed rule because this rule is applicable only to HFCs, not municipalities.

3. The Department has determined that because this rule relates only to the reporting requirements for HFCs, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the proposed rule as to its possible effects on local economies and has determined that for the first five years the proposed rule will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule. Additionally, because this rule only provides for administrative processes required of HFCs, no activities under this rule would support additional local employment opportunities. Alternatively,

the rule would also not cause any negative impact on employment.

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the proposed rule is more consistency and transparency in the content of the reports and therefore in identifying who HFCs are serving in the state of Texas. There will be no material economic impact to any individuals required to comply with the new rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the proposed rule does not have any foreseeable implications related to costs or revenues of the state or local government, as the housing finance corporations will now have to report on more of the information already being collected by the originating lender and provide it in a format specified by the Department.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 23, 2022, to January 23, 2022, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time.

STATUTORY AUTHORITY. This new section is proposed pursuant to Tex. Local Gov't Code, §394.027, which authorizes the Department to adopt rules for this purpose.

Except as described herein, the new sections affect no other code, article, or statute.

#### §1.9. Housing Finance Corporation Reporting Requirements.

(a) Purpose. The purpose of this section is to outline the process, documentation, and format for reporting the information that housing finance corporations (HFCs) are required to submit to the Texas Department of Housing and Community Affairs (the Department) annually pursuant to Tex. Local Gov't Code, §394.027.

#### (b) Reporting Format.

(1) The Department will create a report form in a commonly available format, which contains the data fields described in subsection (c) of this section and which is required to be submitted as part of the annual report. The Department will make said forms available on the Department's web site no later than July 1 of every year to collect information from the prior year.

(2) The HFC must provide the report to the Department in an electronic spreadsheet format acceptable to the Department that contains data for all fields applicable to each respective HFC in a format that can be imported into common database software.

(c) Reporting Content. The HFC must include complete information in the report for all of the fields described in paragraphs (1) - (3) of this subsection no later than August 31 of each year. The report

content must include all information for all HFC activity for the preceding 12 months ending June 30 of the year the report is filed.

(1) General Information. The HFC must include in the report the general information fields identified in subparagraphs (A) - (H) of this paragraph.

(A) The counties and cities served by the HFC;

(B) The name and contact information (phone number and email) for the contact person for the HFC;

(C) The series number or identifying name of any and each single or multifamily bond program, single family To Be Announced (TBA) or Mortgage Credit Certificate (MCC) program or any other single family or multifamily financing program issued by the HFC during the reporting period;

(D) The total number and total face value dollar amount of mortgage loans made via the HFCs programs;

(E) The total number and dollar value of properties assisted with MCCs issued by the HFC;

(F) The number of multifamily properties and units financed through the HFC during the reporting period;

(G) The face value of assistance by assistance type and total; and

(H) The number of properties, number of units and number of persons residing in properties financed by HFC during the reporting time period that are still under affordability restrictions.

(2) Single Family Data. The HFC must include in the report the information fields regarding each household served with assistance for single-family residences identified in subparagraphs (A) - (K) of this paragraph during the reporting period.

(A) The financing method of the loan;

(B) The address and census tract of each property;

(C) The face value of the loan;

(D) The term of the loan;

(E) The annual percentage rate associated with the loan;

(F) The type of loan product (FHA, VA, USDA or conventional);

(G) The name of the loan originator or firm;

(H) The amount and form (grant or loan and terms) of down payment assistance;

(I) The household size and income;

(J) Ethnicity of borrower, if available; and

(K) Special needs of the household, if available.

(3) Multifamily Data. The HFC must include in the report the information fields regarding each multifamily property financed during the reporting period and subject to restrictions imposed by the HFC as a result of HFC financing in prior years, as identified in subparagraphs (A) - (E) of this paragraph:

(A) The name, address, and census tract of each property;

(B) The property manager's contact information;

(C) The term of the loan;

(D) The Bond caption or original source of HFC funds; and

(E) For multifamily properties with three or fewer Units: Information specific to each unit available for lease and if leased the household information at the close of the reporting period as provided in clauses (i) -(vi) of this subparagraph.

(i) Unit Number;

(ii) Whether the unit is vacant or occupied;

(iii) Monthly rent charged;

(iv) Number of bedrooms in the unit;

(v) The size of the household; and

(vi) Annual household income;

(F) For multifamily properties with more than three Units: Information specific to each unit available for lease and if leased the household information at the close of the reporting period as provided in clauses (i) - (xi) of this subparagraph.

(i) Unit Number;

(ii) Whether the unit is vacant or occupied;

(iii) Monthly rent charged;

(iv) Number of bedrooms in the unit;

(v) The size of the household;

(vi) Annual household income;

(vii) Whether the household is assisted with rental assistance of any kind;

(viii) Race of head of household occupying unit, if available;

(ix) Ethnicity of head of household occupying unit, if available;

(x) Whether a member of the household has requested specific special needs accommodations; and

(xi) Whether a unit is mobility and/or auditory/visual accessible by either the Uniform Federal Accessibility Standards (UFAS) or 2010 ADA Standards, including those designed with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671.

(d) The Department may compile and may publish the information received within the reports from HFCs in summary form on its website or elsewhere. In all cases any information compiled from the HFC reports will exclude any personally identifiable information, and publication may be further limited by state and federal statutory exclusions, or exceptions to public information laws. Information made public will only include averages calculated based on not fewer than three households.

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

Filed with the Office of the Secretary of State on November 15, 2022.

TRD-202204570

Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: January 1, 2023  
For further information, please call: (512) 475-3959



## 10 TAC §1.11

The Texas Department of Housing and Community Affairs (the Department) proposes the re adoption, with amendments, to 10 TAC, Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.11, Definition of Service-Enriched Housing. After review of this rule in compliance with Tex. Gov't Code, §2001.039, the Department has assessed this rule and determined that there is a continuing need for this rule and that the proposed amendments are warranted.

**FISCAL NOTE.** Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the readopted rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Mr. Wilkinson also has determined that, for the first five years the readopted rule would be in effect:

1. The proposed readopted rule will not create or eliminate a government program;
2. The proposed readopted rule will not require a change in the number of employees of the Department;
3. The proposed readopted rule will not require additional future legislative appropriations;
4. The proposed readopted rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed readopted rule will not create a new regulation;
6. The proposed action will not repeal an existing regulation;
7. The proposed readopted rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed readopted rule will neither positively nor negatively affect this state's economy.

**PUBLIC BENEFIT/COST NOTE.** Mr. Wilkinson also has determined that, for each year of the first five years the readopted rule is in effect, the public benefit anticipated as a result of the action will be the clarification of a required definition. There will not be any economic cost to any individuals required to comply with the repealed section.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES.** The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

**REQUEST FOR PUBLIC COMMENT.** All comments or questions in response to this notice of rule review may be submitted in writing from December 5, 2022, through January 3, 2023. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, or email [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us). **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time, January 3, 2023.**

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

The proposal affects no other codes, articles, or statutes.

### §1.11. *Definition of Service-Enriched Housing.*

(a) **Purpose.** It is the purpose of this section to define service-enriched housing for the Housing and Health Services Coordination Council.

(b) **Definition.** For the purpose of directing the work of the Housing and Health Services Coordination Council and its work products, including the biennial plan, Service-Enriched Housing is defined as community integrated, affordable, [and] accessible rental housing that provides residents with the opportunity to receive [assistance in coordination of] on-site and/or off-site health-related and other services and supports that foster independence in living and decision-making for individuals including those with disabilities, [and persons] people who are elderly, persons who are experiencing or have experienced homelessness, veterans, youth exiting foster care and Violence Against Women Act covered populations.

(c) Preferences and limitations for individual properties are governed by the tenant selection criteria found in Chapters 1, 10, 11, 12, and 13 of this Title and by specific requirements found in Land Use Restriction Agreements.

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

Filed with the Office of the Secretary of State on November 15, 2022.

TRD-202204569

Bobby Wilkinson  
Executive Director

Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: January 1, 2023  
For further information, please call: (512) 475-3959



## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 31. ADMINISTRATION

##### 16 TAC §§31.3 - 31.11

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new §31.10, Complaints, new §31.11, Family Leave Pool, and amended rules §§31.3 - 31.9. Current §31.10 and §31.11 are proposed to be repealed in a separate, simultaneous rulemaking.

##### *Background and Summary*

The proposed new and amended rules result from review of chapter 31 of the commission's rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. Additionally, new §31.11, Family Leave Pool, is proposed in compliance with Tex. Govt. Code §661.022, which prescribes guidelines for state agency family leave pools.

##### *Section by Section Discussion*

### §31.3 *Petition for the Adoption of a Rule*

The commission proposes to amend §31.3 to provide an email address for submission of petitions for the adoption of a rule to the agency.

### §31.4 *Public Information Signs*

The commission proposes amendments to §31.4 to require that regulated businesses update their complaint sign methods by which a person can file a complaint with the agency and to require that the complaint sign read exactly as shown in the rule. This rule is proposed to become effective on September 1, 2023.

### §31.5 *Public Information Act Requests*

The commission proposes amendments to §31.5 to clarify the role of the Office of the Attorney General's rules in assessing charges for copies and to correct outdated and non-standard references.

### §31.6 *Establishment of Advisory Committees*

The commission proposes amendments to §31.6 to require each committee to hold at least one meeting per calendar year, rather than fiscal year, and to remove the requirement that committee meetings be subject to the Open Meetings Act (OMA).

### §31.7 *Internal Audit Advisory Committee*

### §31.8 *Advisory Committee on Major Information Technology Projects*

### §31.9 *Public Safety Advisory Committee*

The commission proposes amendments to §§31.7, 31.8, and 31.9 to allow the flexibility for the advisory committees to include fewer than two commissioners and authorize the commission's general counsel to designate another commission attorney to serve as legal counsel to the committees. The general counsel will no longer serve as a member of the committees. Additionally, committee members will have 60 days after their initial meeting to receive training on the Public Information Act. No training on the OMA is necessary because the committees will no longer be subject to the OMA under the proposed changes to §31.6. Finally, a provision referencing meetings for public input has been removed as the commissioners do not intend to hold such meetings.

### §31.10 *Complaints*

The commission proposes new §31.10 to provide information regarding filing complaints with the commission against a regulated entity or business and the commission's complaint management process. This rule is proposed to replace current §31.10, Filing a Complaint, and §31.11, Resolution and Information on Complaints, which are simultaneously proposed for repeal.

### §31.11 *Family Leave Pool*

The commission proposes new §31.11 to comply with the rule-making requirement of Tex. Govt. Code §661.022(c).

### *Fiscal Note: Costs to State and Local Government*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed new and amended rules will be in effect, they are not expected to have a significant fiscal impact upon the agency. Implementation will be performed using existing agency resources. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed new and amended rules. The rules do

not impact fees or fines that can be collected by another state or local government nor do they impose additional regulatory obligations on other units of government.

### *Rural Communities Impact Assessment*

The proposed new and amended rules will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposal will not adversely affect a local economy in a material way. The proposed new and amended rules would apply statewide and would not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

### *Small Business and Micro-Business Assessment/Flexibility Analysis*

No material fiscal implications are anticipated for small or micro-businesses due to the proposed new and amended rules. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

### *Takings Impact Assessment*

The proposed new and amended rules do not affect a taking of private real property, as described by the Attorney General's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

### *Public Benefits and Costs*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the new and amended rules would be in effect, the public would benefit from additional methods to communicate with the agency regarding their proposals for changes to the agency's rules and complaints about businesses under the jurisdiction of the commission. The proposed rulemaking will also benefit the public by clarifying the imposition of costs under the Public Information Act. Under the proposed rulemaking, TABC's advisory committees will also operate more effectively and efficiently. The proposal will also benefit the public by ensuring TABC complies with the requirements of Tex. Gov't Code §661.022. There is no increase in costs to the public.

### *Government Growth Impact Statement*

This paragraph constitutes the commission's government growth impact statement for the proposed new and amended rules. The analysis addresses the first five years the proposed new and amended rules would be in effect. The proposal neither creates nor eliminates a government program. It does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed new and amended rules requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed new and amended rules may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposal on December 19, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code

§2001.029. THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

The new and amended rules are proposed pursuant to the commission's authority under §5.31 of the Alcoholic Beverage Code and the rulemaking requirements of Tex. Govt. Code §661.022. Current §31.10 and §31.11 are proposed to be repealed in a separate, simultaneous rulemaking.

The proposed new and amended rules do not impact any other current rules or statutes.

§31.3. *Petition for the Adoption of a Rule.*

(a) Purpose. This section implements Government Code §2001.021 and provides procedures for any interested person (petitioner) to request the Alcoholic Beverage Commission (commission) to adopt a rule. The petitioner must be:

- (1) a resident of this state;
- (2) a business entity located in this state;
- (3) a governmental subdivision located in this state; or
- (4) a public or private organization located in this state that is not a state agency.

(b) Content of Petition.

(1) The petition must be in writing. No form is required but all information must be provided, or a reason why required information cannot be provided given.

(2) The petition must contain the following:

(A) petitioner's name, address, organization or affiliation, if any, and the name of the person or entity on whose behalf the petition is filed, if different from the person submitting the petition;

(B) a plain and brief statement about why a rule or change in an existing rule is needed, required, or desirable, including the public good to be served and any effect on those who would be required to comply with the rule;

(C) an estimate of the fiscal impact on state and local government as a result of enforcing or administering the proposed rule, an estimate of the economic impact on persons required to comply with the proposed rule, whether there may be an effect on local employment, and the facts, assumptions and methodology used to prepare estimates and impacts required by this subparagraph;

(D) a statement on the commission's authority to adopt the proposed rule;

(E) the proposed text of a new rule, or proposed changes to an existing rule; and

(F) a list of individuals, organizations or affiliations that may be interested or affected by the proposed rule, if known.

(c) Submission. A petition is submitted on the date it is received by the Executive Director. The petition must be addressed to the Executive Director, Texas Alcoholic Beverage Commission, and mailed to P.O. Box 13127, Austin, Texas 78711-3127, e-mailed to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov), or hand delivered to the Executive Director at commission headquarters in Austin, Texas.

(d) Review. The Executive Director will review the petition for compliance with the requirements of this section. If all requirements of this section are met, the Executive Director will bring the petition to the commission, except as provided otherwise in this section.

(e) Decision to Deny or Accept. The commission will deny a petition for rulemaking, or accept, in whole or in part, a petition for rulemaking within 60 days from the date the petition is submitted. If the commission neither denies nor accepts the petition within 60 days from the date it is submitted, agency staff will initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. In such case, agency staff may redraft the proposed text to conform to style and format requirements for the agency's rules.

(1) The Executive Director will notify the petitioner in writing if the petition is denied and state the reason or reasons for the denial.

(2) The commission will refer an accepted petition to agency staff to initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. Agency staff may redraft the proposed text to conform to style, format and policy decisions of the agency.

(f) Repetitive petitions. The Executive Director may refuse to bring a petition for rulemaking to the commission if, within the preceding year, the commission has considered a previously submitted petition for the same rule.

§31.4. *Public Information Signs.*

(a) Complaint Sign. In accordance with Alcoholic Beverage Code §5.53(d), any licensed or permitted business [location] in the state authorized to sell or serve [which sells or serve] alcoholic beverages to the ultimate consumer shall display at the [his] place of business in a prominent place easily seen by the public, i.e. near the door or by the cash register, a sign stating the following [that provides the following information]: "If you have a complaint about the sale or service of alcoholic beverages in this establishment, please contact the Texas Alcoholic Beverage Commission by mail at P.O. Box 13127, Austin, Texas 78711-3127, by phone at 1-888-THE-TABC, by visiting [internet at] [www.tabc.texas.gov](http://www.tabc.texas.gov), or through the Alcohol Industry Management System, which can be accessed via the commission's public website [by a TABC-authorized mobile application]."

(1) This sign shall be no smaller than 6 inches by 3-1/2 inches and shall be in lettering or type of a size sufficient to render it both conspicuous and readily legible.

(2) The sign shall be made of sturdy material; if made of paper, the weight shall be no less than 65# stock.

(b) Health Risk Warning Sign. In accordance with Alcoholic Beverage Code §§11.042 and 61.111, a holder of a license or permit authorizing the sale of alcoholic beverages for on premises consumption shall display a health risks warning sign. The health risks warning sign must:

(1) be posted at each egress of all public restrooms on the licensed premises;

(2) be placed at a level where the sign can be easily seen by persons exiting the restroom;

(3) be not less than 8 1/2 x 11 inches in size;

(4) the following language shall be printed in English and in Spanish, in bold black type on a white surface, or other clearly legible graphic design, with a font or type set size of not less than 28 point Arial or Helvetica:

Figure: 16 TAC §31.4(b)(4) (No change.)

(c) The responsibility of furnishing the required signs in this section is the sole responsibility of the licensee or permittee.

§31.5. *Public Information Act Requests.*

(a) To the extent applicable, charges [Charges] made for providing copies of public information by the Texas Alcoholic Beverage Commission shall be assessed in accordance with the schedule of charges maintained by the Office of the Attorney General in Title 1, Chapter 70 of the Texas Administrative Code [and found at 1 TAC §§70.1 - 70.12].

(b) The general counsel [General Counsel] or the general counsel's [General Counsel's] designee shall be the agency's public information [open records] coordinator. The public information [open records] coordinator is subject to the direction of the executive director [Administrator], who is the officer for public information of the agency pursuant to Texas Government Code §552.201(a) [§552.201].

§31.6. *Establishment of Advisory Committees.*

(a) This rule implements Alcoholic Beverage Code §5.21, which authorizes the commission, by rule, to establish advisory committees as necessary to accomplish the purposes of the Alcoholic Beverage Code, and to meet the changing needs of the agency. Government Code Chapter 2110 applies to an advisory committee created by the commission.

(b) The commission rule establishing an advisory committee shall contain, at a minimum, the following information:

- (1) the purpose, role, and goal of the committee;
- (2) composition and representation requirements;
- (3) qualifications of the members, such as experience or geographic location;
- (4) terms of service of committee members;
- (5) any necessary training requirements; and
- (6) the method the agency will use to receive public input on issues considered by the advisory committees.

(c) An advisory committee created by the commission shall not have more than nine members.

(d) The presiding officer of the commission shall appoint the members of an advisory committee.

(e) Each advisory committee shall hold at least one [open] meeting per calendar [fiscal] year. [Meetings at which a quorum is present are subject to the Texas Open Meetings Act (Tex. Gov't Code Ch. 551).]

§31.7. *Internal Audit Advisory Committee.*

(a) Pursuant to Texas Alcoholic Beverage Code § 5.21 and commission Rule 31.6, the commission hereby establishes an Internal Audit Advisory Committee ("Committee").

(b) The purpose, role, and goal of the Committee is to advise the commission on the agency's internal audit processes.

(c) The presiding officer of the commission may [shall] appoint not more than two commissioners and three members of the public to serve on the Committee. The Committee [eommittee] shall select from among its members a presiding officer.

(d) Each public member must either:

- (1) hold an ownership interest or management position with an active TABC licensee or permittee; or
- (2) hold a certified public accountant license or similar financial industry credentials.

(e) The commission's general counsel or another commission attorney assigned by the general counsel shall provide legal counsel to [serve as a non-voting, ex officio member of] the Committee.

(f) Within 60 days after [Prior to] the first Committee [eommittee] meeting, Committee [eommittee] members shall complete training provided by the commission's General Counsel's office regarding compliance with the Texas Public Information [Open Meetings] Act and other applicable ethics rules.

(g) The Committee shall report to the commission at the times and in the manner it determines will best assist the commission and in compliance with the Texas Open Meetings Act.

~~[(h) If the Committee holds a public comment meeting to receive input from the public, agency staff will assist the Committee in conducting the meeting.]~~

§31.8. *Advisory Committee on Major Information Technology Projects.*

(a) Pursuant to Texas Alcoholic Beverage Code § 5.21 and commission Rule 31.6, the commission hereby establishes the Advisory Committee on Major Information Technology Projects ("Committee").

(b) The purpose, role, and goal of the Committee is to advise the commission on the agency's use and development of major information technology projects.

(c) The presiding officer of the commission may [shall] appoint not more than two commissioners and three members of the public to serve on the Committee. The Committee [eommittee] shall select from among its members a presiding officer.

(d) Each public member must either:

- (1) hold an ownership interest or management position with an active TABC licensee or permittee;
- (2) be a practicing attorney in the field of alcohol regulation; or
- (3) have significant experience in information system technology deployment.

(e) The commission's general counsel or another commission attorney assigned by the general counsel shall provide legal counsel to [serve as a non-voting, ex officio member of] the Committee.

(f) Within 60 days after [Prior to] the first Committee [eommittee] meeting, Committee [eommittee] members shall complete training provided by the commission's General Counsel's office regarding compliance with the Texas Public Information [Open Meetings] Act and other applicable ethics rules.

(g) The Committee shall report to the commission at the times and in the manner it determines will best assist the commission and in compliance with the Texas Open Meetings Act.

~~[(h) If the Committee holds a public comment meeting to receive input from the public, agency staff will assist the Committee in conducting the meeting.]~~

§31.9. *Public Safety Advisory Committee.*

(a) Pursuant to Texas Alcoholic Beverage Code §5.21 and commission Rule 31.6, the commission hereby establishes the Public Safety Advisory Committee ("Committee").

(b) The purpose, role, and goal of the Committee is to advise the commission on the agency's public safety initiatives.

(c) The presiding officer of the commission may [shall] appoint not more than two commissioners and three members of the public to serve on the Committee. The Committee [eommittee] shall select from among its members a presiding officer.

(d) Each public member must either:

(1) hold an ownership interest or management position with an active on-premises retail licensee or permittee;

(2) be a practicing attorney in the field of alcohol regulation; or

(3) have retired from a Texas statewide or a federal law enforcement agency.

(e) The commission's general counsel or another commission attorney assigned by the general counsel shall provide legal counsel to [serve as a non-voting, ex officio member of] the Committee.

(f) Within 60 days after [Prior to] the first Committee [committee] meeting, Committee [committee] members shall complete training provided by the commission's General Counsel's office regarding compliance with the Texas Public Information [Open Meetings] Act and other applicable ethics rules.

(g) The Committee shall report to the commission at the times and in the manner it determines will best assist the commission and in compliance with the Texas Open Meetings Act.

{(h) If the Committee holds a public comment meeting to receive input from the public, agency staff will assist the Committee in conducting the meeting.}

#### §31.10. Complaints.

(a) This rule applies to complaints filed with the commission regarding an entity that is subject to commission jurisdiction.

(b) A person may file a complaint by:

(1) sending a completed complaint form to: Texas Alcoholic Beverage Commission, Attn: Enforcement Division, P.O. Box 13127, Austin, Texas 78711;

(2) calling 1-888-THE-TABC (843-8222);

(3) through Alcohol Industry Management System, which can be accessed via the commission's public website; or

(4) by sending a completed complaint form to [complaints@tabc.texas.gov](mailto:complaints@tabc.texas.gov).

(c) License and permit holders shall post a Complaint Sign on the premises in accordance with §31.4(a) of this chapter.

(d) The commission adopts the form in Figure: 16 TAC §31.10 for filing complaints against a licensed or permitted entity. (Fig. 31.10) For complaints received by telephone, an agency employee may complete the form on behalf of the caller. In all other cases, the form must be completed by the person filing the complaint. This form is available for download on the commission's website. Figure: 16 TAC §31.10(d)

(e) The agency shall process complaints as follows:

(1) the agency receives complaints through the means listed in subsection (b) of this section;

(2) designated agency employees assign each complaint to the appropriate division based upon the subject matter of the complaint;

(3) the division supervisor or their designee determines whether the complaint is under the commission's jurisdiction and if not, marks the complaint as rejected;

(4) the division supervisor or their designee may forward the complaint to a local law enforcement agency or other authority if the supervisor believes the other agency or authority may have jurisdiction over the complaint. If the complaint is forwarded the complainant will be notified if contact information was provided with the complaint;

(5) if the division supervisor or their designee finds that the commission has jurisdiction over the complaint, the supervisor will assign the appropriate TABC employee to manage the complaint.

(6) Complaint designations.

(A) the division supervisor or their designee will designate the complaint as closed, rejected, or resolved in the public database.

(B) A complaint is:

(i) closed when a new investigation is opened or when the complaint can be associated with an existing investigation;

(ii) rejected when it does not fall under the agency's jurisdiction; and

(iii) resolved when the complaint resolution does not require an investigation.

(iv) The agency employee assigned to manage a complaint will contact the complainant to inform them of receipt of the complaint and the final disposition of the complaint, if the complainant provided contact information and indicated a desire to be so informed.

#### §31.11. Family Leave Pool.

(a) This rule relates to Texas Government Code Chapter 661, Subchapter A-1, establishing the state employee family leave program.

(b) The director of human resources is designated as the TABC Family Leave Pool (FLP) Administrator.

(c) Employees donating or applying for leave from the FLP must submit their request by e-mail to [Benefits@tabc.texas.gov](mailto:Benefits@tabc.texas.gov).

(d) A TABC employee may apply for leave from the FLP if the employee has exhausted all available leave and experiences:

(1) the birth of a child;

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

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

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

(5) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member.

(e) The employee is solely responsible for the payment of any income tax resulting from their donation or withdrawal of leave from the FLP.

(f) An employee who chooses to donate leave hours to the FLP must donate at least eight hours, unless the employee is separating from the agency. An employee separating from the agency may donate any number of leave hours to the FLP.

(g) Once donated to the FLP, leave hours cannot be recouped by the donating employee.

(h) Employees may not have outside employment while using FLP leave.

(i) Retiring employees will not receive additional retirement credit with the Employee Retirement System for hours donated to the FLP.

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

Filed with the Office of the Secretary of State on November 15, 2022.

TRD-202204573

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 206-3451



## 16 TAC §31.10, §31.11

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes the repeal of rule §31.10, Filing a Complaint, and rule §31.11, Resolution and Information on Complaints. In a separate, simultaneous rulemaking, the commission proposes to replace these rules with a new §31.10 regarding complaints procedures.

### *Background and Summary*

The commission proposes the repeal of these closely related rules in order to replace them with a single, consolidated and concise new §31.10. New §31.10, Complaints, is proposed simultaneously with this proposal for repeals, and will provide information regarding filing complaints with the commission against a regulated entity or business and the commission's complaint management process.

### *Fiscal Note: Costs to State and Local Government*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed rule repeals will be in effect, they are not expected to have a significant fiscal impact upon the agency. Implementation will be performed using existing agency resources. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed repeals. The repeals do not impact fees or fines that can be collected by another state or local government nor impose additional regulatory obligations on other units of government.

### *Rural Communities Impact Assessment*

The proposed repeals will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed repeals will not adversely affect a local economy in a material way. The repeals will apply statewide and will not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

### *Small Business and Micro-Business Assessment/Flexibility Analysis*

No material fiscal implications are anticipated for small or micro-businesses due to the proposed repeals. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

### *Takings Impact Assessment*

The proposed repeals do not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The repeals would impose no burdens on private real property because they neither

relate to, nor have any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

### *Public Benefits and Costs*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the repeals would be in effect, the public would benefit from the replacement of the rules with a consolidated, clearer rule relating to complaints about businesses under the jurisdiction of the commission. There is no increase in costs to the public.

### *Government Growth Impact Statement*

This paragraph constitutes the commission's government growth impact statement for the proposed repeals. The analysis addresses the first five years the proposed repeals would be in effect. The proposed repeals neither create nor eliminate a government program. They do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed repeals requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed repeals may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeals on December 19, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

These repeals are proposed pursuant to the commission's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules as necessary to carry out the provisions of the code.

The proposed repeals do not impact any other current rules or statutes.

### *§31.10. Filing a Complaint.*

### *§31.11. Resolution and Information on Complaints.*

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

Filed with the Office of the Secretary of State on November 15, 2022.

TRD-202204574

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 206-3451



## CHAPTER 33. LICENSING

### SUBCHAPTER D. APPLICATION REVIEW AND PROTESTS

#### 16 TAC §33.55

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes amended rule §33.55, regarding Conditional Approval of license and permit applications.

##### *Background and Summary*

Due to recent changes that have increased efficiency in license and permit application reviews, some applications are reviewed and approved before their check for the fee payment has cleared. A small group of applicants have had an application approved, but their payment instruments were later returned for insufficient funds (fee payments are processed by the Comptroller, not the TABC). Despite repeated requests for payment, this small group has failed to remit alternate fee payment to complete their applications. However, they continue to operate under the ostensible authority of the license or permit they were issued before their checks bounced.

The purpose of the amendment to rule 33.55 is to clearly indicate that a license or permit application approved prior to the fee payment clearing is only approved subject to the condition that the fees are paid. If those fees are not paid, the rule provides a clear procedure for revocation of conditional approval. This change will affect very few applicants as in most cases, confirmation of fee payment occurs prior to completion of the application review and approval.

##### *Fiscal Note: Costs to State and Local Government*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed amended rule will be in effect, it is not expected to have a significant fiscal impact upon the agency. Implementation will be performed using existing agency resources. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed amended rule. The rule does not impact fees or fines that can be collected by another state or local government nor does it impose additional regulatory obligations on other units of government.

##### *Rural Communities Impact Assessment*

The proposed rule will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed rule will not adversely affect a local economy in a material way. The amended rule apply statewide and do not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

##### *Small Business and Micro-Business Assessment/Flexibility Analysis*

No material fiscal implications are anticipated for small or micro-businesses due to the proposed rule. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

##### *Takings Impact Assessment*

The proposed rule does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it

neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

##### *Public Benefits and Costs*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the rule would be in effect, the public would benefit from a transparent procedure for revocation of conditional approval of a license or permit, which is necessary for the agency to continue approving applications with maximum efficiency. There is no increase in costs to the public.

##### *Government Growth Impact Statement*

This paragraph constitutes the commission's government growth impact statement for the proposed amended rule. The analysis addresses the first five years the proposed rule would be in effect. The proposed rule neither creates nor eliminates a government program. It does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to [rule@tabc.texas.gov](mailto:rule@tabc.texas.gov). Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rule on December 19, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, rule Attorney, at (512) 206-3451.

Amended rule 33.55 is proposed pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which it may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed amended rule does not impact any other current rule or statutes.

##### *§33.55. Conditional Approval.*

(a) Unless the exception in subsection (b) of this section applies, the commission shall not issue a new license or permit until 15 days have elapsed since the commission updated its public database to show the application as pending.

(b) If the executive director determines that there is a compelling reason to issue a license or permit before 15 days have elapsed since the commission updated its public database to show the application as pending, the executive director may grant conditional approval of the license or permit. If no valid protests are filed at the end of the 15-day period, the license or permit becomes approved by operation of law. If one or more valid protests are filed before the time period for filing protests has expired, the conditional approval is revoked and the executive director shall provide notice of the revocation to the applicant.

(c) Approval of an application for a license or permit is conditional until the payment of application fees has cleared. If a financial instrument is returned for insufficient funds, or there is any other failure of fee payment, and the applicant fails to remit required fees within

ten (10) business days of the agency's request for payment, the application may be considered withdrawn by the applicant pursuant to section 33.57 of this title. If the application is considered withdrawn, conditional approval is revoked, and the executive director shall provide notice of the revocation to the applicant. Revocation of conditional approval for a renewal application results in expiration of the license or permit and the applicant must re-apply and pay the fees for an original license or permit application.

(d) [(e)] An applicant who chooses to proceed with operations while subject to a conditional approval does so at its own risk of loss in the event that the conditional approval is revoked and it fails to obtain or maintain the necessary license or permit. If an applicant fails to obtain the license or permit following conditional approval, the commission shall refund fees paid pursuant to section 33.25 of this title. [An applicant who fails to obtain the necessary permit following conditional approval will have its applications fees refunded in full.]

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

Filed with the Office of the Secretary of State on November 15, 2022.

TRD-202204575

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 206-3451



## SUBCHAPTER E. EVENTS AT A TEMPORARY LOCATION

### 16 TAC §33.81

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new rule §33.81, related to Purchase of Alcoholic Beverages for Temporary Events.

#### *Background and Summary*

After recent legislative changes to the commission's statutory menu of licenses and permits, members of the regulated industry expressed some confusion as to where a Mixed Beverage permit holder can purchase alcoholic beverages for an event held at a temporary location that is not in the same county as the permit holder's primary licensed premises. The commission proposes new §33.81 to clarify that all alcoholic beverages can be purchased in the county of the event, with appropriate recordkeeping. Alcoholic beverages that the permit holder has in stock may also be transported to the event site.

#### *Fiscal Note: Costs to State and Local Government*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed new rule will be in effect, it is not expected to have a significant fiscal impact upon the agency. Implementation will be performed using existing agency resources. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed new rule. The rule does not impact fees or fines that can be collected by another state or local government nor does it impose additional regulatory obligations on other units of government.

#### *Rural Communities Impact Assessment*

The proposed rule will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed rule will not adversely affect a local economy in a material way. The rule applies statewide and does not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy because it allows purchase in the county of the event without respect to whether the county is urban or rural. Additionally, because few events will be subject to this rule, it will not result in economic impacts at the local or state level.

#### *Small Business and Micro-Business Assessment/Flexibility Analysis*

The proposed rule clarifies alcohol sourcing options for businesses subject to the rule, including small and micro-businesses. This will be of particular benefit to those small and micro-businesses that do not have the vehicles or other resources necessary to transport alcoholic beverages over long distances to an off-site event. No material fiscal implications are anticipated for small or micro-businesses due to the proposed rule. In fact, it may decrease regulated permit holders' costs related to transporting alcoholic beverages to the site of a temporary event. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

#### *Takings Impact Assessment*

The proposed rule does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

#### *Public Benefits and Costs*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the rules would be in effect, the public would benefit from access to a variety of products at events at temporary locations, including widely distributed products and those local to the area of the event, without any increase in costs.

#### *Government Growth Impact Statement*

This paragraph constitutes the commission's government growth impact statement for the proposed new rule. The analysis addresses the first five years the proposed rule would be in effect. The proposed rule neither creates nor eliminates a government program. It does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rule on December 19, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit

the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

New rule 33.81 is proposed pursuant to the commission's general powers in §5.31 of the Code.

The proposed new rule does not impact any other current rules or statutes.

§33.81. Purchase of Alcoholic Beverages for a Temporary Event.

(a) This section applies to holders of Mixed Beverage Permits when selling alcoholic beverages at an event authorized by a Temporary Event Approval or under a File and Use Notification.

(b) Except as provided by subsection (c) of this section, a Mixed Beverage Permit holder purchasing alcoholic beverages for an event at a temporary location in a county other than the county in which the premises covered by its primary permit is located must:

(1) purchase the alcoholic beverages from a seller authorized under this code to sell the alcoholic beverages to members of the retail tier in the county in which the permit holder sells the alcoholic beverages under this section; and

(2) keep a record of the amount of alcoholic beverages purchased and sold under this section, by type, for no less than two years following the last day of the event.

(c) If the temporary event is held in a county that includes more than one territory, as that term is defined by Code §102.71(5), a Mixed Beverage Permit holder must purchase malt beverages from the distributor holding the territorial agreement covering the temporary event location.

(d) This section does not preclude a Mixed Beverage Permit holder from transporting alcoholic beverages in stock at its primary location to a temporary event.

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

Filed with the Office of the Secretary of State on November 15, 2022.

TRD-202204576

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 206-3451



## CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER AND DELIVERY DRIVER TRAINING

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes amendments to rules §§50.2, 50.6, 50.7, 50.9 - 50.11, 50.21, 50.22, 50.24, and 50.25, relating to Alcoholic Beverage Seller Server Training.

### *Background and Summary*

The proposed amendments result from review of chapter 50 of the commission's rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. Proposed re-

visions will add definitions of terms for clarification of provisions that have historically caused some confusion among schools and students; remove a provision for unit-based instruction that no school has opted to use since the beginning of the program; remove obsolete technology references and ordering and issuing requirements for certificates; expand the categories of criminal offenses that the commission may consider to support a decision not to process a school's application or a trainer's application for a new or renewal permit; update a reference to the course requirements for issuance of a renewal certificate to a school or trainer; and provide a 30-day limit for late application renewals.

### *Fiscal Note: Costs to State and Local Government*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed amended rules will be in effect, they are not expected to have a significant fiscal impact upon the agency because they reflect current practices employed by existing commission staff. The amended rule does not impact fees or fines that can be collected by another state or local government, nor does it impose additional regulatory obligations on other units of government.

### *Rural Communities Impact Assessment*

The proposed amended rules will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed amended rule will not adversely affect a local economy in a material way. The amended rules will apply statewide and not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

### *Small Business and Micro-Business Assessment/Flexibility Analysis*

No material fiscal implications are anticipated for small or micro-businesses due to the proposed amended rules. The fee for each certificate remains at \$2.00. A service charge, currently estimated to be \$1.25, may be added by the entity performing the online processing service to cover the costs of that service. It is anticipated that businesses will pass the service charge through to their students. The commission does not set the amount of the service charge and does not receive the money paid to cover that charge. Amendments remove obsolete requirements for printing, mailing, and in-person signatures that may result in efficiencies and savings for small and micro-businesses. Because there are no anticipated material fiscal implications, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

### *Takings Impact Assessment*

The proposed amended rules do not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

### *Public Benefits and Costs*

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the amended rules would be in effect, the public would benefit from regulated businesses' understanding of and compliance with rules to protect test integrity by verifying student identity and comprehension. The public will also benefit from expedited online processing, which avoids any unnecessary delays in issuing a certificate. As noted in the Small

Business and Micro-Business Assessment/Flexibility Analysis, an estimated \$1.25 service charge may be added by the entity performing the online processing service to cover the costs of that service.

### *Government Growth Impact Statement*

This paragraph constitutes the commission's government growth impact statement for the proposed amended rule. The analysis addresses the first five years the proposed amended rule would be in effect. The proposed amended rules neither create nor eliminate a government program. They do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amended rules requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed amended rules may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rules on December 19, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. **THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

## SUBCHAPTER A. GENERAL AND ADMINISTRATIVE PROVISIONS

### 16 TAC §50.2

The amended rules are proposed as part of the regular four-year review cycle prescribed by Government Code §2001.039 and pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed amended rules do not otherwise impact any other current rules or statutes.

#### *§50.2. Definitions.*

Words used in this chapter have their common and ordinary meaning unless they are given a specific meaning in the code or are defined in this section.

(1) Applicant--An [The] individual and/or each owner, officer, director, manager, or trainer of a legal entity who applies to the commission for a certificate under this chapter.

(2) Branch Seller Server School Certificate.

(A) Branch Classroom-Based Seller Server School Certificate--A certificate issued by the commission to the holder of a Primary Seller Server School Certificate granting the same authority as the Primary Certificate but at a site that is designated on the Branch Certificate and that is different from the site designated on the Primary Certificate;

(B) Branch Mobile Application Seller Server School Certificate--A certificate issued by the commission to the holder of a Primary Internet-Based Seller Server School Certificate that allows for the approved course content to be completed through the internet

or through the mobile application, provided that all testing must be completed through the internet and that tests may not be stored on the mobile device or in the mobile application; or

(C) Branch Internet-Based Seller Server School Certificate--A certificate issued by the commission to the holder of a Primary Internet-Based Seller Server School Certificate that allows for the approved course content to have an alternate domain location on the internet, provided that all course content and testing must be completed online.

(3) Break--An interruption in a course of instruction occurring after the lesson introduction and before the lesson summation.

(4) Classroom-Based Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school that:

(A) has authority under this chapter to offer instruction and issue seller server certificates; and

(B) does not qualify for either an In-House Seller Server School Certificate or an Internet-Based Seller Server School Certificate.

(5) Commission-Approved Personal Identification Number--A social security number, an individual taxpayer identification number (ITIN), or an alien registration number ("A" number); ~~or the IV case number from a machine-readable immigrant visa (MRIIV)].~~

(6) Comprehension question--A question designed to establish the Student's participation in a course or program and comprehension of the materials by requiring the student to answer a question regarding a fact or concept taught in the course or program.

(7) ~~[(6)]~~ Course of instruction [~~Instruction~~]-The mandatory curriculum and the optional curriculum used to teach a seller server certificate course.

(8) ~~[(7)]~~ Incomplete application--An application that fails to include all facts, disclosures, documents, statements, authorizations, signatures, and fees required by this chapter or requested by the commission for issuance of a certificate.

(9) ~~[(8)]~~ In-House Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school sponsored or operated by a retail permittee or licensee and that has authority under this chapter to offer instruction on either a classroom basis or a computer basis and to issue seller server certificates.

(10) ~~[(9)]~~ Internet-Based Seller Server School Certificate--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school offering an interactive course on a delivery platform with web-based functionality that:

(A) has authority under this chapter to offer instruction and issue seller server certificates; and

(B) does not qualify for either a Classroom-Based Seller Server School Certificate or an In-House Seller Server School Certificate.

(11) ~~[(10)]~~ Mandatory Curriculum--The curriculum provided by the commission that must be used by a certified school teaching a seller server certificate course.

(12) Multimedia component--A technique (such as combining of sound, video, and text) in which several media are employed, including, but not limited to sound and audio recording, videos, and animation.

(13) [(41)] Optional Curriculum--Any curriculum not provided by the commission that is used by a school to teach a seller server certificate course.

(14) Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver license number, address, date of birth, or other similar information that is unique to the student.

(15) [(42)] Primary Seller Server School Certificate--A certificate issued by the commission under this chapter granting authority to:

(A) offer instruction and maintain records at the school's principal site designated on the primary certificate; and

(B) issue seller server certificates.

(16) [(43)] School--The holder of a Primary or Branch Seller Server School Certificate issued by the commission.

(17) [(44)] Seller Server Certificate--A certificate issued to an individual who completes a course of instruction offered by a school and who passes the Commission Standard Competence Test.

(18) [(45)] Seller Server Certificate Course--A class providing instruction in the sale, service, dispensing, delivery, and consumption of alcoholic beverages to or by persons in private clubs, minors or intoxicated persons, and that is designed to enable students to pass the Commission Standard Competence Test and receive a seller server certificate.

(19) Student--An individual who is participating in or has completed a Seller Server Certificate Course.

(20) [(46)] Trainer--An individual who holds a Seller Server Trainer Certificate issued under this chapter.

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

Filed with the Office of the Secretary of State on November 16, 2022.

TRD-202204596

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 206-3451



## SUBCHAPTER B. MANDATORY CURRICULUM AND COURSE OF INSTRUCTION

### 16 TAC §50.6, §50.7

The amended rules are proposed as part of the regular four-year review cycle prescribed by Government Code §2001.039 and pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed amended rules do not otherwise impact any other current rules or statutes.

§50.6. *Management of Classroom-Based Course of Instruction.*

(a) No more than 50 students may attend a session.

(b) A student who misses more than 10% of the required 120 minutes of class instruction shall not be allowed to take the Commission Standard Competence Test and may not be given a Seller Server Certificate based on his attendance at that session.

(c) No alcoholic beverage may be consumed by anyone attending or teaching the session, during the session or during breaks.

(d) Each [Unless prior approval is received from the commission upon request by the school, each] session must be presented in a continuous block of instruction. Instruction may be interrupted by brief breaks, but they must be limited in number and duration. Time spent in a break or taking the Commission Standard Competence Test shall not be included in the 120-minute mandatory curriculum attendance requirement.

[(e) A school seeking approval to offer a course of instruction on a unit basis rather than as a continuous block of instruction must define what material will be taught in each unit. The units must be offered in the sequence of the mandatory curriculum.]

[(1) A student must attend all of the units necessary to receive instruction in the 120-minute mandatory curriculum before he is allowed to take the Commission Standard Competence Test.]

[(2) At the conclusion of a unit, the student must answer five questions on the material in that unit. A student may not receive instruction in the next unit if the student:]

[(A) answers more than one question incorrectly; or]

[(B) has not been in attendance for the complete unit.]

[(3) The questions on a unit test may be short answer, multiple choice, or a combination of those methods.]

[(4) If a student incorrectly answers more than one question on a unit test, the student must attend and complete that unit again before being retested.]

[(5) During a unit retest, the student must be asked questions that are different from those he was previously asked.]

[(6) As long as different questions are asked and the student has attended the unit after each failed test, a school may decide how many times the student may be retested on a unit.]

(e) [(f)] The Commission Standard Competence Test shall be administered to each student immediately following the conclusion of instruction at the class he attends. No test may be administered at any other place or time.

(f) [(g)] The Commission Standard Competence Test shall be administered on a closed-book basis.

(g) [(h)] A student must correctly answer at least 70% of the questions asked on the Commission Standard Competence Test administered to him to be eligible to receive a Seller Server Certificate.

(h) [(i)] A student who does not correctly answer 70% of the questions asked may be immediately retested once. If the student does not correctly answer 70% of the questions asked on the retest, the student must repeat the course in full.

§50.7. *Management of Internet-Based Course of Instruction.*

(a) An internet-based school must verify a student's identity.

(1) To verify the student's identity, the school must ask each student a minimum of ten personal validation questions. Students [may] have no more than 60 seconds to respond to a personal validation

question. If a student answers more than 30% of the personal validation questions incorrectly, the student must be dropped from the course.

(2) In lieu of the validation method required in paragraph (1) of this subsection, a school may use another validation method that has been approved by the commission upon request by that school.

(b) A student may be allowed to reenter a course through the use of a username and password, or by other means approved by the commission that are as effective as password verification.

(c) An internet-based school may present the course of instruction on a unit basis that is approved by the commission.

(1) At the conclusion of a unit, the student must answer five comprehension questions on the material in that unit. A student may not proceed to the next unit if the student:

(A) answers more than one question incorrectly; or

(B) has not viewed all [of the] multimedia components of a unit.

(2) Comprehension questions [Questions] on a unit test must be of a difficulty level that a student cannot correctly answer them without having viewed the material in that unit. Comprehension [The] questions on a unit test may be short answer, multiple choice, or a combination of those methods.

(3) If a student incorrectly answers more than one comprehension question on a unit test, the student must restart and complete that unit again before being retested.

(4) During a unit retest, the student must be asked comprehension questions that are different from those he was previously asked.

(5) If [As long as] different comprehension questions are asked and the student has restarted and completed the unit after each failed test, a school may decide how many times the student may be retested on a unit.

(d) A student must correctly answer at least 70% of the questions asked on the Commission Standard Competence Test administered to him to be eligible to receive a Seller Server Certificate.

(e) A student who does not correctly answer 70% of the questions asked on the Commission Standard Competence Test administered to him may be immediately retested once. If the student does not correctly answer 70% of the questions asked on the retest, the student must repeat the course in full.

(f) A student must have adequate access to a help desk to resolve technical issues and the hours must be posted for the student to review before registering for the course. If a request for support is made outside of the posted time period, technical support must contact the requestor and attempt to resolve the issue during the next posted time period that follows the request. Access to technical assistance may be provided by means of:

(1) email;

(2) direct messaging; or

(3) phone with active voicemail.

(g) Questions by a student about the content of the course of instruction must be answered by the holder of a seller server trainer certificate.

(1) The school must make available to students the days and times a Seller Server Trainer will be available to answer content related questions prior to registering for the course; and

(2) Seller Server Trainers must be available a reasonable amount of time weekly to provide support to students.

(h) An internet-based school may not allow any advertisements to appear during the course of instruction. Advertisements that appear on the website when the course of instruction is not being presented must follow established marketing practices.

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

Filed with the Office of the Secretary of State on November 16, 2022.

TRD-202204598

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Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 206-3451



## SUBCHAPTER C. SELLER SERVER SCHOOL CERTIFICATES AND REQUIREMENTS

### 16 TAC §§50.9 - 50.11, 50.21, 50.22, 50.24

The amended rules are proposed as part of the regular four-year review cycle prescribed by Government Code §2001.039 and pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed amended rules do not otherwise impact any other current rules or statutes.

*§50.9. Issuance [and Control by Schools] of Seller Server Certificates.*

(a) A school must order and pay for all seller server certificate numbers in advance using the order forms and payment methods approved by the commission. Certificate numbers cost \$2.00 each. [Order and payment requirements for schools.]

~~[(1) All seller server certificate numbers must be ordered and paid for in advance using the order forms and payment methods approved by the commission.]~~

~~[(A) Certificate numbers cost \$2.00 each.]~~

~~[(B) Certificate numbers must be purchased in minimal lots of 60.]~~

~~[(C) The commission will provide each certified school with a certificate template that the school can use to print the seller server certificates it issues to students. A school may also hire a commission-approved vendor to print the seller server certificates.]~~

~~[(2) As a condition for ordering additional certificate numbers, a school must:]~~

~~[(A) have sessions currently scheduled;]~~

~~[(B) submit the session schedules to the commission; and]~~

~~[(C) account for all previously issued certificate numbers.]~~

~~[(3) A certificate order for a session scheduled to occur within five business days from the date of the order must be submitted using expedited mail or delivery service provider. If the certificate numbers cannot be received electronically by the school, the order must also include a preprinted and prepaid return delivery package or label. The certificate numbers will be delivered electronically to the school through the valid e-mail address provided on the school's application, or using the preprinted and prepaid delivery package or label provided with the order.]~~

(b) ~~[(4)]~~ No session may be conducted unless the school:

(1) ~~[(A)]~~ has sufficient certificate numbers available to issue a certificate to each individual attending the session at the time, date and location of the scheduled session; and

~~[(B) can print and issue a certificate to each individual attending the session at the time, date, and location where the session is conducted; and]~~

(2) ~~[(C)]~~ limits the number of individuals attending a session to the number of certificate numbers available at the location on the date and time the session is conducted.

(c) ~~[(5)]~~ If a school had sufficient certificate numbers to issue to each student in a session, but one or more certificate numbers had to be voided so that a student who should have received a certificate did not receive one on the date of the session, the school must, within five calendar days of the session, submit a written statement to the commission explaining why sufficient certificate numbers were not available and listing the voided certificate numbers.

(d) ~~[(b)]~~ Requirements for classroom-based or in-house schools issuing seller server certificate to students.

(1) If a student satisfies the requirements for a certificate, the school must issue the student the certificate on the date the student satisfied those requirements and at the location of that session.

(2) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school, at the conclusion of the session where the student satisfied the requirements for a certificate, and on the date and location of that session, must:

(A) provide the student with a written receipt showing the name of the school, the name of the instructor, the instructor's certificate number, the amounts paid by the student, and the date, time and location of the session;

(B) provide the student written notice containing the commission's internet address and informing the student that the student may file a complaint with the commission;

(C) notify the commission in writing, or on forms provided by the commission for internet notification, of the information required to be provided to the student in subparagraph (A) of this paragraph; and

(D) issue the student a certificate within 10 calendar days from the date of the session where the student satisfied the requirements for a certificate.

(e) ~~[(e)]~~ Requirements for internet-based schools issuing seller server certificate to students.

(1) If a student satisfies the requirements for a certificate, the school must electronically issue the student the certificate within 24 hours of the time the student satisfied those requirements.

(2) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school, within 24 hours of the con-

clusion of the session where the student satisfied the requirements for a certificate, must electronically provide the student:

(A) a receipt showing the name of the school, the name of the instructor, the instructor's certificate number, the amounts paid by the student, and the date and time of the session;

(B) an explanation of why the certificate is not being issued; and

(C) the commission's internet address and notice that the student may file a complaint with the commission.

(3) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school, within 24 hours of the conclusion of the session where the student satisfied the requirements for a certificate, must electronically provide the commission the information provided to the student under paragraph (2) of this subsection.

(4) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school must issue the student a certificate within 10 calendar days from the date of the session where the student satisfied the requirements for a certificate.

(f) ~~[(d)]~~ A school that fails to comply with the requirements of subsection ~~(d) or (e)~~ ~~[(b) or (e)]~~ of this section commits a separate violation for each student affected by that failure.

(g) ~~[(e)]~~ The commission may refuse to issue certificates to a school:

(1) if the commission has a reasonable basis to believe the certificates have been misused or abused or that inadequate security or control may result in the misuse or abuse of certificates;

(2) if the school fails to provide information and records within three business days of a request by the commission; or

(3) if the school has failed to create or maintain information and records required by the commission.

(h) ~~[(f)]~~ A school may not transfer a certificate to another school, even if the schools are affiliated branch or primary schools.

#### *§50.10. Requirements for Records, Reports and Notices.*

(a) A school must electronically notify the commission at least three business days in advance of each scheduled session. The notice must include the date, time and location of the session. ~~[and whether the session will have continuous instruction or be presented as units.]~~ The commission may waive the three-day requirement on request for good cause shown on an individual basis, but in no case may a session be taught without prior notification to the commission.

(b) Reports of cancelled classes.

(1) A school must electronically notify the commission of the cancellation of a session prior to the scheduled date of the session unless the cancellation cannot reasonably have been anticipated before that date.

(2) When a cancellation cannot reasonably have been anticipated prior to the scheduled date of the session, the school must electronically notify the commission of the cancellation not later than the next business day. The notice must provide an explanation of the circumstances justifying the late notice.

(c) A school shall maintain the Commission Standard Competence Test in a secure manner and in a secure location at all times and restrict access to ensure that the test is not available to students or the public before or after it is administered. A school must electronically notify the commission of any breach of security involving the test within 24 hours of discovering the breach.

(d) Access to commission's portal to file reports and notices.

(1) Each certified school is provided with information and security access to the commission's selected secure portal when an original certificate or renewal is issued. Access to the secure portal may be terminated without notice if a security breach or malicious virus is detected.

(2) The commission may require or perform periodic audits to ensure secure portals are used for authorized purposes.

(3) A breach of security or misuse of the secure portal will result in immediate termination of access pending investigation.

(e) Reports of seller training.

(1) For each session taught, a school shall electronically file a report of seller training not later than 7 [14] calendar days after the date the class was held.

(2) Each report of seller training shall include all students who successfully completed the session and received a passing grade on the commission standard competence course.

(3) Each report of seller training shall contain each student's name, commission-approved personal identification number, date of birth, test score and certificate number.

~~[(4) The report of seller training must be personally signed by the certified trainer who actually taught the session.]~~

~~(4) [(5)]~~ The trainer shall personally verify that on the date indicated each student included in the report satisfactorily completed the session and received a passing grade on the Commission Standard Competence Test.

(f) Required records.

(1) Each school must maintain, at the school's primary site or at a designated branch site, the reports and notices required in this section.

(2) For each student attending a session, the school must maintain the information required by this paragraph.

(A) The student's first and last names and middle initial.

(B) The student's mailing address.

(C) The student's e-mail address, if available.

(D) Any information required to assign the student a commission-approved personal identification number.

(E) The student's score on the Commission Standard Competence Test.

(3) All records, reports and documents required in this section shall be maintained for four years.

(4) Records, reports and documents required by this section may be maintained electronically in a methodical and organized manner.

(5) All records, reports and documents shall be made available to the commission upon request. Failure to provide the material within five business days of the request is cause for cancellation or suspension of the school's certificate.

(6) Failure to submit any record, report or notice to the commission as and when required is cause for cancellation or suspension of the school's certificate.

(7) Significant and/or repeated errors in submitting information to the commission are cause for cancellation or suspension of the school's certificate.

(8) If a school ceases operation, all records and reports shall be provided to the commission.

(9) The commission may monitor sessions unannounced.

(10) The commission may conduct audits unannounced.

(11) An internet-based school must maintain all contracts it has to receive traffic that has been redirected from another domain.

(g) The executive director may develop standard practices relating to the implementation of this chapter. The standard practices will provide guidance to schools and individuals affected by this chapter regarding technical details required to efficiently and effectively implement this chapter. The standard practices will be provided to certified schools and will be posted on the commission's website. The standard practices may not conflict with or alter the provisions of this chapter.

*§50.11. Grounds for Refusing to Process Application.*

(a) The commission may refuse to process an original or renewal application for a school certificate under this chapter, if the applicant or any individual who must submit a personal history sheet with the application:

(1) does not meet the minimum qualifications;

(2) fails to submit a complete application;

(3) fails to pay the required fees;

(4) falsifies, misrepresents, or fails to provide or verify a material fact, disclosure or document required by the commission on the application;

(5) fails to provide or produce information requested by the commission, and the time for providing the information has passed;

(6) ~~[had a final disposition of a felony conviction]~~ within five years of the date of application, was convicted of or served deferred adjudication for:<sup>[3]</sup>

(A) any felony offense;

(B) any controlled substance offense in the Health and Safety Code Chapter 481;

(C) any firearm or deadly weapon offense in Penal Code Chapter 46;

(D) any prostitution offense in Penal Code Chapter 43;

(E) any gambling offense in Penal Code Chapter 47;

(F) any human trafficking offense in Penal Code Chapter 20A;

(G) any fraud offense in Penal Code Chapters 32 or 35;

(H) any money laundering offense in Penal Code Chapter 34; or

(I) any violation of the Alcoholic Beverage Code.

(7) conducts business in a manner that warrants the cancellation or suspension of the certificate for 24 months following the cancellation or suspension;

(8) conducted seller server training courses and allowed students to participate in a seller server training program with the expectation that they would receive a valid commission authorized certificate while the primary seller server certificate was under suspension; or

(9) is the owner of the primary seller server certificate and is residentially domiciled with a person whose primary seller server certificate was cancelled for cause within the 12-month period preceding the owner's application.

(b) The commission may refuse to process an original or renewal application for a seller server trainer certificate under this chapter without a hearing, if the applicant:

- (1) does not meet the minimum qualifications;
- (2) fails to submit a complete application;
- (3) fails to pay the required fees;
- (4) falsifies, misrepresents, or fails to provide or verify a material fact, disclosure or document required by the commission on the application;
- (5) fails to provide or produce information requested by the commission, and the time for providing the information has passed;
- (6) had a final disposition of a felony conviction within five years of the date of application;
- (7) conducts business in a manner that warrants the cancellation or suspension of the certificate for 24 months following the cancellation or suspension; or
- (8) used a trainer who conducted seller server training courses and allowed students to participate in a seller server training program with the expectation that they would receive a valid commission authorized certificate while the primary seller server certificate was under suspension.

*§50.21. Renewal Application.*

(a) An application for renewal of a certificate issued under this subchapter must be submitted on forms provided by the commission. The applicant must verify that the individual owner, or a designated representative of the owning legal entity, has attended any mandatory training offered or sponsored by the commission, and has completed the commission's train the trainer course and passed the final exam for that course with a score of 80% or better [liquor law class], during the term of the expiring certificate.

(b) Any information that has changed since the original or last renewal application was submitted must be completed and corrected on forms provided for an original application.

(c) Except as otherwise provided by subsection (d) of this section, a renewal application must be submitted before the date the certificate expires.

(d) Notwithstanding subsection (c) of this section, the commission may accept a renewal application and the certificate holder may continue to operate for 30 days following the expiration date, if:

- (1) neither the primary nor any associated branch school is currently under a suspension order; and
- (2) the required fees and late fee are submitted with the renewal application.

(e) A certificate holder who fails to submit a renewal as required by this section or pay the required fees must apply for an original application.

(f) A certificate issued under this subchapter may not be renewed if the school has not held at least 20 sessions during the term of the expiring certificate.

*§50.22. Expiration and Fees.*

- (a) Primary seller server school certificate.

(1) A primary certificate will expire on the second anniversary of the date it is issued.

(2) The two-year fee for an original primary certificate is \$1000.

(3) The two-year fee for a renewal primary certificate is \$500.

(4) A late fee of \$100 must be submitted with a renewal application submitted after the date the certificate expired if the application is received within 30 days after the date of expiration. If the renewal application and fees are not received during the 30day period, the applicant must apply and pay the fee for an original primary certificate.

(5) No fees will be refunded after a certificate is issued.

(6) Fees cannot be prorated for a term of less than two years.

(7) Applications must be completed within one year of the date the application was received by the commission, or the application shall be deemed void. All fees are nonrefundable.

(8) If the applicant does not meet the deadline established in paragraph (7) of this subsection, the applicant must reapply for a new certificate by complying with requirements and procedures, including payment of fees.

(b) Branch seller server school certificate.

(1) A branch certificate will expire on the date the primary certificate expires.

(2) The two-year fee for each original classroom based or classroom-based in-house branch certificate is \$200, and for each internet-based or mobile application in-house branch certificate is \$50.

(3) The two-year fee for each renewal classroom based or classroom-based in-house branch certificate is \$100, and for each internet-based or mobile application or in-house branch certificate is \$25.

(4) Fees for branch certificates that will expire in less than two years as a result of the primary certificate's expiration are not prorated.

(5) Applications must be completed within one year of the date the application was received by the commission, or the application shall be deemed void. All fees are nonrefundable.

(6) If the applicant does not meet the deadline established in paragraph (5) of this subsection, the applicant must reapply for a new certificate by complying with requirements and procedures, including payment of fees.

(c) No certificate will be issued until all fees and late fees are paid. A fee is paid on the date funds are available and transferred from the applicant's account.

(d) The filing fee for a change of ownership is \$100.

*§50.24. Notice of Change of Location.*

The holder of a certificate issued under this subchapter must comply with §33.93 [§33-33] of this title.

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

Filed with the Office of the Secretary of State on November 16, 2022.



## SUBCHAPTER D. SELLER SERVER TRAINER CERTIFICATE

### 16 TAC §50.25

The amended rules are proposed as part of the regular four-year review cycle prescribed by Government Code §2001.039 and pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed amended rules do not otherwise impact any other current rules or statutes.

#### §50.25. Seller Server Trainer Certificate.

(a) Applicant Minimum Qualifications. An applicant for an original or renewal seller server trainer certificate must:

(1) submit documentation issued by an agency of the United States, this or another state of the United States that proves the applicant is a United States citizen or is legally authorized to work in the United States at the time of application;

(2) not be disqualified to receive a seller server school certificate under §50.12 of this chapter;

(3) be at least 21 years of age;

(4) submit a completed application on a commission approved form;

(5) pay the fee required for a seller server trainer certificate; and

(6) not have had a final disposition of a felony conviction within five years of the date of application.

(b) The commission may deny an application for an original or renewal seller server trainer certificate if the applicant has been convicted of or served deferred adjudication for:

(1) any felony offense;

(2) any controlled substance offense in the Health and Safety Code Chapter 481;

(3) any firearm or deadly weapon offense in Penal Code Chapter 46;

(4) any prostitution offense in Penal Code Chapter 43;

(5) any gambling offense in Penal Code Chapter 47;

(6) any human trafficking offense in Penal Code Chapter 20A;

(7) any fraud offense in Penal Code Chapters 32 or 35;

(8) any money laundering offense in Penal Code Chapter 34; or

(9) any violation of the Alcoholic Beverage Code.

(c) ~~[(b)]~~ An applicant for an original seller server trainer certificate must submit with the application:

(1) a certificate of completion issued by the provider of the commission standard train the trainer course and pass the final exam with a score of 80% or better; ~~trainer training and signed by the instructor of the training;~~ and

(2) documentation establishing that the applicant has at least:

(A) 2 years' ~~[years]~~ experience in teaching or training; or

(B) 15 hours of post-secondary ~~[post secondary]~~ education in a related field.

~~(d)~~ ~~[(e)]~~ Expiration and Fees.

(1) A seller server trainer certificate will expire on the second anniversary of the date it is issued.

(2) The two-year fee for an original seller server trainer certificate is \$100, and for a renewal is \$50.

(3) A late fee of \$50 must be submitted with a renewal application submitted after the date the certificate expired.

(4) No fees will be refunded after a certificate is issued.

(5) Fees cannot be prorated for a term of less than two years.

(6) Applications must be completed within one year of the date the application was received by the commission, or the application shall be deemed void. All fees are nonrefundable.

(7) If the applicant does not meet the deadline established in paragraph (6) of this subsection, the applicant must reapply for a new certificate by complying with requirements and procedures, including payment of fees.

~~(e)~~ ~~[(d)]~~ The holder of a seller server trainer certificate may renew the certificate if:

(1) a renewal application is submitted, on forms provided by the commission, prior to the expiration of the current certificate;

(2) the required two-year fee is submitted with the application;

(3) the applicant verifies that the applicant attended all mandatory training offered or sponsored by the commission and completed the commission's liquor law course during the two-year term of the expiring certificate; and

(4) the applicant has instructed at least 20 sessions during the term of the expiring certificate.

(f) ~~[(e)]~~ Notwithstanding subsection ~~(e)(1)~~ ~~[(d)(1)]~~ of this section, the commission may accept a renewal application and the seller server trainer certificate holder may continue to operate for 30 days following the expiration date of the ~~[his]~~ certificate, if:

(1) the holder of the seller server trainer certificate is not currently under a suspension order; and

(2) the required fees and late fees are submitted with the renewal application.

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

Filed with the Office of the Secretary of State on November 16, 2022.

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**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 97. PLANNING AND  
ACCOUNTABILITY**

The Texas Education Agency (TEA) proposes the repeal of §97.1066 and new §97.1066, concerning campus repurposing and closure. The proposed repeal and new rule would reflect changes to Texas Education Code (TEC), §39A.113, by House Bill 4205, 86th Texas Legislature, 2019, and provide clarification to statutory provisions.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 97.1066, Campus Closure, was adopted in 2016 to outline the process and procedures in the event the commissioner orders campus closure. Due to statutory changes and the need for more specificity around closure and campus repurposing, the section would be repealed and replaced with new §97.1066, Campus Repurposing and Closure. Following is a summary of the proposed new rule.

New subsection (a) would define terms used throughout the proposed new section.

New subsection (b) would establish that the proposed new section applies to campuses that are ordered closed by the commissioner under TEC, §39A.111, or to campuses that are closed by the district.

New subsection (c) would establish what qualifies as a repurposed campus. New subsection (c)(3)(A)(iii) would add clarity to the provision found in TEC, §39A.113(a)(1)(A), by including how many grade levels can be added to a newly repurposed campus each year.

New subsection (d) would define the criteria for the distinctly different academic program described in TEC, §39A.113(a)(1). Subsection (d)(1) and (2) would specify the staffing requirements for a campus that is considered to have a distinctly different academic program: the principal and assistant principals must be new to the campus unless they are in their first year of assignment at the campus (and, therefore, did not oversee the campus when it received consecutive unacceptable ratings); and teachers employed at the campus prior to repurposing must apply for a position at the repurposed campus and have demonstrated instructional effectiveness in the prior year. Subsection (d)(3) would specify that the campus must be an open-enrollment campus in the district. Subsection (d)(4) would clarify that the district must establish plans to implement a new academic experience, including plans for high-quality instructional materials, school culture, staffing, and services for special populations. Language would also be added in subsection (d) to clarify that if a campus is operated under a qualifying contract as an in-district charter with an entity that meets the requirements in TEC, §39A.113(a)(1)(B), the campus will be considered to meet the requirements of a distinctly different academic program.

New subsection (e) would establish the criteria for campus repurposing after a campus is ordered closed by the commissioner due to continued unacceptable ratings. Subsection (e)(1) would clarify that, if the commissioner orders campus closure, the closure takes place at a date specified by the commissioner, and, if the commissioner appoints a board of managers to govern the school district, the commissioner may assign a new county-district-campus number (CDCN) to the campus that caused the sanction, if the campus meets the requirements in subsection (e). Subsection (e)(2) would clarify that the new CDCN takes effect no later than September 1. Subsection (e)(3) would allow the commissioner to issue a label of Not Rated to a campus subject to TEC, §39A.111.

Subsection (e)(4) would clarify the criteria that a facility that housed a closed campus must meet to receive a new CDCN for a repurposed campus in the same facility. The proposed new language would specify that the campus must meet the requirements in TEC, §39A.113, related to the students and grade levels that can be served at the repurposed campus and would require that the repurposed campus meet the criteria for a distinctly different academic program that is defined in subsection (d). The new language would further clarify that a campus that is operated under a qualifying contract as an in-district charter with an entity that meets the requirements in TEC, §39A.113(a)(1)(B), may receive a new CDCN, but if the district terminates the contract before the end of the 3-year term, the commissioner may order closure of the campus or appoint a board of managers to govern the district. The new subsection would also stipulate that the district must complete governance training and create a student tracking plan no later than June 30 of the year that the campus begins operation under the new CDCN. The student tracking plan would require that, unless the campus is to be operated under contract by a qualifying non-profit entity, students who were assigned to the closed campus attend a higher performing campus and not the repurposed campus.

New subsection (f) would address the assignment of a new CDCN to a campus that is closed by the district. New subsection (f)(1) would clarify that all criteria in subsection (f) must be met for a district to receive the new CDCN. New subsection (f)(2) would clarify that districts may not receive a new CDCN to evade state or federal accountability sanctions and interventions, and if a district is determined to have requested the new CDCN to evade sanctions and interventions, the commissioner may deny the request, assign students under a new CDCN to the campus's prior CDCN, and open a special investigation into the district. New subsection (f)(2)(B) would clarify some of the scenarios in which a district would be considered to be attempting to evade accountability sanctions and interventions.

Subsection (f)(3) would clarify that if a campus's most recent rating was an acceptable rating, the district may close the campus, repurpose the facility, and receive a new CDCN unless the commissioner determines that such an assignment would allow the district or campus to evade state or federal accountability sanctions and interventions as described in subsection (f)(2)(A).

Subsection (f)(4) would establish the timelines under which the district may close a campus with an unacceptable rating, repurpose the facility, and receive a new CDCN. It would clarify that the district board of trustees must order closure of the campus by January 31 of the year that the campus could receive its fourth or less consecutive unacceptable rating and that the repurposed campus and the district would have to meet the criteria in sub-

section (f)(4). Subsection (f)(5) would clarify that, once a campus has begun operating in the school year in which it could earn its fifth consecutive unacceptable rating, the district cannot order closure of that campus.

New subsection (g) would clarify that, regardless of prior rating, if a district facility has not been used for direct education services for at least one school year, the district may receive a new CDCN for a new campus in that facility without having to meet the requirements in new §97.1066.

New subsection (h) would clarify that the commissioner may allow students assigned to the closed campus to attend the repurposed campus if there are no other campuses in which the students may enroll in accordance with TEC, §39A.113(d).

New subsection (i) would establish that if the district reassigns the majority of students from a campus that was closed due to an unacceptable rating to another single campus, that campus may be assigned the CDCN of the closed campus (and, therefore, be subject to the sanctions for the closed campus) if the commissioner determines that the reassignment threatens the integrity of the accountability system.

**FISCAL IMPACT:** Kelvey Oeser, deputy commissioner for educator support, has determined that 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 repeal an existing regulation and create a new regulation. The proposed rule action would establish new criteria that campuses closed due to unacceptable ratings must meet if the district wants to repurpose the facility to house a new campus under TEC, §39A.113.

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 expand or limit 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:** Ms. Oeser 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 providing school districts with clarifications on the criteria to repurpose a closed campus. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have a data and reporting impact. Districts that intend to repurpose a campus that has been closed must submit plans describing the campus's new academic program and student tracking plans to ensure that students who attended the closed, unacceptable campus will attend a higher-performing campus.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** 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 December 2, 2022, and ends January 9, 2023. 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 December 2, 2022. 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/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

## SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

### DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

#### 19 TAC §97.1066

**STATUTORY AUTHORITY.** The repeal is proposed under Texas Education Code (TEC), §39A.111, which establishes that a campus that receives a fifth consecutive unacceptable rating is subject to a board of managers or closure; TEC, §39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019, which establishes the requirements for a campus that has been closed by commissioner action to be repurposed; and TEC, §39A.115, which allows the commissioner to adopt rules to implement TEC, Chapter 39A, Subchapter C.

**CROSS REFERENCE TO STATUTE.** The repeal implements Texas Education Code, §§39A.111; 39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019; and 39A.115.

*§97.1066. Campus Closure.*

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

Filed with the Office of the Secretary of State on November 18, 2022.

TRD-202204645

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 1, 2023

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



## 19 TAC §97.1066

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §39A.111, which establishes that a campus that receives a fifth consecutive unacceptable rating is subject to a board of managers or closure; TEC, §39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019, which establishes the requirements for a campus that has been closed by commissioner action to be repurposed; and TEC, §39A.115, which allows the commissioner to adopt rules to implement TEC, Chapter 39A, Subchapter C.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§39A.111; 39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019; and 39A.115.

### §97.1066. Campus Repurposing and Closure.

(a) Definitions. For purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acceptable and unacceptable ratings--the terms acceptable and unacceptable ratings have the meanings assigned in Texas Education Code (TEC), §39.0543. The accountability rating is for the year in which the performance occurs, not the year in which the preliminary or final rating is issued.

(2) Campus--this term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).

(3) County-district-campus number (CDCN)--the 9-digit number assigned to instructional campuses.

(4) Facility--a facility includes a building, a group of buildings, portable buildings, or any combination thereof that the commissioner of education determines would comprise a campus.

(b) Campus closure. A campus may be closed by:

(1) the commissioner as described in TEC, §39A.111, and §97.1065 of this title (relating to Commissioner Determinations for Decisions Preceding Alternative Management, Campus Closure, or Board of Managers) if it is assigned an unacceptable performance rating for five consecutive school years, regardless of whether the school district closes or orders the closure of the campus before the fifth consecutive unacceptable accountability rating is issued; or

(2) the school district, subject to the provisions in this section.

(c) Repurposing. A campus is considered to be repurposed if:

(1) a CDCN assigned to a campus is closed;

(2) the school district operates a new campus in the same facility as the closed campus; and

(3) the new campus meets the criteria in TEC, §39A.113. The campus must:

(A) serve a majority of grade levels not served at the original campus.

(i) The school district must have a grade level plan approved by Texas Education Agency (TEA) staff.

(ii) The campus may repurpose starting with one or more grade spans (elementary, middle school, and/or high school).

(I) If the campus repurposes with only one grade span, the campus must repurpose with the lowest grade level or levels to be served and include no more than three elementary grade levels, including prekindergarten-Grade 5; one middle school grade level, in-

cluding Grades 6-8; or one high school grade level, including Grades 9-12.

(II) If the campus repurposes with more than one grade span (elementary, middle school, and/or high school), the campus may repurpose starting with the lowest grade level in each grade span.

(iii) The campus may not add more than one grade level per school year;

(B) serve a majority of students who did not attend that campus the previous year; and

(C) offer a distinctly different academic program as described in subsection (d) of this section.

(d) Distinctly different academic program. For purposes of this section, a distinctly different academic program must meet the conditions in paragraphs (1)-(4) of this subsection. Notwithstanding the requirements in this subsection, the campus will be considered to operate a distinctly different education program if the campus is operated under contract as described in TEC, §39A.113(a)(1)(B), and the contract meets the requirements described in §97.1075(d) of this title (relating to Contracting to Partner to Operate a Campus under Texas Education Code, §11.174).

(1) The principal and all assistant principals must not have previously served at the campus, unless they are in their first year of assignment at the campus and have demonstrated improvement in academic outcomes at the campus.

(2) A teacher employed at the campus under the closed CDCN must apply for a position to continue at the campus and must have demonstrated instructional effectiveness in the previous school year.

(3) The school district must ensure that the campus will be open enrollment and will accept students from outside of the campus's geographic boundary and provide a lottery to students outside the geographic boundary if the campus is oversubscribed.

(4) The school district must demonstrate that the academic experience of the students at the new campus will differ significantly from the academic experience that was previously offered at the campus, including, but not limited to, a description of the new plans to:

(A) implement high-quality instructional materials that are aligned to instructional planning calendars and interim and formative assessments;

(B) create a positive school culture;

(C) recruit, select, assign, induct, and retain a full staff of highly qualified educators;

(D) evaluate and develop instructional staff; and

(E) serve special populations and at-risk students.

(e) Repurposing after commissioner closure.

(1) If a school district is subject to TEC, §39A.111, the commissioner shall order either:

(A) the closure of the campus that received a fifth consecutive unacceptable rating with closure taking effect on a date determined by the commissioner; or

(B) the appointment of a board of managers to govern the school district as provided by TEC, §39A.202, which takes effect immediately upon appointment. If the commissioner appoints a board of managers, the campus that received a fifth consecutive unacceptable rating may, at the commissioner's discretion:

(i) continue to operate; and  
(ii) receive a new CDCN, subject to the provisions in this subsection relating to repurposing after commissioner closure.

(2) If the commissioner assigns a new CDCN to a campus, that assignment takes effect no later than September 1 of the school year following the assignment.

(3) The commissioner will determine the effective date of the campus closure ordered under §97.1065 of this title. If the closed campus would receive a campus rating for any year following the year for which a rating was issued that made the school district subject to TEC, §39A.111, the campus may be assigned a label of Not Rated.

(4) A school district may repurpose a facility that housed a campus that was closed by order of the commissioner under TEC, §39A.111, and receive a new CDCN if one of the following requirements is met.

(A) The campus and school district meet the following criteria:

(i) the campus meets the criteria in TEC, §39A.113(a)(1)(A), subsection (c)(3) of this section, or subsection (d) of this section; and

(ii) the school district meets the following criteria by June 30 of the year in which the operation of the campus with a new CDCN will begin:

(I) the district completes initial training in a TEA-approved governance framework supporting continuous improvement and engages in ongoing implementation for at least the duration of the school year in which the new campus number is open;

(II) the district develops and implements a plan to ensure that the students who attended the closed campus do not attend the repurposed campus, unless the campus is to be operated under contract as described in subparagraph (B) of this paragraph. The plan must ensure that students who attended the closed campus:

(-a-) are assigned to a campus whose most recent performance rating is an A, B, or C or have access to nearby school choices that are higher performing than the closed campus. For purposes of this subsection, a higher performing campus is a campus whose most recent performance rating is an A, B, or C; and

(-b-) must be allowed to attend the new campus until the student would have stopped attending the closed campus by reason of matriculation to another campus or graduation; and

(III) the district timely submits all information required by the commissioner to make a determination under this subsection. Failure to submit information by June 30 may result in non-approval of the new CDCN.

(B) The campus is operated under contract with a non-profit entity as described in TEC, §39A.113(a)(1)(B), and the contract:

(i) meets the requirements described in §97.1075(d) of this title; and

(ii) has a term of at least three years. If the contract is terminated prior to the end of the contract term, the commissioner may order closure of the campus or appoint a board of managers as described in TEC, §39A.111.

(f) Repurposing after school district closure.

(1) A school district may repurpose a facility that housed a closed campus and receive a new CDCN if the district meets the criteria in this subsection.

(2) Regardless of the campus's most recent rating, a school district may not repurpose a facility and receive a new CDCN if the commissioner determines that such an assignment would allow the district or campus to evade state or federal accountability sanctions and interventions.

(A) If a school district is determined to have requested a new CDCN to evade state or federal accountability sanctions and interventions, the commissioner may:

(i) deny the approval of the new CDCN or assign students enrolled under the new CDCN to the prior CDCN; and

(ii) open a special investigation of the school district under TEC, §39.003.

(B) Changing a CDCN to evade sanctions and interventions may include, but is not limited to, the following scenarios:

(i) enrolling zero students in a CDCN and reassigning students to one or more other campuses in the school district;

(ii) requesting closure of a CDCN and then serving students in that facility under a different CDCN;

(iii) relocating the majority of students to a new facility without prior TEA approval;

(iv) requesting closure of a CDCN and repurposing the campus with the same grade configuration; or

(v) requesting significant modification of grade levels at a campus with an unacceptable rating even if campus closure is not requested.

(3) A school district that closes a campus whose most recent academic accountability rating is acceptable or higher, including a rating of D that meets the criteria in TEC, §39.0543(b), may repurpose the facility that housed that campus and receive a new CDCN unless the commissioner determines that such an assignment would allow the district or campus to evade state or federal accountability sanctions and interventions as described in paragraph (2)(A) of this subsection.

(4) A school district that closes a campus whose most recent academic accountability rating is unacceptable may repurpose a facility and receive a new CDCN if:

(A) the school district board of trustees ordered the campus closed no later than January 31 of the school year in which the campus could earn its second, third, or fourth consecutive unacceptable rating, as defined in TEC, §39.0543(a) and (c), regardless of whether the facility was used for direct educational services in the school year prior to the proposed operation of the new campus under a new CDCN;

(B) the campus meets all criteria in TEC, §39A.113(a)(1)(A), subsection (c)(3) of this section, and subsection (d) of this section related to campus repurposing; and

(C) the school district meets the following criteria by June 30 of the year in which the operation of the campus with a new CDCN will begin:

(i) the school district completes initial training in a TEA-approved governance framework supporting continuous improvement and engages in ongoing implementation for at least the duration of the school year in which the new CDCN is open;

(ii) the school district is issued a final closure order that is not subject to any contingency;

(iii) the school district develops and implements a plan to ensure that the students who attended the closed campus do not

attend the repurposed campus. The plan must ensure that students who attended the closed campus:

(I) are assigned to a campus whose most recent performance rating is an A, B, or C or have access to nearby school choices that are higher performing than the closed campus. For purposes of this subsection, a higher performing campus is campus whose most recent performance rating is an A, B, or C; and

(III) must be allowed to attend the new campus until the student would have stopped attending the closed campus by reason of matriculation to another campus or graduation; and

(iv) the school district timely submits all information required by the commissioner to make a determination under this subsection. Failure to submit information by June 30 may result in non-approval of the new CDCN.

(5) A school district cannot close or order the closure of a campus in the year that the fifth or higher consecutive unacceptable accountability rating could be earned.

(g) Repurposing a campus that has not been in operation. Regardless of school district or commissioner closure, the district may repurpose the campus with a new CDCN if the facility has not been used for any direct educational services for at least one complete school year without having to meet requirements in this section.

(h) Exemptions. The commissioner may grant an exemption allowing students assigned to a closed campus to attend the repurposed campus if there is no other campus in the school district at which the students may enroll.

(i) Reassignment. Notwithstanding the provisions in this section, if the school district reassigns a majority of the students that attended a campus that was closed due to an academically unacceptable rating in the prior year to another campus in the district, the receiving campus may be assigned the CDCN of the closed campus and shall be subject to any sanction or intervention applicable to the closed campus if the commissioner determines that this is necessary to preserve the integrity of the accountability system.

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

Filed with the Office of the Secretary of State on November 18, 2022.

TRD-202204646

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 1, 2023

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



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 133. HOSPITAL LICENSING SUBCHAPTER C. OPERATIONAL REQUIREMENTS**

## **25 TAC §133.53**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §133.53, concerning Hospital Price Transparency Reporting and Enforcement in Texas Administrative Code, Title 25, Part 1, Chapter 133, Subchapter C, concerning Operational Requirements.

### **BACKGROUND AND PURPOSE**

The proposal is necessary to implement Senate Bill (S.B.) 1137, 87th Legislature, Regular Session, 2021, which requires hospitals licensed under Texas Health and Safety Code Chapter 241 to disclose price information and maintain and make publicly available a list of standard charges for certain hospital items and services, including by publishing the list or a link to the list in a prominent location on the home page of the hospital's website. The proposed new rule also implements HHSC's authority under S.B. 1137 to impose an administrative penalty on a hospital that violates HSC Chapter 327.

### **SECTION-BY-SECTION SUMMARY**

Proposed new §133.53 requires a hospital to comply with the pricing disclosure requirements under Texas Health and Safety Code Chapter 327 and submit any updates to the list of standard charges or list of shoppable services to HHSC as specified on HHSC's website. The proposed rule also sets forth the administrative penalties HHSC may impose against a hospital that fails to comply with Health and Safety Code Chapter 327 or §133.53.

### **FISCAL NOTE**

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated cost to local government as a result of enforcing and administering the rule as proposed. HHSC lacks the data to provide an estimate of the amounts as they are specific to applicable hospital districts or municipally or county-owned licensed hospitals.

There may be an increase in administrative penalties collected by HHSC as a result of enforcing and administering the rule as proposed, which could increase revenue to state government. HHSC does not have the ability to estimate what the increase in revenue, if any, may be as the agency is not able to predict how many facilities may violate a provision subject to an administrative penalty or the outcome of any future enforcement actions or administrative penalty amounts.

### **GOVERNMENT GROWTH IMPACT STATEMENT**

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will affect fees paid to HHSC;
- (5) the proposed rule will create a new rule;
- (6) the proposed rule will not expand, limit, or repeal an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and

(8) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

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

Trey Wood has also determined that there will be an adverse economic effect on rural communities because municipally-owned hospitals are likely to incur costs to comply with the price disclosure requirements. There are currently two licensed hospitals owned by rural communities and no licensed hospitals meeting the definition of a small business or a micro-business.

HHSC is proposing this rule to comply with statute and has no regulatory flexibility in doing so.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be publicly accessible information consistent with statutory requirements for hospital price disclosures.

Trey Wood has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs because of costs to maintain and submit the required price disclosures.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R033" in the subject line.

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §241.026, which requires HHSC to

develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals; and Texas Health and Safety Code Chapter 327, which requires HHSC to monitor and enforce compliance with the hospital price disclosure requirements of that chapter.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 327.

#### §133.53. Hospital Price Transparency Reporting and Enforcement.

(a) A hospital shall comply with the disclosure and reporting requirements of Texas Health and Safety Code (HSC) Chapter 327 (relating to Disclosure of Prices) as described in this section.

(b) In this section, "prominent location" or "prominently displayed" means a size and font at least as large as that of surrounding text, links, or buttons, distinct from the background of the website, immediately viewable upon accessing the home page of the hospital's publicly accessible website without having to scroll.

(c) A hospital shall make the information required by HSC Chapter 327 available in a prominent location on the home page of its publicly accessible website or accessible by selecting a dedicated link that is prominently displayed on the home page of its publicly accessible website. If the facility operates multiple locations and maintains a single website, the homepage must contain a link to the list containing the links to each location the facility operates in a manner that clearly associates the list with the applicable location of the facility.

(d) Each time a hospital updates a list as required by HSC §327.003 and §327.004, it shall submit the updated list to the Texas Health and Human Services Commission (HHSC) in the manner specified by HHSC on its website.

(e) HHSC has jurisdiction to impose an administrative penalty against a hospital licensed under this chapter for violations of HSC Chapter 327 and this section. An administrative penalty imposed under this section shall be in accordance with the provisions of HSC §327.008.

(f) In determining the amount of any penalty sought pursuant to HSC §327.008, HHSC shall consider:

- (1) previous violations by the hospital's operator;
  - (2) the seriousness of the violation;
  - (3) the demonstrated good faith of the hospital's operator;
- and
- (4) any other matters that justice may require.

(g) For purposes of calculating any penalty sought pursuant to HSC §327.008, the penalty imposed by HHSC for a hospital with one of the following total gross revenues, as reported to the Centers for Medicare and Medicaid Services, in the year preceding the year in which a penalty is imposed, may not exceed:

- (1) \$10 for each day the hospital violated HSC Chapter 327, if the hospital's total gross revenue is less than \$10,000,000;
- (2) \$100 for each day the hospital violated HSC Chapter 327, if the hospital's total gross revenue is \$10,000,000 or more and less than \$100,000,000; and
- (3) \$1,000 for each day the hospital violated HSC Chapter 327, if the hospital's total gross revenue is \$100,000,000 or more.

(h) Each day a violation continues is considered a separate violation.

(1) The administrative penalties for each day of a continuing violation cease on the date the violation is corrected. A violation

that is the subject of a penalty is presumed to continue on each successive day until it is corrected. The date of correction alleged by the hospital in its written plan of correction or corrective action plan will be presumed to be the actual date of correction, unless HHSC later determines that the correction was not made by that date or was not satisfactory.

(2) For continuing violations pursuant to HSC Chapter 327, penalties are cumulative as demonstrated in Figure: 25 TAC §133.53(h)(2). The penalty amount is multiplied by the number of days the violation continues. The penalty amount for each day of the continuing violation is then added to the running total of the previous day's penalties according to the formula in subparagraph (A) of this paragraph.

Figure: 25 TAC §133.53(h)(2)

(A) Cumulative administrative penalty = [penalty for each day of violation + (penalty for each day of violation x number of days of violation)]/2 x (number of days of violation).

(B) The cumulative amounts are not subject to the per day penalty cap in subsection (g) of this section.

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

Filed with the Office of the Secretary of State on November 15, 2022.

TRD-202204568

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 834-4591



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 358. STATE WATER PLANNING GUIDELINES

##### SUBCHAPTER B. DATA COLLECTION

###### 31 TAC §358.6

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §358.6.

###### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

Certain retail public utilities are required by Texas Water Code, Chapter 16 to submit water loss audits to the TWDB. The TWDB proposes a new validation requirement on water loss audits required by certain retail public utilities. Additionally, the TWDB is clarifying how it will apply water loss thresholds to retail public utilities based on a utility's service connection density and is adjusting the water loss threshold values to better ensure water loss mitigation is included as an effective strategy of utilities receiving financial assistance for drinking water projects.

## SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

### Subchapter B. Data Collection.

#### Section 358.6. Water Loss Audits.

Section 358.6(a) is revised to remove the definition of "Category or Categories" in §358.6(a)(5) to add a new definition of "Validation," relating to the process of review of water loss audits and related data submitted to the TWDB for administrative completeness.

Section 358.6(a) is revised to remove the definition of "Unavoidable annual real loss" in §358.6(a)(12) because it is no longer used in the rule.

Section 358.6(b) is revised to remove the stated effective date of §358.6(b)(4) as it has occurred, and the section is currently effective and operative.

Section 358.6(b) is revised to add new §358.6(b)(5) to provide a validation requirement for water loss audits and related data submitted to the TWDB and require the TWDB to create new validation guidelines.

Section 358.6(c) is revised to require that validation of a water loss audit is also required for the executive administrator to determine whether a water loss audit is administratively complete.

Section 358.6(e) is revised to clarify which water loss thresholds the TWDB will apply to certain retail public utilities.

Previous §358.6(e)(1) is removed to help clarify how the TWDB applies water loss thresholds of retail public utilities by service connection density.

Section 358.6(e)(2) is renumbered to §358.6(e)(1).

New §358.6(e)(1) clarifies how the TWDB will apply water loss thresholds to certain retail public utilities to conform with industry standard. It applies to those retail public utilities with more than or equal to 32 service connections per mile rather than population of 10,000 or fewer persons and a service connection density of more than or equal to 32 connections per mile.

New §358.6(e)(1)(B) revises the real loss threshold for these retail public utilities to be less than 30 gallons per connection per day from 50 gallons per connection per day based on currently available water loss data to the TWDB.

Previous §358.6(e)(3) is renumbered to §358.6(e)(2).

New §358.6(e)(2) clarifies how the TWDB will apply water loss thresholds to certain retail public utilities to conform with industry standard. It applies new water loss thresholds to certain retail public utilities with less than 32 service connections per mile rather than a population of 10,000 or fewer persons and a service connection density less than 32 connections per mile.

New §358.6(e)(2)(B) clarifies that real loss will be calculated based on a connection per day standard rather than a connection per mile standard to conform with industry standard. It revises the real loss threshold for these retail public utilities to be less than 57 gallons per connection per day from 1,600 gallons per mile per day.

Previous §358.6(e)(4) is renumbered to §358.6(e)(3).

New §358.6(e)(3) applies new water loss thresholds to utilities with a volume of wholesale water sales that flow through the retail distribution system.

New §358.6(e)(3)(A) removes the use of a modified calculation that includes wholesale volume to calculate apparent water loss and instead requires that apparent water loss expressed as gallons per connection per day must be less than the utility's allowed apparent water loss.

New §358.6(e)(3)(B) removes the use of a utility's unavoidable annual real loss as a method for calculating real loss. It instead requires that real loss, expressed as gallons per connection per day and including a wholesale factor that accounts for wholesale water volume must be less than the applicable real water loss thresholds as stated in proposed new §§358.6(e)(1) or (e)(2).

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years this rule is in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to protect water resources of this state as authorized by the Texas Water Code.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies water loss audit requirements for applicable retail public utilities and facilitates the regional water planning process. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as it these requirements are imposed by statute.

#### ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons

who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify how the TWDB will evaluate water loss audits submitted to it that are statutorily required for certain retail public utilities in compliance with Texas Water Code Chapter 16.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather complies instead with Section 16.0121, Texas Water Code. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify water loss audit thresholds for certain retail public utilities. The proposed rule would substantially advance this stated purpose by requiring validation of water loss audit data submitted to the TWDB while also measuring water loss based on a retail public utility's service connection density rather than population and service connection density to match industry standards.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law which is exempt under Texas Government

Code §2007.003(b)(4). The TWDB is the agency charged with compiling this information for the appropriate development of water management strategies to be included in local, regional water plans.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with existing statewide water loss auditing requirements in Chapter 16, Texas Water Code without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, while the proposed rule (1) will require the creation of new employee positions and (2) will expand an existing regulation through requiring a validation requirement on the submittal of certain water loss audits.

#### AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)

The TWDB reviewed the proposed rulemaking in light of the statutory requirement for the Agency to review existing rules in Texas Government Code §2001.039 and has determined that the proposed rulemaking to 31 TAC §358.6 is necessary to comply with §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and also specifically under §16.0121, Texas Water Code, which imposes a requirement on the TWDB to develop methodologies for water loss audits.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register*. Include Chapter 363 in the subject line of any comments submitted.

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code Section 6.0121.

Cross-reference to statute: This rulemaking affects Texas Water Code, Chapter 16, Subchapter B.

§358.6. *Water Loss Audits.*

(a) Definitions. Unless otherwise indicated, in this section the following terms shall have the meanings assigned.

(1) Allowed apparent loss--A unique number for allowable apparent loss calculated for each utility.

(2) Annual real loss--A unique number calculated for each utility based on the utility's real loss on an annualized basis.

(3) Apparent loss--Unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

(4) Average system operating pressure--System operating pressure in pounds per square inch calculated using a weighted average approach as identified in the American Water Works Association M36 Manual.

~~[(5) Category or Categories--A category of retail public utility as listed in Texas Water Code §16.0121(e).]~~

(5) Validation - The process of examining water loss audit inputs to identify and correct inaccuracies in water loss audit data and the application of methodology to evaluate and communicate the uncertainty inherent in water loss audit data.

(6) Executive Administrator--The executive administrator of the Board.

(7) Mitigation--An action or actions taken by a retail public utility to reduce the amount of total water loss in a system. Mitigation may include a detailed water loss assessment, pipe or meter replacement, or addition or improvement of monitoring devices to detect water loss.

(8) Real loss--Loss from main breaks and leaks, storage tank overflows, customer service line breaks, and line leaks.

(9) Retail public utility or utility--A retail public utility as defined by Texas Water Code §13.002.

(10) Service connection density--The number of a retail public utility's connections on a per mile basis.

(11) Total water loss--The sum of a utility's real loss and apparent loss.

~~[(12) Unavoidable annual real loss--A unique number calculated for each utility based on the number of connections, miles of distribution lines, and operating pressure. ]~~

(b) A retail public utility that provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding calendar year, unless a different 12-month period is allowed by the executive administrator. The water loss audit may be submitted electronically.

(1) Audit required annually. The utility must file the water loss audit with the executive administrator annually by May 1st if the utility:

(A) has more than 3,300 connections; or

(B) is receiving financial assistance from the board, regardless of the number of connections. A retail public utility is receiving financial assistance from the board if it has an outstanding loan, loan forgiveness agreement, or grant agreement from the board.

(2) Audit required every five years. The utility must file the water loss audit with the executive administrator by May 1, 2016, and every five years thereafter by May 1st if the utility has 3,300 or fewer connections and is not receiving financial assistance from the board.

(3) The water loss audit must be performed in accordance with methodologies developed by the executive administrator based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the executive administrator. The executive administrator will provide the necessary forms and methodologies to the retail public utility.

(4) A ~~[Effective January 1, 2019, the]~~ water loss audit must be performed by a person who has completed water loss audit training developed by the executive administrator. The executive administrator will make such training available without charge on the agency website and may also provide such training in person or by video.

(5) Effective January 1, 2025, a utility required to submit a water loss audit annually as described in paragraph (1)(B) of this subsection or that is applying for financial assistance will be required to have its most current water loss audit validated within three months of submittal or prior to consideration of a request for financial assistance from the board. The executive administrator will validate the submitted water loss audit in conference with the retail public utility. Alternatively, the utility may elect to have the water loss audit validated by a person other than the executive administrator. Should a water loss audit be validated by a person other than the executive administrator's staff, validation must follow TWDB's validation guidelines and be performed by a person other than the person submitting the water loss audit, who has completed water loss audit validation training and is certified to conduct such validation.

(c) The executive administrator shall determine if the water loss audit is administratively complete. A water loss audit is administratively complete if all required responses are provided, ~~[and]~~ the audit is completed by a person who has been trained to conduct water loss auditing as described in subsection (b)(4) of this section, and ~~the audit has been validated as described in subsection (b)(5) of this section [paragraph (4) of subsection (b)].~~ In the event the executive administrator determines that a retail public utility's water loss audit is incomplete, the executive administrator shall notify the utility.

(d) A retail public utility that provides potable water that fails to submit a water loss audit or that fails to correct a water loss audit that is not administratively complete within the timeframe provided by the executive administrator is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, G, H, J, O, Q, and R; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit has been filed with and accepted by the executive administrator.

(e) The following thresholds shall apply to certain ~~[the indicated categories of]~~ retail public utilities~~[utility]~~:

~~[(1) For a retail public utility with a population of more than 10,000:]~~

~~[(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.]~~

~~[(B) Real loss expressed as gallons per connection per day must be less than three times the utility's unavoidable annual real loss.]~~

~~(1) [(2) For a retail public utility with a [population of 10,000 or fewer and a] service connection density more than or equal to 32 connections per mile:~~

~~(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.~~

~~(B) Real loss expressed as gallons per connection per day must be less than 30 [50] gallons per connection per day.~~

~~(2) [(3)] For a retail public utility with a [population of 10,000 or fewer and] a service connection density less than 32 connections per mile:~~

~~(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.~~

~~(B) Real loss expressed as gallons per connection [mile] per day must be less than 57 [1,600] gallons per connection [mile] per day.~~

~~(3) [(4)] For a utility that has a volume of wholesale water sales that flow through the retail water distribution system:~~

~~(A) Apparent loss expressed as gallons per connection per day [determined using a modified calculation that includes the wholesale volume,] must be less than the utility's allowed apparent loss.~~

~~(B) Real loss, expressed as gallons per connection per day and including a wholesale factor that takes into account the wholesale water volume, must be less than the applicable real loss threshold described in paragraphs (1)(B) or (2)(B) of this subsection. [three times the utility's unavoidable annual real loss.]~~

(f) If a retail public utility's total water loss meets or exceeds the threshold for that utility, the retail public utility must use a portion of any financial assistance received from the board for a water supply project to mitigate the utility's water loss. Mitigation will be in a manner determined by the retail public utility and the executive administrator in conjunction with the project proposed by the utility and funded by the board. On the request of a retail public utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily mitigating the utility's system water loss. The request for waiver should be addressed to the executive administrator and include information about the utility's current or planned activities to mitigate their water loss and their source of funding for that mitigation.

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

Filed with the Office of the Secretary of State on November 17, 2022.

TRD-202204615

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 463-7876



## CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

### SUBCHAPTER A. GENERAL PROVISIONS

The Texas Water Development Board (TWDB) proposes amending existing 31 TAC §363.2 and adding new 31 Texas Administrative Code (TAC) §363.45 relating to the use of Alternative Delivery Guidance.

## BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The Texas Legislature amended Texas Government Code Chapter 2269 to allow the use of alternative project delivery methods for the construction of public works projects, including water and wastewater projects, financed by the TWDB. Regardless of the project delivery method employed, all applicants for TWDB program funding must meet program requirements.

To accommodate methods such as Construction Manager-at-Risk (CMAR) and Design-Build (D-B) in addition to the more common Design-Bid-Build, the TWDB has prepared guidance for the use of CMAR and DB delivery methods. Concurrent with the review of these proposed amendments, the draft guidance will provide further detail and explanation. The draft guidance may be found on the TWDB website and comments on the guidance may be submitted to [public-comment@twdb.texas.gov](mailto:public-comment@twdb.texas.gov). The proposed additions and amendments to TWDB rules incorporate this document to provide the guidance necessary for efficient use of these delivery methods with projects financed by the TWDB.

## SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

### 31 TAC §363.2 Definitions of Terms

Section 363.2 is amended by adding paragraph (26) "Alternative Delivery Guidance" to identify the Guidance for Use of Construction-Manager-at-Risk and Design-Build Project Delivery Methods that provides for the alternative methods of delivery.

### 31 TAC §363.45 Use of Alternative Delivery Guidance

Section 363.45 is added to describe the process by which an applicant will use an alternative delivery method rather than Design-Bid-Build project delivery.

## FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state and local governments. Any savings will relate to local project costs. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. While these rules do not directly result in changes in costs for state or local governments, the use of alternative delivery methods in general may provide cost savings to local governments who utilize those methods. These rules clarify that local governments may use these statutorily-authorized alternative delivery methods for TWDB-financed projects.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed

on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Texas Water Code; and are necessary to protect the health, safety, and welfare of the residents of this state.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

## PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB borrowers. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

## LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §2001.022)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

## DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify requirements for TWDB borrowers.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express re-

quirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §§15.439, 15.537, 17.183, and 17.186. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TWDB borrowers. The proposed rule would substantially advance this stated purpose by ensuring consistency with current law and improving the effectiveness of the financing programs.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that reviews contract documents, including those using alternative delivery methods.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding construction of public works projects financed by the TWDB without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register*. Include Chapter 363 in the subject line of any comments submitted.

### DIVISION 1. INTRODUCTORY PROVISIONS

#### 31 TAC §363.2

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.439, 15.537, 17.183, and 17.186.

This rulemaking affects Water Code, Chapters 15 and 17.

#### §363.2. *Definitions of Terms.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) - (25) (No change.)

(26) Alternative Delivery Guidance--A document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

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

Filed with the Office of the Secretary of State on November 17, 2022.

TRD-202204616  
Ashley Harden  
General Counsel

Texas Water Development Board  
Earliest possible date of adoption: January 1, 2023  
For further information, please call: (512) 463-7686



### DIVISION 4. PREREQUISITES TO RELEASE OF STATE FUNDS

#### 31 TAC §363.45

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The new rule is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the

authority of Texas Water Code §§15.439, 15.537, 17.183, and 17.186.

This rulemaking affects Water Code, Chapters 15 and 17.

*§363.45. Use of Alternative Delivery Guidance.*

An applicant choosing to follow an alternative delivery method must elect to do so, and notify the Board, prior to commitment of TWDB funds. Once a funding request is approved by the Board, release of funds for project-specific tasks is governed by the provisions of the Alternative Delivery Guidance rather than the rules and procedures generally applied to Design-Bid-Build project delivery as set out in Subchapter A, Divisions 4 and 5 of this Chapter.

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

Filed with the Office of the Secretary of State on November 17, 2022.

TRD-202204668

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Texas Water Development Board

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 463-7686



## CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) proposes adding new 31 Texas Administrative Code (TAC) §371.64 and amending existing 31 TAC §371.1 relating to the use of Alternative Delivery Guidance.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The Texas Legislature amended Texas Government Code Chapter 2269 to allow the use of alternative project delivery methods for the construction of public works projects, including water and wastewater projects, financed by the TWDB. Regardless of the project delivery method employed, all applicants for TWDB program funding must meet program requirements.

To accommodate methods such as Construction Manager-at-Risk (CMAR) and Design-Build (D-B) in addition to the more common Design-Bid-Build, the TWDB has prepared guidance for the use of CMAR and DB delivery methods. Concurrent with the review of these proposed amendments, the draft guidance will provide further detail and explanation. The draft guidance may be found on the TWDB website and comments on the guidance may be submitted to [public-comment@twdb.texas.gov](mailto:public-comment@twdb.texas.gov). The proposed additions and amendments to TWDB rules incorporate this document to provide the guidance necessary for efficient use of these delivery methods with projects financed by the TWDB.

### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

#### 31 TAC §371.1(68) Definitions of Terms

Section 371.1 is amended by adding subsection (68) "Alternative Delivery Guidance" to identify the Guidance for Use of Construc-

tion-Manager-at-Risk and Design-Build Project Delivery Methods that provides for the alternative methods of delivery.

#### 31 TAC §371.64 Use of Alternative Delivery Guidance

Section 371.64 is added to describe the process by which an applicant will use an alternative delivery method rather than Design-Bid-Build project delivery.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state and local governments. Any savings will relate to local project costs. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. While these rules do not directly result in changes in costs for state or local governments, the use of alternative delivery methods in general may provide cost savings to local governments who utilize those methods. These rules clarify that local governments may use these statutorily-authorized alternative delivery methods for TWDB-financed projects.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Texas Water Code; and are necessary to protect the health, safety, and welfare of the residents of this state.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB borrowers. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

#### LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §2001.022)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also

has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify requirements for TWDB borrowers.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §§15.001, 15.6041, and 15.605. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TWDB borrowers. The proposed rule would substantially advance this stated purpose by ensuring consistency with current law and improving the effectiveness of the financing programs.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government

Code §2007.003(b)(4). The TWDB is the agency that reviews contract documents, including those using alternative delivery methods.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding construction of public works projects financed by the TWDB without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register*. Include Chapter 363 in the subject line of any comments submitted.

## SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

### 31 TAC §371.1

#### STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.6041, and 15.605.

This rulemaking affects Water Code, Chapter 15.

#### §371.1. *Definitions of Terms.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15, 16 or 17, and not

defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) - (67) (No change.)

(68) Alternative Delivery Guidance--a document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

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

Filed with the Office of the Secretary of State on November 17, 2022.

TRD-202204617

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 463-7686



## SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

### 31 TAC §371.64

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.6041, and 15.605.

This rulemaking affects Water Code, Chapter 15.

#### §371.64. Use of Alternative Delivery Guidance.

An applicant choosing to follow an alternative delivery method must elect to do so, and notify the Board, prior to commitment of TWDB funds. Once a funding request is approved by the Board, release of funds for project-specific tasks is governed by the provisions of the Alternative Delivery Guidance rather than the rules and procedures generally applied to Design-Bid-Build project delivery as set out in Subchapters F, G, and H of this Chapter.

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

Filed with the Office of the Secretary of State on November 17, 2022.

TRD-202204622

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 463-7686



## CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) proposes adding new 31 Texas Administrative Code (TAC) §375.84 and amending existing 31 TAC §375.1 relating to the use of Alternative Delivery Guidance.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The Texas Legislature amended Texas Government Code Chapter 2269 to allow the use of alternative project delivery methods for the construction of public works projects, including water and wastewater projects, financed by the TWDB. Regardless of the project delivery method employed, all applicants for TWDB program funding must meet program requirements.

To accommodate methods such as Construction Manager-at-Risk (CMAR) and Design-Build (D-B) in addition to the more common Design-Bid-Build, the TWDB has prepared guidance for the use of CMAR and DB delivery methods. Concurrent with the review of these proposed amendments, the draft guidance will provide further detail and explanation. The draft guidance may be found on the TWDB website and comments on the guidance may be submitted to [public-comment@twdb.texas.gov](mailto:public-comment@twdb.texas.gov). The proposed additions and amendments to TWDB rules incorporate this document to provide the guidance necessary for efficient use of these delivery methods with projects financed by the TWDB.

### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

#### 31 TAC §375.1(71) Definitions of Terms

Section 375.1 is amended by adding paragraph (71) "Alternative Delivery Guidance" to identify the Guidance for Use of Construction-Manager-at-Risk and Design-Build Project Delivery Methods that provides for the alternative methods of delivery.

#### 31 TAC §375.84 Use of Alternative Delivery Guidance

Section 375.84 is added to describe the process by which an applicant will use an alternative delivery method rather than Design-Bid-Build project delivery.

### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state and local governments. Any savings will relate to local project costs. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. While these rules do not directly result in changes in costs for state or local governments, the use of alternative delivery methods in general may provide cost savings to local governments who utilize those methods. These rules clarify that local governments may use these statuto-

rily-authorized alternative delivery methods for TWDB-financed projects.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Texas Water Code; and are necessary to protect the health, safety, and welfare of the residents of this state.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB borrowers. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

#### LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §2001.022)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify requirements for TWDB borrowers.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law;

(3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §§15.001, 15.601, 15.603, and 15.605. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TWDB borrowers. The proposed rule would substantially advance this stated purpose by ensuring consistency with current law and improving the effectiveness of the financing programs.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that reviews contract documents, including those using alternative delivery methods.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding construction of public works projects financed by the TWDB without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease

in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

**SUBMISSION OF COMMENTS** (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register*. Include Chapter 363 in the subject line of any comments submitted.

**SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS**

**31 TAC §375.1**

**STATUTORY AUTHORITY** (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.601, 15.603, and 15.605.

This rulemaking affects Water Code, Chapter 15.

*§375.1. Definitions.*

The following words and terms have the following meanings when used in this chapter, unless the context clearly indicates otherwise. Words defined in Chapter 15 of the Texas Water Code and not defined here shall have the meanings provided by Chapter 15.

(1) - (70) (No change.)

(71) Alternative Delivery Guidance--A document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

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

Filed with the Office of the Secretary of State on November 17, 2022.

TRD-202204618

Ashley Harden  
General Counsel

Texas Water Development Board

Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 463-7686



**SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL**

**31 TAC §375.84**

**STATUTORY AUTHORITY** (Texas Government Code §2001.024(a)(3))

The new rule is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.601, 15.603, and 15.605.

This rulemaking affects Water Code, Chapter 15.

*§375.84. Use of Alternative Delivery Guidance.*

An applicant choosing to follow an alternative delivery method must elect to do so, and notify the Board, prior to commitment of TWDB funds. Once a funding request is approved by the Board, release of funds for project-specific tasks is governed by the provisions of the Alternative Delivery Guidance rather than the rules and procedures generally applied to Design-Bid-Build project delivery as set out in Subchapters F, G, and H of this Chapter.

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

Filed with the Office of the Secretary of State on November 17, 2022.

TRD-202204619

Ashley Harden  
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Earliest possible date of adoption: January 1, 2023

For further information, please call: (512) 463-7686

