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# TEXAS REGISTER

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*Pages 7091 - 7230*

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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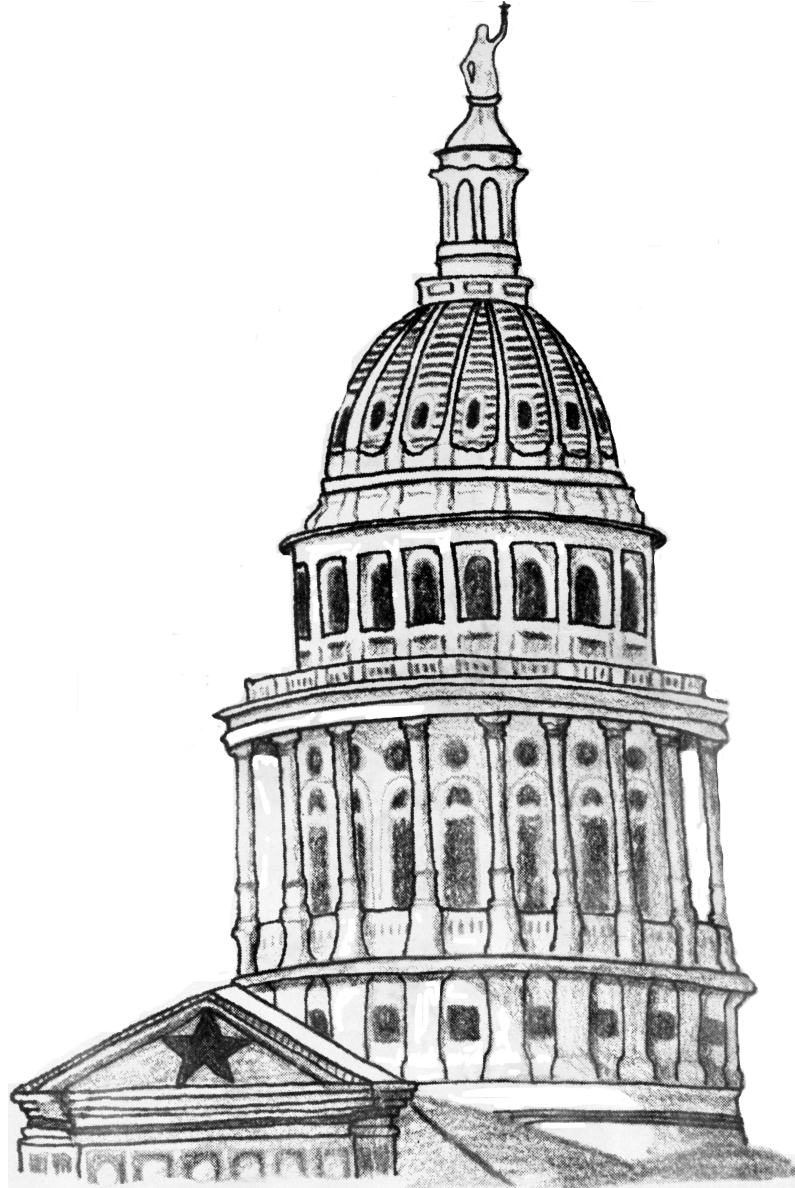
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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for November 6, 2019

Appointed to the Board of the Texas Department of Motor Vehicles, for a term to expire February 1, 2021, Joel W. Richardson of Canyon, Texas (replacing Gary W. Painter of Midland, who is deceased).

Appointed to the Texas Alcoholic Beverage Commission, pursuant to HB 1545, 86th Legislature, Regular Session, for a term to be determined as set forth by law, Michael S. "Scott" Adkins of El Paso, Texas.

Appointed to the Texas Alcoholic Beverage Commission, pursuant to HB 1545, 86th Legislature, Regular Session, for a term to be determined as set forth by law, Deborah "Debbie" Gray Marino of San Antonio, Texas.

Appointed to the Upper Colorado River Authority, for a term to expire February 1, 2021, Blake R. "Reese" Braswell of Bronte, Texas (replacing Ronny D. "Ron" Alexander of Paint Rock, who resigned).

### Appointments for November 8, 2019

Appointed to the Sabine River Authority of Texas Board of Directors, for a term to expire July 6, 2023, Clifford R. "Cliff" Todd of Long Branch, Texas (replacing Andrew L. Mills of Milam, who resigned).

Appointed to the University of Houston System Board of Regents, for a term to expire August 31, 2025, Durga D. Agrawal, Ph.D., of Houston, Texas (Dr. Agrawal is being reappointed).

Appointed to the University of Houston System Board of Regents, for a term to expire August 31, 2025, Guadalupe "Alonzo" Cantu of McAllen, Texas (replacing Paula M. Mendoza of Houston, whose term expired).

Appointed to the University of Houston System Board of Regents, for a term to expire August 31, 2025, John A. McCall, Jr., O.D., of Grapeland, Texas (replacing Peter K. Taaffe of Austin, whose term expired).

Appointed as presiding officer of the Webb County - City of Laredo Regional Mobility Authority, for a term to expire February 1, 2020, Jed A. Brown of Laredo, Texas (replacing Ruben Soto, Jr. of Laredo, whose term expired).

### Appointments for November 12, 2019

Appointed as presiding officer of the Sulphur River Regional Mobility Authority, for a term to expire February 1, 2021, Jay W. Hodge of Paris, Texas (replacing Holland R. Harper of Paris, who resigned).

Appointed to the Texas Low-Level Radioactive Waste Disposal Compact Commission, for a term to expire September 1, 2025, John J. "Jeff" Mundy of Austin, Texas (replacing Clinton J. "Clint" Weber of Fort Worth, whose term expired).

Greg Abbott, Governor

TRD-201904226

## Proclamation 41-3697

### TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that exceptional drought conditions pose a threat of imminent disaster in Bandera, Blanco, Brown, Callahan, Coke, Coleman, Concho, Crockett, Dimmit, Eastland, Edwards, Fisher, Frio, Glasscock, Haskell, Hays, Irion, Jim Hogg, Jones, Karnes, Kendall, Kimble, Kinney, Llano, Mason, Maverick, McCulloch, Medina, Menard, Nolan, Nueces, Palo Pinto, Real, Runnels, San Patricio, Schleicher, Shackelford, Starr, Stephens, Sterling, Taylor, Throckmorton, Tom Green, Uvalde, Val Verde, Webb, Wichita, Wilbarger, Williamson, Wilson, Young, Zapata, and Zavala counties.

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat to public health, property, and the economy;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

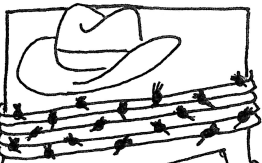
Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 8th day of November, 2019.

Greg Abbott, Governor

TRD-201904227



TEXAS



Caroline Kinney



Lone Star State



# THE ATTORNEY GENERAL

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The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

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## Requests for Opinions

### **RQ-0313-KP**

#### **Requestor:**

The Honorable Deborah Earley

Blanco County Attorney

Post Office Box 471

Johnson City, Texas 78636

Re: Authority of a political subdivision to regulate public comment sessions during open meetings under Government Code section 551.007 (RQ-0313-KP)

## **Briefs requested by December 9, 2019**

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-201904214

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: November 12, 2019





# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

##### SUBCHAPTER B. ADVISORY COMMITTEES

##### DIVISION 1. COMMITTEES

The Texas Health and Human Services Commission (HHSC) proposes the repeal of §351.819, concerning the Behavioral Health Integration Advisory Committee; §351.831, concerning the Employment First Task Force; and §351.835, concerning the Advisory Committee on Qualifications for Health Care Translators and Interpreters. HHSC proposes amendments to §351.805, concerning the State Medicaid Managed Care Advisory Committee; §351.821, concerning the Value-Based Payment and Quality Improvement Advisory Committee; §351.823, concerning the e-Health Advisory Committee; §351.827, concerning the Palliative Care Interdisciplinary Advisory Council; §351.833, concerning the STAR Kids Managed Care Advisory Committee; and §351.837, concerning the Texas Autism Council.

##### BACKGROUND AND PURPOSE

In 2015, the Texas Legislature removed 38 advisory committees from HHSC that were established by statute and, by adopting Texas Government Code §531.012, authorized the Executive Commissioner to establish advisory committees by rule. The Executive Commissioner's advisory committee rules were effective July 1, 2016. Several of the advisory committees are set to expire December 31, 2019, and HHSC intends to continue some of them. In addition, in Senate Bill 1731, the 85th Legislature removed the statutory expiration date for the Palliative Care Interdisciplinary Advisory Council, and in House Bill 4533, the 86th Legislature extended the STAR Kids Managed Care Advisory Committee through December 31, 2023. The only purposes of the proposal are to extend the terms of several advisory committees set to expire by the end of 2019, implement the aforementioned legislation, and repeal rules relating to advisory committees that have expired or are abolished.

##### SECTION-BY-SECTION SUMMARY

Proposed §351.805 extends the abolishment date of the State Medicaid Managed Care Advisory Committee to December 31, 2023.

Proposed §351.819 repeals the Behavioral Health Integration Advisory Committee.

Proposed §351.821 extends the abolishment date of the Value-Based Payment and Quality Improvement Advisory Committee to December 31, 2023.

Proposed §351.823 extends the abolishment date of the e-Health Advisory Committee to December 31, 2023.

Proposed §351.827 deletes the abolishment date of the Palliative Care Interdisciplinary Advisory Council and provides that the Council will continue as long as the state law establishing it remains in effect.

Proposed §351.831 repeals the Employment First Task Force.

Proposed §351.833 extends the abolishment date of the STAR Kids Managed Care Advisory Committee to December 31, 2023, consistent with Texas Government Code §533.00254(b)(1).

Proposed §351.835 repeals the Advisory Committee on Qualifications for Health Care Translators and Interpreters.

Proposed §351.837 extends the abolishment date of the Texas Autism Council to December 31, 2023.

##### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years the rules are in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rules as proposed.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated General Revenue (GR) cost of \$16,413 in fiscal year (FY) 2020, \$16,413 in FY 2021, \$16,413 in FY 2022, \$16,413 in FY 2023, and \$16,413 in FY 2024.

Enforcing or administering the rules does not have foreseeable implications relating to the costs or revenues of local government.

##### GOVERNMENT GROWTH IMPACT STATEMENT

Trey Wood, Chief Financial Officer, has determined that during the first five years that the rules will be in effect:

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

- (6) the proposed rules will repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the proposed rules. There are no entities other than HHSC required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT**

The proposed rules will not affect a local economy.

**COSTS TO REGULATED PERSONS**

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

**PUBLIC BENEFIT AND COSTS**

Constance Allison, Deputy Executive Commissioner of Policy and Rules, has determined that for each year of the first five years the rules are in effect, the public benefit will be accurate information available to stakeholders and the public regarding the duration and expiration of advisory committees making policy recommendations to HHSC.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rule amendments and appeals relate only to advisory committee expiration and duration. There is no cost of compliance, as there are no entities other than HHSC required to comply with the proposal.

**TAKINGS IMPACT ASSESSMENT**

HHSC has determined that this 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 §2007.043 of the Government Code.

**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 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to [HHSCRulesCoordinationOffice@hhsc.state.tx.us](mailto:HHSCRulesCoordinationOffice@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 14 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) e-mailed before midnight on the last day of the comment period. If 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 e-mailing comments, please indicate "Comments on Proposed Rule 20R022 in the subject line.

**1 TAC §§351.805, 351.821, 351.823, 351.827, 351.833, 351.837**

**STATUTORY AUTHORITY**

The amendments are 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, and Texas Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule and to include in the rule a date of abolition.

The amendments affect Texas Government Code §531.0055 and Texas Government Code §531.012.

*§351.805. State Medicaid Managed Care Advisory Committee.*

(a) Statutory authority. The State Medicaid Managed Care Advisory Committee (SMMCAC) is established in accordance with Texas Government Code §531.012.

(b) Purpose.

(1) The SMMCAC advises HHSC on the statewide operation of Medicaid managed care, including program design and benefits, systemic concerns from consumers and providers, efficiency and quality of services, contract requirements, provider network adequacy, trends in claims processing, and other issues as requested by the Executive Commissioner.

(2) The SMMCAC assists HHSC with Medicaid managed care issues.

(3) The SMMCAC disseminates Medicaid managed care best practice information as appropriate.

(c) Tasks. The SMMCAC makes recommendations to HHSC and performs other tasks consistent with its purpose.

(d) Reports.

(1) By December 31st of each fiscal year, the SMMCAC must file a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;

(B) provides the members' attendance records;

(C) briefly describes actions taken by the committee;

(D) describes how the committee has accomplished its tasks;

(E) summarizes the status of any rules that the committee recommended to HHSC;

(F) describes anticipated activities the committee will undertake in the next fiscal year;

(G) recommends amendments to this section, as needed; and

(H) identifies the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By December 31st of each even-numbered year, the committee must file a written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Abolition. The SMMCAC is abolished, and this section expires, December 31, 2023 [2019].

(f) Membership. The SMMCAC consists of an odd number, but no more than 23, members.

(1) Each member is appointed by the Executive Commissioner.



(2) The SMMCAC consists of representatives of the following categories:

- (A) hospitals;
- (B) managed care organizations and participating health care providers;
- (C) primary care providers and specialty care providers;
- (D) state agencies;
- (E) low-income Medicaid recipients or consumer advocates representing low-income recipients;
- (F) Medicaid recipients with intellectual, developmental and/or physical disabilities, or consumer advocates representing those recipients;
- (G) parents of children who are Medicaid recipients;
- (H) rural providers;
- (I) advocates for children with special health care needs;
- (J) pediatric health care providers, including specialty providers;
- (K) long-term services and supports providers, including nursing facility providers and direct service workers;
- (L) obstetrical care providers;
- (M) community-based organizations serving low-income children and their families;
- (N) community-based organizations engaged in perinatal services and outreach;
- (O) Medicaid recipients who are 65 years of age or older;
- (P) Medicaid recipients or family members who are using mental health services;
- (Q) non-physician mental health providers participating in the Medicaid managed care program; and
- (R) entities with responsibilities for the delivery of long-term services and supports or other Medicaid service delivery, including:
  - (i) independent living centers;
  - (ii) area agencies on aging;
  - (iii) aging and disability resource centers established under the Aging and Disability Resource Center initiative funded in part by the federal Administration on Aging and the Centers for Medicare and Medicaid Services; and
  - (iv) community mental health and intellectual disability centers.

(3) The membership will be racially and geographically diverse.

(4) Except as necessary to stagger terms, each member is appointed to serve a term of two years, with an appropriate number expiring each August 31. A member can serve no more than two terms.

(g) Officers.

(1) The SMMCAC selects a chair and vice chair from among its members.

(2) Each officer serves until his or her committee term expires.

§351.821. *Value-Based Payment and Quality Improvement Advisory Committee.*

(a) Statutory authority. The Value-Based Payment and Quality Improvement Advisory Committee (Quality Committee) is established in accordance with Texas Government Code §531.012.

(b) Purpose. The Quality Committee provides a forum to promote public-private, multi-stakeholder collaboration in support of quality improvement and value-based payment initiatives for Medicaid, other publicly funded health services, and the wider health care system.

(c) Tasks. The Quality Committee performs the following tasks:

(1) studies and makes recommendations regarding:

(A) value-based payment and quality improvement initiatives to promote better care, better outcomes, and lower costs for publicly funded health care services;

(B) core metrics and a data analytics framework to support value-based purchasing and quality improvement in Medicaid/CHIP;

(C) HHSC and managed care organization incentive and disincentive programs based on value; and

(D) the strategic direction for Medicaid/CHIP value-based programs; and

(2) pursues other deliverables consistent with its purpose to improve quality and efficiency in state health care services as requested by the Executive Commissioner or adopted into the work plan or bylaws of the committee.

(d) Reports.

(1) By December 31st of each fiscal year, the Quality Committee files a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;

(B) provides the members' attendance records;

(C) briefly describes actions taken by the committee;

(D) describes how the committee has accomplished its tasks;

(E) summarizes the status of any rules that the committee recommended to HHSC;

(F) describes anticipated activities the committee will undertake in the next fiscal year;

(G) recommends amendments to this section, as needed; and

(H) identifies the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By December 1st of each even-numbered year, the committee submits a written report to the Executive Commissioner and Texas Legislature that:

(A) describes current trends and identifies best practices in health care for value-based payment and quality improvement; and

(B) provides recommendations consistent with the purposes of the Quality Committee.

(e) Date of abolition. The Quality Committee is abolished, and this section expires, on December 31, 2023 [2019].

(f) Membership.

(1) The Quality Committee is composed of 19 voting members appointed by the Executive Commissioner.

(A) HHSC solicits voting members from the following categories:

- (i) Medicaid managed care organizations;
- (ii) Regional Healthcare Partnerships;
- (iii) hospitals;
- (iv) physicians;
- (v) nurses;
- (vi) pharmacies;
- (vii) providers of long-term services and supports;
- (viii) academic systems; and

(ix) members from other disciplines or organizations with expertise in health care finance, delivery, or quality improvement.

(B) The final composition of the committee is determined by the Executive Commissioner.

(C) The committee may include nonvoting, *ex officio* agency representatives as determined by the Executive Commissioner.

(2) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(3) Members are appointed to staggered terms so that the terms of approximately half the members expire on December 31st of each even-numbered year.

(4) Except as necessary to stagger terms, the term of each voting member is four years.

(g) Officers. The Quality Committee selects from its members a presiding officer and an assistant presiding officer.

(1) The presiding officer serves until December 31st of each odd-numbered year. The assistant presiding officer serves until December 31st of each even-numbered year.

(2) The presiding officer and the assistant presiding officer remain in their positions until the committee selects a successor; however, the individual may not remain in office past the individual's membership term.

*§351.823. e-Health Advisory Committee.*

(a) Statutory authority. The e-Health Advisory Committee is established under Texas Government Code §531.012.

(b) Purpose. The committee advises the Executive Commissioner and Health and Human Services system agencies (HHS agencies) on strategic planning, policy, rules, and services related to the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services.

(c) Tasks. The committee:

(1) advises HHS agencies on the development, implementation, and long-range plans for health care information technology

and health information exchange, including the use of electronic health records, computerized clinical support systems, health information exchange systems for exchanging clinical and other types of health information, and other methods of incorporating health information technology in pursuit of greater cost-effectiveness and better patient outcomes in health care and population health;

(2) advises HHS agencies on incentives for increasing health care provider adoption and usage of an electronic health record and health information exchange systems;

(3) advises HHS agencies on the development, use, and long-range plans for telemedicine, telehealth, and home telemonitoring services, including consultations, reimbursements, and new benefits for inclusion in Medicaid telemedicine, telehealth, and home telemonitoring programs;

(4) makes recommendations to HHS agencies through regularly scheduled meetings and verbal or written recommendations communicated to HHSC staff assigned to the committee; and

(5) performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reports.

(1) By February of each year, the committee files an annual written report with the Executive Commissioner covering the meetings and activities in the immediate preceding calendar year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the committee;

(D) a description of how the committee accomplished its tasks;

(E) a summary of the status of any rules that the committee recommended to HHSC;

(F) a description of activities the committee anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

(H) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) The committee also files an annual written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Date of abolition. The committee is abolished, and this section expires, on December 31, 2023 [2019].

(f) Membership. The committee is composed of no more than 24 members appointed by the Executive Commissioner.

(1) The committee includes representatives of HHS agencies, other state agencies, and other health and human services stakeholders concerned with the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services, including:

(A) at least two non-voting *ex officio* representatives from HHSC;

(B) at least one non-voting *ex officio* representative from the Texas Department of State Health Services;

- (C) at least one representative from the Texas Medical Board;
- (D) at least one representative from the Texas Board of Nursing;
- (E) at least one representative from the Texas State Board of Pharmacy;
- (F) at least one representative from the Statewide Health Coordinating Council;
- (G) at least one representative of a managed care organization;
- (H) at least one representative of the pharmaceutical industry;
- (I) at least one representative of a health science center in Texas;
- (J) at least one expert on telemedicine;
- (K) at least one expert on home telemonitoring services;
- (L) at least one representative of consumers of health services provided through telemedicine;
- (M) at least one Medicaid provider or child health plan program provider;
- (N) at least one representative from the Texas Health Services Authority established under Chapter 182, Texas Health and Safety Code;
- (O) at least one representative of a local or regional health information exchange; and
- (P) at least one representative with expertise related to the implementation of electronic health records, computerized clinical support systems, and health information exchange systems for exchanging clinical and other types of health information.

(2) When appointing members, the Executive Commissioner will consider the cultural, ethnic, and geographic diversity of Texas, including representation from at least 6 of the 11 Texas Health Service Regions as defined by the Texas Department of State Health Services in accordance with Texas Health and Safety Code §121.007 ([www.dshs.state.tx.us/regions/state.shtm](http://www.dshs.state.tx.us/regions/state.shtm)).

(3) Except as may be necessary to stagger terms, the term of office of each member is two years. Individuals will normally serve one term. An individual may apply and be appointed for a second year term, which may be served consecutively or nonconsecutively.

(A) Members are appointed for staggered terms so that the terms of half of the members expire on December 31st of each year.

(B) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(C) This paragraph does not apply to ex officio members, who serve at the pleasure of the Executive Commissioner.

(g) Officers. The committee selects from its members the presiding officer and an assistant presiding officer.

(1) The presiding officer serves until July 1st of each even-numbered year. The assistant presiding officer serves until July 1 of each odd-numbered year.

(2) A member serves no more than two consecutive terms as presiding officer or assistant presiding officer.

§351.827. *Palliative Care Interdisciplinary Advisory Council.*

(a) Statutory authority. The Palliative Care Interdisciplinary Advisory Council (Palliative Care Council or Council) is established in accordance with Texas Health and Safety Code Chapter 118, as adopted by Act of May 23, 2015, 84th Leg., R.S., §2 (H.B. 1874).

(b) Purpose. The Palliative Care Council assesses the availability of patient-centered and family-focused, interdisciplinary team-based palliative care in Texas for patients and families facing serious illness. The Council works to ensure that relevant, comprehensive, and accurate information and education about palliative care is available to the public, health care providers, and health care facilities. This includes information and education about complex symptom management, care planning, and coordination needed to address the physical, emotional, social, and spiritual suffering associated with serious illness.

(c) Tasks. The Palliative Care Council performs the following tasks:

(1) consults with and advises HHSC on matters related to the establishment, maintenance, operation, and outcome evaluation of the palliative care consumer and professional information and education program established under Texas Health and Safety Code §118.011;

(2) studies and makes recommendations to remove barriers to appropriate palliative care services for patients and families facing serious illness in Texas of any age and at any stage of illness; and

(3) pursues other deliverables consistent with its purpose as requested by the Executive Commissioner or adopted into the work plan or bylaws of the council.

(d) Reports.

(1) By December of each fiscal year, the Palliative Care Council files a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the committee;

(D) a description of how the committee accomplished its tasks;

(E) a summary of the status of any rules that the committee recommended to HHSC;

(F) a description of activities the committee anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

(H) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By October 1st of each even-numbered year, the Council submits a written report to the Executive Commissioner and the standing committees of the Texas senate and house with primary jurisdiction over health matters. The report:

(A) assesses the availability of palliative care in Texas for patients in the early stages of serious disease;

(B) analyzes barriers to greater access to palliative care;

(C) analyzes policies, practices, and protocols in Texas concerning patients' rights related to palliative care, including:

(i) whether a palliative care team member may introduce palliative care options to a patient without the consent of the patient's attending physician or practitioner;

(ii) the practices and protocols for discussions between a palliative care team member and a patient on life-sustaining treatment or advance directives decisions; and

(iii) the practices and protocols on informed consent and disclosure requirements for palliative care services; and

(D) provides recommendations consistent with the purposes of the Palliative Care Council.

(e) Date of abolition. The [Palliative Care Council is subject to Chapter 325, Texas Government Code. Unless continued in existence as provided by that chapter, the] Palliative Care Council is required by statute and will continue as long as the state law that requires it remains in effect [is abolished and this section expires September 1, 2019].

(f) Membership.

(1) The Palliative Care Council is composed of at least 15 voting members appointed by the Executive Commissioner.

(A) The Palliative Care Council must include:

(i) at least five physician members, including:

(I) two who are board certified in hospice and palliative care; and

(II) one who is board certified in pain management;

(ii) three palliative care practitioner members, including:

(I) two advanced practice registered nurses who are board-certified in hospice and palliative care; and

(II) one physician assistant who has experience providing palliative care;

(iii) four health care professional members, including:

(I) a nurse;

(II) a social worker;

(III) a pharmacist; and

(IV) a spiritual-care professional; and

(iv) at least three members:

(I) with experience as an advocate for patients and the patients' family caregivers;

(II) who are independent of a hospital or other health care facility; and

(III) at least one of whom represents an established patient advocacy organization.

(B) Health care professional members listed in subparagraph (A)(iii) of this paragraph must meet one or more of the following qualifications:

(i) experience providing palliative care to pediatric, youth, or adult populations;

(ii) expertise in palliative care delivery in an inpatient, outpatient, or community setting; or

(iii) expertise in interdisciplinary palliative care.

(C) The committee may include nonvoting agency, ex-officio representatives as determined by the Executive Commissioner.

(2) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(3) Members are appointed to staggered terms so that the terms of approximately half the members expire on December 31st of each odd-numbered year.

(4) Except as necessary to stagger terms, the term of each voting member is four years.

(g) Officers. The Palliative Care Council selects from its members a presiding officer and an assistant presiding officer.

(1) The presiding officer serves until December 31 of each odd-numbered year. The assistant presiding officer serves until December 31 of each even-numbered year.

(2) The presiding officer and the assistant presiding officer remain in their positions until the Palliative Care Council selects a successor; however, the individual may not remain in office past the individual's membership term.

§351.833. STAR Kids Managed Care Advisory Committee.

(a) Statutory authority. The STAR Kids Managed Care Advisory Committee (STAR Kids Advisory Committee) is established under Texas Government Code §531.012.

(b) Purpose. The STAR Kids Advisory Committee advises HHSC on the establishment and implementation of, and recommends improvements to, the STAR Kids managed care program.

(c) Tasks. The STAR Kids Advisory Committee makes recommendations consistent with its purpose to HHSC through regularly scheduled meetings and staff assigned to the committee.

(d) Reports.

(1) By December 31st of each fiscal year, the STAR Kids Advisory Committee must file a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;

(B) provides the members' attendance records;

(C) briefly describes actions taken by the committee;

(D) describes how the committee has accomplished its tasks;

(E) summarizes the status of any rules that the committee recommended to HHSC;

(F) describes anticipated activities the committee will undertake in the next fiscal year;

(G) recommends amendments to this section, as needed; and

(H) identifies the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By December 31 of each even-numbered year, the committee must file a written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Abolition. On December 31, 2023 [2019], the advisory committee is abolished and this section expires.

(f) Membership.

(1) The Executive Commissioner appoints the members of the STAR Kids Advisory Committee.

(2) The STAR Kids Advisory Committee may consist of:

(A) representatives from families whose children will receive private duty nursing, are IDD waiver recipients, or receive mental and behavioral health services under the program;

(B) medical care providers;

(C) providers of home and community-based services, including at least one private duty nursing provider, one durable medical equipment provider, and one pediatric therapy provider;

(D) managed care organizations;

(E) advocates for children with special health care needs; and

(F) other stakeholders as the executive commissioner determines appropriate.

(3) The STAR Kids Advisory Committee may have no more than 24 members.

(4) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(g) Presiding officer.

(1) The committee selects from its members a presiding officer, and an assistant presiding officer at the discretion of the committee.

(2) The presiding officer serves until August 31st of each even-numbered year. The assistant presiding officer, if applicable, serves until August 31st of each odd-numbered year.

(3) A member serves no more than two consecutive terms as presiding officer or assistant presiding officer.

§351.837. *Texas Autism Council.*

(a) Statutory authority. The Texas Autism Council is established in accordance with HHSC's general authority to establish committees under Texas Government Code §531.012(a).

(b) Purpose. The Texas Autism Council advises and make recommendations to HHSC and the Executive Commissioner to ensure that the needs of persons of all ages with autism spectrum disorder and their families are addressed and that all available resources are coordinated to meet those needs.

(c) Tasks. The Texas Autism Council performs the following activities:

(1) makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee; and

(2) other tasks consistent with its purpose that are requested by the Executive Commissioner.

(d) Reporting requirements. The Texas Autism Council performs reporting activities assigned by Texas Human Resources Code §114.008.

(e) Abolition. The Texas Autism Council is abolished, and this section expires, on December 31, 2023 [2019].

(f) Membership.

(1) The Texas Autism Council consists of no more than 24 members.

(A) Each public member is appointed by the Executive Commissioner.

(B) Each ex officio member is appointed by the commissioner or executive head of the represented state agency.

(C) Each member must have knowledge of and an interest in autism spectrum disorder.

(D) Texas Autism Council membership is allocated as follows:

(i) The majority of public members are family members of a person with autism spectrum disorder.

(ii) A representative from each of the following state agencies will serve as an ex officio member:

(I) Texas Department of Aging and Disability Services;

(II) Texas Department of Family and Protective Services;

(III) Texas Department of State Health Services;

(IV) Texas Health and Human Services Commission;

(V) Texas Workforce Commission; and

(VI) Texas Education Agency.

(2) Except as necessary to stagger terms, each public member is appointed to serve a term of two years.

(3) An ex officio member serves in an advisory capacity only and may not:

(A) serve as an officer; or

(B) vote.

(g) Presiding officer.

(1) The Texas Autism Council selects a presiding officer from among its members.

(2) Unless reelected, the presiding officer serves a term of one year.

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

Filed with the Office of the Secretary of State on November 8, 2019.

TRD-201904187

Karen Ray  
Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 707-6101



**1 TAC §§351.819, 351.831, 351.835**

**STATUTORY AUTHORITY**

The repeals are 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, and Texas

Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule and to include in the rule a date of abolition.

The repeals affect Texas Government Code §531.0055 and Texas Government Code §531.012.

§351.819. *Behavioral Health Integration Advisory Committee.*

§351.831. *Employment First Task Force.*

§351.835. *Advisory Committee on Qualifications for Health Care Translators and Interpreters.*

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 8, 2019.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 707-6101



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 27. TEXAS FIRST TIME HOMEBUYER PROGRAM RULE

##### 10 TAC §§27.1 - 27.10

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, §§27.1 - 27.10. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

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

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

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

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

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal 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 rules.

**PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed sections would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed sections.

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

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous proposed adoption making changes to the rule governing the Texas First Time Homebuyer Program Rule.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

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

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Texas First time Homebuyer Program.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held November 22, 2019, to December 23, 2019, to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [cathy.gutierrez@tdhca.state.tx.us](mailto:cathy.gutierrez@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time December 23, 2019.

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

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

§27.1. *Purpose.*

§27.2. *Definitions.*

§27.3. *Procedures for Submitting Requests or Inviting Proposals.*

§27.4. *Restrictions on Residences Financed and Applicant.*

§27.5. *Occupancy and Use Requirements.*

§27.6. *Application Procedure and Requirements for Commitments by Mortgage Lenders.*

§27.7. *Criteria for Approving Participating Mortgage Lenders.*

§27.8. *Resale of the Residence.*

§27.9. *Conflicts with Bond Indentures and Applicable Law.*

§27.10. *Waiver.*

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 8, 2019.

TRD-201904182

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-9268



### 10 TAC §§27.1 - 27.9

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, §§27.1 - 27.9. The purpose of the proposed new sections is to make changes that clarify that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule; revise several definitions; remove §27.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do; add Residential Property Standards; clarify that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise; clarify that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt bonds or for which a Mortgage Credit Certificate has been or will be issued; and make other minor technical corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted, because it meets the exceptions described under items (c)(4) and (9) of that section. The rules relate to a program through which the Department accesses federal bond authority to provide affordable housing opportunities to low income Texans under Treasury Regulations §143. The rule also ensures compliance with Tex. Gov't Code, Subchapter MM, Texas First-Time Homebuyer Program. In spite of these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes

changes to the rules that govern the Texas First Time Homebuyer Program.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the general program guidelines for the First Time Homebuyer Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, 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 new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are 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 sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a more updated rule reflecting transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

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

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from November 22, 2019, to December 23, 2019. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [cathy.gutierrez@tdhca.state.tx.us](mailto:cathy.gutierrez@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, December 23, 2019.

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

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

#### §27.1. Purpose.

(a) The purpose of the Texas First Time Homebuyer Program is to facilitate the origination of single-family Mortgage Loans for eligible first time homebuyers, and to provide to qualifying homebuyers down payment and closing cost assistance. The Texas First Time Homebuyer Program is administered in accordance with Texas Government Code, Chapter 2306. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this Program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

#### §27.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website ([www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)) in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing of a Mortgage Loan under the Program.

(3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of

chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(e) of the Code.

(5) Code--The Internal Revenue Code of 1986, as amended from time to time.

(6) Contract for Deed Exception--The exception for certain Mortgage Loan eligibility requirements, as provided in the Master Mortgage Origination Agreement, available with respect to a principal residence owned under a contract for deed by a person whose family income is not more than 50% of the area's Applicable Median Family Income.

(7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

(8) First Time Homebuyer--A person who has not owned a home during the three (3) years preceding the date on which an application under this program is filed. A person will be considered to have owned a home if the person had a present ownership interest in a home during the three (3) years preceding the date on which the application was filed. In the event there is more than one person applying with respect to a home, each applicant must separately meet this three year requirement.

(9) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

(10) Mortgage Lender--the entity, as defined in §2306.004 of the Tex. Gov't Code, that is participating in the Program and signatory to the Master Mortgage Origination Agreement.

(11) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(12) Program--The Texas First Time Homebuyer Program.

(13) Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90% of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

(14) Qualified Veteran Exemption to First Time Homebuyer Requirement--A qualified veteran who has not previously received financing as a first time homebuyer through a single family mortgage revenue bond program is exempt from the requirement to be a first time homebuyer. The veteran must certify that he or she has not previously obtained a Mortgage Loan financed by single family mortgage revenue bonds and is utilizing the veteran exception set forth in §143(d)(2)(D) of the IRS Code. Qualified veterans must also complete a worksheet evidencing qualification as a veteran and provide copies of discharge papers.

(15) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. This is



intended to have the same meaning as Home as defined in §2306.1071 of the Tex. Gov't Code.

(16) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(17) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, an Area of Chronic Economic Distress. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(18) Targeted area exemption to first time homebuyer requirement--Borrower's purchasing homes in targeted areas financed through the program are exempt from the requirement to be a first time homebuyer and income and purchase price limits may be higher as found in the "Combined Income and Purchase Price Limits Table" located on the Department's website.

(19) United States Department of Veterans Affairs--Also known as VA.

#### §27.3. Restrictions on Residences Financed and Applicant.

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a home that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements in subsection (d) of this section may qualify for down payment and closing cost assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Federal Mortgage Lender.

#### §27.4. Occupancy and Use Requirements.

(a) Occupancy requirement. The Applicant must occupy the property within 60 days after the date of closing as his or her Residence. Borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.

(b) Use for a business. Homebuyer may not use more than 15% of the residence in a trade or business (including childcare services) on a regular basis for compensation. If the residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Borrower may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Borrower's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or

unless extenuating circumstances exist which are beyond Borrower's control.

#### §27.5. Application Procedure and Requirements for Commitments by Mortgage Lenders.

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA, RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.

#### §27.6. Criteria for Approving Participating Mortgage Lenders.

(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

(1) FHA;

(2) RHS;

(3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in the Program, a qualified Mortgage Lender must:

(1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;

(2) originate, process, underwrite, close and fund originated loans; and

(3) be an approved Mortgage Lender with the Program's master servicer.

#### §27.7. Resale of the Residence.

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be

issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

§27.8. Conflicts with Bond Indentures and Applicable Law.

All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

§27.9. Waiver.

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §27.8, if the Board finds that waiver is appropriate to fulfill the purposes or polices of Texas Government Code, Chapter 2306.

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 8, 2019.

TRD-201904183

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-9268



## CHAPTER 28. TAXABLE MORTGAGE PROGRAM

### 10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 28, Taxable Mortgage Program, §§28.1 - 28.9. The purpose of the proposed repeal is to eliminate outdated rules while adopting new updated rules under separate action.

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

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

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous proposed adoption making changes to the rule governing the Taxable Mortgage Program.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

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

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Taxable Mortgage Program.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

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

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

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal 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 rulemaking.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed sections would be an elimination of outdated rules while adopting new updated rules under separate action. There will be no economic costs to individuals required to comply with the repealed sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 22, 2019, to December 23, 2019, to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [cathy.gutierrez@tdhca.state.tx.us](mailto:cathy.gutierrez@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time December 23, 2019.

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

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

*§28.1. Purpose.*

- §28.2. *Definitions.*
- §28.3. *Procedures for Submitting Requests or Inviting Proposals.*
- §28.4. *Restrictions on Residences Financed and Applicant.*
- §28.5. *Occupancy and Use Requirements.*
- §28.6. *Application Procedure and Requirements for Commitments by Mortgage Lenders.*
- §28.7. *Criteria for Approving Participating Mortgage Lenders.*
- §28.8. *Resale of the Residence.*
- §28.9. *Waiver.*

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 8, 2019.

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 Bobby Wilkinson  
 Executive Director  
 Texas Department of Housing and Community Affairs  
 Earliest possible date of adoption: December 22, 2019  
 For further information, please call: (512) 936-9268



**10 TAC §§28.1 - 28.9**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 28, Taxable Mortgage Program Rule, §§28.1 - 28.9. The purpose of the proposed new sections is to make changes that clarify that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule; revise several definitions; remove §28.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do; add Residential Property Standards; clarify that borrowers receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise; clarify that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt bonds or for which a Mortgage Credit Certificate has been or will be issued; and make other minor technical corrections.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions apply. However, no costs are associated with this action that would have prompted a need to be offset.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern the Taxable Mortgage Program.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that would eliminate any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and
8. The new rule will not negatively nor positively affect the state's economy.

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

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 general program guidelines for the Taxable Mortgage Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, 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 new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are 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 sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a more updated rule reflecting transparent compliant

regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule have already been in practice.

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

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from November 22, 2019, to December 23, 2019. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [cathy.gutierrez@tdhca.state.tx.us](mailto:cathy.gutierrez@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, December 23, 2019.

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

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

#### §28.1. Purpose.

(a) The purpose of the Taxable Mortgage Program is to facilitate the origination of single-family mortgage loans and to refinance existing Mortgage Loans for eligible homebuyers and in both cases to provide down payment and closing cost assistance. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

#### §28.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website ([www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)) in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing of a Mortgage Loan under the Program.

(3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month

period for which statistical information is available, as determined in accordance with §143(e) of the Code.

(5) Code--The Internal Revenue Code of 1986, as amended from time to time.

(6) Department Designated Areas of Special Need--Geographic areas designated by the Department from time to time as areas of special need.

(7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

(8) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

(9) Mortgage Lender--The entity, as defined in §2306.004 of the Tex. Gov't Code, participating in the Program and signatory to the Master Mortgage Origination Agreement.

(10) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(11) Program--The Taxable Mortgage Program.

(12) Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90 percent of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

(13) Regulations--The applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

(14) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. Has the same meaning as Home in Chapter 2306 of the Tex. Gov't Code.

(15) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(16) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, an Area of Chronic Economic Distress, or a Department Designated Area of Special Need. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(17) United States Department of Veterans Affairs--Also known as VA.

#### §28.3. Restrictions on Residences Financed and Applicant.

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a home that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements may qualify for down payment and closing cost assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Mortgage Lender.

#### §28.4. Occupancy and Use Requirements.

(a) Occupancy requirement. The Applicant must occupy the property within 60 days after the date of closing as his or her Residence. Borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.

(b) Use for a business. Homebuyer may not use more than 15% of the Residence in a trade or business (including childcare services) on a regular basis for compensation. If the Residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Borrower may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Borrower's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

#### §28.5. Application Procedure and Requirements for Commitments by Mortgage Lenders.

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA, RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.

#### §28.6. Criteria for Approving Participating Mortgage Lenders.

(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

(1) FHA;

(2) RHS;

(3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in the Program, a qualified Mortgage Lender must

(1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;

(2) originate, process, underwrite, close and fund originated loans; and

(3) be an approved Mortgage Lender with the Program's master servicer.

#### §28.7. Resale of the Residence.

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

#### §28.8. Conflicts with Bond Indentures and Applicable Law.

All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

#### §28.9. Waiver.

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §28.8, if the Board finds that waiver is appropriate to fulfill the purposes or policies of Texas Government Code, Chapter 2306, or for good cause, as determined by the Board.

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 8, 2019.

TRD-201904185

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**TITLE 19. EDUCATION**

**PART 1. TEXAS HIGHER EDUCATION  
COORDINATING BOARD**

**CHAPTER 1. AGENCY ADMINISTRATION**

**SUBCHAPTER DD. TITLE IX TRAINING**

**ADVISORY COMMITTEE**

**19 TAC §§1.9531 - 1.9536**

The Texas Higher Education Coordinating Board proposes new Chapter 1, Subchapter DD, §§1.9531 - 1.9536, concerning the Title IX Training Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to make recommendations to the Coordinating Board regarding rules for adoption under §51.295 of the Texas Education Code; and develop recommended training for responsible and confidential employees designated under §51.290, for employees in the course and scope of their employment and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions. The newly added rules will affect students when the recommendations are adopted by the Board.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new rules. There would be minimal costs to public institutions of higher education to support the expenses of committee members who may travel to the Coordinating Board in Austin for meetings.

Dr. Silverman as also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the new rules will be improvements in procedures at public institutions of higher education for addressing incidents of sexual misconduct. There would be minimal costs to public institutions of higher education to support travel and other expenses of committee members who may travel to the Coordinating Board in Austin for meetings. There is no impact on local employment. There is no impact on small businesses, micro businesses, and rural communities.

**Government Growth Impact Statement**

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create new rules;
- (6) the rules will not limit an existing rule;

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

(8) the rules will positively affect the state's economy.

Comments on the proposal may be submitted to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new rules are proposed under the Texas Education Code, Sections 51.290 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of advisory committees and Texas Government Code, Section 2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new rules affect the implementation of Texas Education Code, Chapter 51.

§1.9531. Authority and Purpose of the Title IX Training Advisory Committee.

(a) Statutory authority for this subchapter is provided in the Texas Education Code (TEC), Chapter 51, §51.294 and §51.260.

(b) The Title IX Training Advisory Committee is created to provide the Board with recommendation(s) regarding the training for responsible and confidential employees and student advocates designated under TEC Section 51.290, Title IX Coordinators and other institutional employees who may receive confidential disclosures from students under Section 51.290.

§1.9532. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Recommended Training--Training developed by the advisory committee for responsible and confidential employees and student advocates designated under Section 51.290, for employees in the course and scope of their employment, and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions.

§1.9533. Committee Membership and Officers.

(a) The advisory committee consists of nine members appointed by the commissioner of higher education. Eight members must be chief executive officers of postsecondary educational institutions or representatives designated by those officers; and one member must be a representative of an advocacy organization for victims of sexual assault or family violence.

(b) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings. A co-chair shall also be elected by the committee to serve in the presiding officer's stead as needed.

(c) Members shall serve staggered 3-year terms and may serve multiple terms.

§1.9534. Duration.

The committee shall be abolished no later than November 1, 2023, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§1.9535. Meetings and Tasks of the Committee.

(a) The committee shall meet as required by workload and tasks to meet the deadline listed under subsection (c) of this section. Thereafter the committee shall meet on an annual basis, as required by TEC Section 51.294. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties. Minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the committee.

(b) Tasks assigned the committee include:

(1) make recommendations to the coordinating board regarding rules for adoption under Section 51.295; and

(2) develop recommended training for responsible and confidential employees and student advocates designated under TEC Section 51.290, for employees in the course and scope of their employment and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions.

(c) Not later than December 1, 2019, the advisory committee shall develop the recommended training under subsection (b) of this section.

(d) The advisory committee shall annually review and, if necessary, update the training recommended under subsection (b)(2) of this section.

§1.9536. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The committee shall report any recommendations to the Board on no less than an annual basis. The committee shall also report committee activities to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request

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

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William Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6206



**SUBCHAPTER EE. STUDY AND REPORT ON  
CORE CURRICULUM ADVISORY COMMITTEE  
19 TAC §§1.9541 - 1.9546**

The Texas Higher Education Coordinating Board proposes new Chapter 1, Subchapter EE, §§1.9541 - 1.9546, concerning the Study and Report on Core Curriculum Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to provide the Board with recommendation(s) regarding the effectiveness of the requirements regarding the transfer of course credit between institutions of higher education for courses in the core curriculum under §61.822 in supporting more efficient undergraduate transfer between institutions of higher

education. The newly added rules will affect students when the recommendations are adopted by the Board.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections. There would be minimal costs to public institutions of higher education to support the expenses of committee members who may travel to the Coordinating Board in Austin for meetings.

Dr. Silverman has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be improvements in core curriculum course transfer at public institutions of higher education for students. There would be minimal costs to public institutions of higher education to support travel and other expenses of committee members who may travel to the Coordinating Board in Austin for meetings. There is no impact on local employment. There is no impact on small businesses, micro businesses, and rural communities.

**Government Growth Impact Statement**

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

Comments on the proposal may be submitted to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.8221, which provides the Coordinating Board with the authority to establish an advisory committee to assist the Board in completing the board's duties under this section and provide the Board with subject matter expertise and analysis and Texas Government Code, Section 2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§1.9541. Authority and Purpose of the Study and Report on Core Curriculum Advisory Committee.

(a) Statutory authority for this subchapter is provided in the Texas Education Code (TEC), Chapter 61, §61.8221.

(b) The Study and Report on Core Curriculum Advisory Committee is created to provide the Board with recommendation(s)

regarding the effectiveness of the requirements regarding the transfer of course credit between institutions of higher education for courses in the core curriculum under §61.822 in supporting more efficient undergraduate transfer between institutions of higher education.

§1.9542. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Core Curriculum or Texas Core Curriculum--the curriculum in the liberal arts, humanities, sciences, and political, social, and cultural history that all undergraduates of an institution of higher education are required to complete before receiving an academic undergraduate degree. Core curriculum provisions apply to institutions of higher education that offer academic undergraduate degree programs.

§1.9543. Committee Membership and Officers.

(a) The advisory committee consists of up to 24 of the following members appointed by the board in equal numbers:

(1) representatives of public junior colleges designated by the applicable college to represent the college on the advisory committee; and

(2) representatives of general academic teaching institutions designated by the applicable institution to represent the institution on the advisory committee.

(b) A majority of members appointed to the advisory committee under subsection (a)(2) of this section must be representatives of a general academic teaching institution at which at least 25 percent of students enrolled at the institution for the 2018 fall semester were classified as transfer students.

(c) In appointing members to the advisory committee under subsection (b) of this section, the board shall, to the greatest extent practicable, ensure that the membership of the advisory committee is balanced with respect to:

(1) institutional representation, including:

(A) the regions of the state;

(B) the mission type of the general academic teaching institution or public junior college;

(C) university system affiliation, as applicable;

(D) student enrollment; and

(E) institutional groupings under the board's higher education accountability system;

(2) representation of faculty and administrators at general academic teaching institutions or public junior colleges;

(3) representation of academic disciplines; and

(4) any other factors the board determines relevant.

(d) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings. A co-chair shall also be elected by the committee to serve in the presiding officer's stead as needed.

(e) Members shall serve single terms lasting until the abolishment of the committee no later than September 1, 2021.

§1.9544. Duration.

The committee shall be abolished no later than September 1, 2021, in accordance with Texas Education Code, Chapter 61, §61.8221.

§1.9545. Meetings and Tasks of the Committee.

(a) The committee shall meet as required by workload and tasks to meet the deadline listed under subsection (d) of this section. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties. Minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the committee.

(b) The advisory committee shall study and make recommendations to the board regarding the effectiveness of the requirements regarding the transfer of course credit between institutions of higher education for courses in the core curriculum under §1.822 in supporting more efficient undergraduate transfer between institutions of higher education. The study and recommendations must include an analysis of:

(1) the efficacy of dividing the recommended core curriculum for each meta major into a general academic core curriculum and an academic discipline core curriculum and, if determined to be efficacious, the recommended number of semester credit hours for each component of the recommended core curriculum for each meta major;

(2) methods to ensure that courses completed in the general academic core curriculum and academic discipline core curriculum transfer between institutions of higher education for course credit applied toward a student's major at the receiving institution; and

(3) the potential inclusion of courses in the field of study curricula adopted by the board under §61.823 in the recommended core curriculum adopted by the board under §61.822.

(c) Each quarter ending before November 1, 2020, the advisory committee shall submit to the chairs of the standing legislative committees with primary jurisdiction over higher education and to the Board a report on the advisory committee's progress on the study and recommendations required under subsection (b) of this section.

(d) Not later than July 1, 2020, the advisory committee shall submit to the Board a report that includes the results of the study conducted under subsection (b) of this section and any recommendations for legislative or other action.

§1.9546. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The committee shall report any recommendations to the Board on no less than an annual basis. The committee shall also report committee activities to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6206





## CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

### SUBCHAPTER BB. NURSING SHORTAGE REDUCTION PROGRAM RIDER 28 STUDY WORK GROUP

#### 19 TAC §§22.751 - 22.757

The Texas Higher Education Coordinating Board proposes Subchapter BB, §§22.751 - 22.757 of Board rules concerning the establishment of the Nursing Shortage Reduction Program Rider 28 Study Work Group. The proposed rules establish the Nursing Shortage Reduction Program (NSRP) Rider 28 Study Work Group. The work group will be charged with studying the effectiveness of the NSRP in addressing the shortage of professional nurses in the state, studying the structure and efficiency of the program, and studying other funding strategies to address the nursing shortage. The work group members will include the following: an equitable representation of institutions eligible to participate in the program, the Texas Nursing Association, the Texas Board of Nursing, The Department of State Health Services Center for Nursing Workforce Studies, and other stakeholders. The work group will include two ad-hoc members from the Texas Higher Education Coordinating Board (THECB) staff. Each higher education institution in Texas that is eligible to participate in the NSRP will have an opportunity to nominate an individual to the work group. Tasks assigned to the work group will include advising the Board of the THECB, providing THECB staff with feedback about processes and procedures, and addressing any other issues related to the NSRP Rider 28 Study as determined by the Board of the THECB. The rules were adopted by the Board on an emergency basis at the October 2019 meeting pursuant to Section 2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than a 30 days' notice.

Dr. Julie Eklund, Assistant Commissioner for Strategic Planning and Funding, has determined there will be no fiscal implications for state or local governments as a result of adding the new sections. There would be no impact on small businesses or rural communities as described in Texas Government Code, Chapter 2006.002; therefore, an Economic Impact analysis is not required.

Dr. Eklund has also determined the public benefits anticipated as a result of administering the new sections will be to enable a work group, as required by the general appropriations act, to study the effectiveness of the NSRP in addressing the shortage of professional nurses in the state. There would be no impact on public institutions of higher education and local employment.

#### Government Growth Impact Statement

- (1) the rules *will not* create or eliminate a government program;
- (2) implementation of the rules *will not* require the creation or elimination of employee positions;
- (3) implementation of the rules *will not* require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules *will not* require an increase or decrease in fees paid to the agency;
- (5) the rules *will not* create a new rule;
- (6) the rules *will not* limit an existing rule;

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

(8) the rules *will* positively affect the state's economy.

Comments on the proposed amendments may be submitted to Julie Eklund, Assistant Commissioner for Strategic Planning and Funding, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at Julie.Eklund@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed to create a work group to study the effectiveness of the Nursing Shortage Reduction Program in addressing the shortage of professional nurses in the state, as required by General Appropriations Act, HB 1, Article III-56, Section 28, Subsection g, 86th Texas Legislature.

There are no statutes, articles, or codes affected by the proposed action.

#### §22.751. Authority and Specific Purpose of the Nursing Shortage Reduction Program Rider 28 Study Work Group.

(a) Authority. Authority for this subchapter is provided in the General Appropriations Act, HB 1, Article III-56, Section 28, Subsection g, 86th Texas Legislature.

(b) Purpose. The Nursing Shortage Reduction Program Rider 28 Study Work Group is created to provide the Commissioner and the Board with guidance regarding the Nursing Shortage Reduction Program.

#### §22.752. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) Nursing Shortage Reduction Program--The program authorized in the General Appropriations Act, HB 1, Article III-56, Section 28, 86th Texas Legislature.

#### §22.753 Work Group Membership.

(a) The work group members will include the following: an equitable representation of institutions eligible to participate in the Nursing Shortage Reduction Program, the Texas Nursing Association, the Texas Board of Nursing, The Department of State Health Services Center for Nursing Workforce Studies, and industry.

(b) The work group will include two ad-hoc members from the Texas Higher Education Coordinating Board (THECB) staff.

(c) Each higher education institution that is eligible to participate in the NSRP will have an opportunity to nominate an individual to the work group.

(d) Board staff will recommend for Board appointment individuals who are nominated.

(e) The number of work group members shall not exceed twenty-four (24).

(f) Members shall serve until the work group is abolished.

#### §22.754. Duration.

The work group shall be abolished no later than November 2, 2020, in accordance with Texas Government Code, Chapter 2110.

§22.755. Meetings.

The Work Group shall meet as necessary. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Work Group.

§22.756. Tasks Assigned to the Work Group.

Tasks assigned to the Work Group include:

(1) Study the effectiveness of the Professional Nursing Shortage Reduction Program in addressing the shortage of professional nurses in the state;

(2) Study the structure and efficiency of the program;

(3) Study other funding strategies to address the nursing shortage; and

(4) Any other issues related to the Nursing Shortage Reduction Program as determined by the Board.

§22.757. Report to the Board; Evaluation of Work Group Costs and Effectiveness.

The Work Group shall report recommendations to the Board. The Work Group shall also report Work Group activities to the Board to allow the Board to properly evaluate the work of the Work Group, usefulness, and the costs related to the Work Group existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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William Franz

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For further information, please call: (512) 427-6533



## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

#### SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING TRANSITION ASSISTANCE FOR HIGHLY MOBILE STUDENTS WHO ARE HOMELESS OR IN SUBSTITUTE CARE

##### **19 TAC §§89.1601, 89.1603, 89.1605, 89.1607, 89.1609, 89.1611, 89.1613, 89.1615, 89.1617**

The Texas Education Agency (TEA) proposes new §§89.1601, 89.1603, 89.1605, 89.1607, 89.1609, 89.1611, 89.1613, 89.1615, and 89.1617, concerning transition assistance for highly mobile students who are homeless or in substitute care. The proposed new rules would assist with the transition of students who are homeless or in substitute care from one school

to another and provide local education agencies (LEAs) with guidance on the requirements of Texas Education Code (TEC), §25.007.

BACKGROUND INFORMATION AND JUSTIFICATION: Senate Bill (SB) 1220, 85th Texas Legislature, 2017, amended TEC, §25.007, relating to transition assistance for students who are homeless or in substitute care. SB 1220 addressed the continuity of education for this population of students, including placement in comparable courses or education programs and provision of comparable services during the referral process, and authorized the commissioner to establish rules to implement TEC, §25.007.

Proposed new 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter FF, Commissioner's Rules Concerning Transition Assistance for Highly Mobile Students Who Are Homeless or in Substitute Care, would address school district and open-enrollment charter school responsibilities, as follows.

Proposed new §89.1601, Definitions, would provide clarity by defining terms having meanings specific to proposed new Chapter 89, Subchapter FF.

Proposed new §89.1603, Transfer of Student Records and Transcripts, would address responsibilities for LEAs to request, send, and receive student records and transcripts as required by TEC, §25.002(a-1), to ensure a seamless enrollment and transition.

Proposed new §89.1605, Development of Systems to Ease Transitions and Establish Procedures to Lessen the Adverse Impact of Movement of a Student, would establish systems that LEAs must develop to ease the transition during the first two weeks of enrollment at a new school. The proposed new rule would address welcome packets, introductions, and a process to ensure that eligible students receive nutrition benefits. It would also address the necessary elements for the required enrollment conference.

Proposed new §89.1607, Award of Credit, would address the creation and examination of existing local policies to assist LEAs with the award of credits, including credit by examination, credit recovery plans, course transition plans, and personal graduation plans.

Proposed new §89.1609, Placement in Educational Programs and Courses, would address LEA responsibilities relating to course and educational program placement in order to ensure continuity for students.

Proposed new §89.1611, Promotion of Access to Educational and Extracurricular Programs for Students Who Are Homeless or in Substitute Care, would set forth LEA responsibilities relating to access and participation in educational and extracurricular programs, including tutoring programs, Communities in Schools or similar programs, and University Interscholastic League (UIL) participation to mitigate transition barriers to participation.

Proposed new §89.1613, Promotion of Postsecondary Information, would address LEA responsibilities to promote postsecondary access and to ensure students are progressing toward graduation and are linked with appropriate higher education financial resources and supports in order to implement TEC, §28.02121 and §54.366, and 42 United States Code, §11432(g)(6)(A)(x).

Proposed new §89.1615, Provision of Special Education Services, would address LEA responsibilities to provide special education services and accept referrals made by previous school

districts or open-enrollment charter schools for special education evaluation to ensure the appropriate placement of services for students.

Proposed new §89.1617, Notice to Student's Educational Decision-Maker and Caseworker, would address the requirement in TEC, §25.007, that LEAs provide notice to the student's educational decision-maker or caseworker of information that significantly impacts the education of the student. The proposed new rule would include the requirement passed by House Bill 1709, 86th Texas Legislature, 2019, requiring school districts and open-enrollment charter schools to provide notice to the student's educational decision-maker and caseworker regarding the appointment of a surrogate parent for the child under TEC, §29.0151.

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

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations to assist with the transition of students who are homeless or in substitute care. The proposal would lay out the expectations for school districts and open-enrollment charter schools on what is needed to fulfill the requirements of TEC, §25.007.

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 in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to the rule's applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Montano 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 mitigation of challenges and integration of solutions at school districts and open-enrollment charter schools for effectively serving mobile students who are homeless or in substitute care. The proposal would require actions to reduce barriers related to school transitions, thus supporting learning

and future educational achievement for students as they transition between Texas public schools due to their mobility. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA has determined that the proposal would require a written report or other paperwork but does not specifically require a principal or classroom teacher to complete the report or paperwork. However, local district decisions may vary. In such an instance, the proposal would impose the least burdensome requirement possible to achieve the objective of the rule. Section 89.1611 would require that appropriate district or charter school staff complete and submit a UIL waiver of residence application form for students who are homeless or in substitute care plan and to participate in varsity athletics or other UIL-sponsored activities.

**PUBLIC COMMENTS:** The public comment period on the proposal begins November 22, 2019, and ends December 23, 2019. 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 November 22, 2019. 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/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §25.002(a-1), which requires school districts and open-enrollment charter schools to transfer student records to the district to which the request is made not later than the 10th working day after the date a request for the information is received by the district; and TEC, §25.007(c), which authorizes the commissioner to establish rules to facilitate the transition between schools of children who are homeless or in substitute care.

**CROSS REFERENCE TO STATUTE.** Texas Education Code, §25.002(a-1) and §25.007(c).

§89.1601. Definitions.

The following words and terms, when used in this subchapter, have the following meaning, unless the context clearly indicates otherwise.

(1) Homeless--This term has the meaning assigned to the term "homeless children and youths" under 42 United States Code (USC), §11434a.

(2) Homeless liaison--A person designated by a school district or an open-enrollment charter school pursuant to the McKinney-Vento Homeless Assistance Act (42 USC, §11432(g)(1)(J)(ii)), to ensure homeless children and youth are identified and enrolled, with a full and equal opportunity to succeed, in schools.

(3) Substitute care--The placement of a child who is in the conservatorship of the Texas Department of Family and Protective Services (DFPS) in care outside the child's home. The term includes foster care, institutional care, pre-adoptive homes, placement with a relative of the child, or commitment to the Texas Juvenile Justice Department under Texas Family Code, §263.001(a)(4).

(4) Foster care liaison--The individual each local educational agency appoints to act as a liaison to facilitate enrollment or transfer of a child who is in conservatorship of the state, pursuant to Texas Education Code, §33.904.

(5) Foster care--Twenty-four-hour substitute care for children placed away from their parents or guardians and for whom DFPS has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions, and pre-adoptive homes.

(6) Educational decision-maker--A person designated by DFPS to make education decisions on behalf of youth in substitute care.

(7) Enrollment conference--A student-centered meeting for a newly enrolled student to identify academic and extracurricular interests; introduce school processes and opportunities for engagement; develop course and instructional strategies; review credits and assessment information; determine social-emotional support; and communicate confidential information that may impact a student's success, if needed.

(8) Records--Documents in printed or electronic form that include, but are not limited to, student transcripts; individual course grades; academic achievement records; course credits, whether full or partial; individualized education program referrals; intervention data; immunizations; state assessment scores; student attendance data; disciplinary reports; graduation endorsements; special education/Section 504 committee records; performance acknowledgements; and personal graduation plans.

§89.1603. Transfer of Student Records and Transcripts.

(a) Each school district and open-enrollment charter school must ensure that copies of student records are made available to schools to which students who are homeless or in substitute care transfer.

(b) Each school district and open-enrollment charter school is required to transfer student records within 10 working days of receipt of a request from a district or charter school to which a student who is homeless or in substitute care enrolls, as required by Texas Education Code (TEC), §25.002(a-1). The discretionary authority under TEC, §31.104(d), to withhold records of a student if the student has not returned or paid for instructional materials or technological equipment does not exempt a district or charter school from the mandatory provision in TEC, §25.002, to send records to another public school in which the student enrolls.

(c) Proof of enrollment in a different school district or open-enrollment charter school permits retroactive withdrawal to the date a student enrolled in the new school. The date of enrollment in the new district or charter school is considered the date of withdrawal from the previous district or charter school.

(d) Student records must be requested, sent, and received using the Texas Records Exchange (TReX) system.

(e) If a school district or an open-enrollment charter school fails to receive the required information within 10 working days, the requesting district or charter school shall report the noncompliant district or charter school to the division responsible for general inquiries at the Texas Education Agency.

§89.1605. Development of Systems to Ease Transitions and Establish Procedures to Lessen the Adverse Impact of Movement of a Student.

(a) Each school district and open-enrollment charter school shall develop systems to ease transition of a student who is homeless or in substitute care during the first two weeks of enrollment at a new school. These systems shall include the following:

(1) welcome packets containing information regarding enrollment in extracurricular activities, club activities, information on fee waivers, tutoring opportunities, the student code of conduct, and contact information for pertinent school staff such as counselors, nurses, social workers, the foster care liaison, the homeless liaison, the principal and any assistant principals, and related contacts;

(2) introductions for new students that maintain student privacy and confidentiality to the school environment and school processes by school district or charter school faculty, campus-based student leaders, or ambassadors; and

(3) mechanisms to ensure that a process is in place for all students who qualify to receive nutrition benefits upon enrollment, as all students who are homeless or in substitute care are eligible for United States Department of Agriculture Child Nutrition Programs. The process must expedite communication with the district or charter school nutrition coordinator to ensure that eligible students are not charged in error or experience delays in receiving these benefits.

(b) A school district or an open-enrollment charter school shall convene an enrollment conference with the student within the first two weeks of enrollment or within the first two weeks after the student is identified as homeless or in substitute care.

(1) The convening of the enrollment conference shall not delay or impede the enrollment of the student.

(2) The enrollment conference shall address the student's credit recovery, credit completion, attendance plans and interventions, interests and strengths, discipline or behavior concerns, previous successes, college readiness, and social and emotional supports as well as district policies relating to transfers and withdrawals and communication preferences with parents or guardians. The enrollment conference may be comprised of:

- (A) school administrators;
- (B) homeless or foster care liaisons;
- (C) a social worker;
- (D) teachers;
- (E) counselors;
- (F) dropout prevention specialists;
- (G) attendance/truancy officers;
- (H) the foster placement caregiver or case manager;

(I) the Texas Department of Family and Protective Services (DFPS) designated educational decision-maker;

(J) the DFPS caseworker, Court Appointed Special Advocates (CASA) volunteer, or other volunteer, as applicable; and

(K) a parent and/or guardian.

(3) The enrollment conference must continue to convene on a regular schedule (at least every semester or, if a school operates under a quarterly or trimester system, every quarter or trimester) to assess and evaluate the needs, academic progress, interventions, and support services of students who are homeless or in substitute care.

(c) A district or charter school must provide professional development and training for pertinent staff members (such as principals, registrars, counselors, designated liaisons, nutrition coordinators, transportation specialists, etc.) concerning communication, processes, and procedures for facilitating successful school transitions for students who are homeless or in substitute care.

(d) For each district or charter school, the Texas Records Exchange (TREx), the Personal Identification Database (PID), or the Person Enrollment Tracking (PET) application must be used to expedite coordination and communication between the sending and receiving schools.

§89.1607. Award of Credit.

(a) Each school district and open-enrollment charter school must adopt a local policy to assist with awarding to a student who is homeless or in substitute care credit for a course that was earned prior to the student enrolling in or transferring to the district or charter school, as required by §74.26 of this title (relating to Award of Credit).

(b) Each school district and open-enrollment charter school must examine how credit is awarded based on satisfactorily meeting all state and local requirements for a course upon enrollment, as required by §74.26 of this title.

(c) Each school district and open-enrollment charter school must provide opportunities for a student who is homeless or in substitute care who enrolls in the district or charter school after the start of the school year to be administered credit by examination at any point during the school year, as required by §74.24 of this title (relating to Credit by Examination).

(d) Each school district and open-enrollment charter school must award credit proportionately to a student who is homeless or in substitute care who successfully completes only half of a course, as required by §74.26(e) of this title.

(e) Each school district and open-enrollment charter school must:

(1) develop a credit recovery plan for students who were denied credits outside the district or charter school;

(2) create a course transition plan for students who have been denied credit;

(3) develop and administer a personal graduation plan for each student in junior high or middle school, as required by Texas Education Code (TEC), §28.0212;

(4) ensure that school staff engage with the student, parent, or guardian, as applicable, to develop a credit recovery plan upon enrollment if the student has a credit deficit that would impede on-time promotion or graduation; and

(5) comply with TEC, §28.025(i), concerning the award of diplomas for students who are homeless or in substitute care who are in Grade 11 or 12.

§89.1609. Placement in Educational Programs and Courses.

(a) When a student who is homeless or in substitute care transfers before or during the school year, the receiving school district or open-enrollment charter school shall initially place the student in educational programs and courses based on the student's prior enrollment in and current educational assessments from the sending school.

(1) Educational programs include, but are not limited to, gifted and talented program services, bilingual or special language services for English learners, career and technical education, and early college high school.

(2) Course placement includes, but is not limited to, honors, International Baccalaureate, Advanced Placement, vocational, technical, and career pathway courses.

(b) Each school district and open-enrollment charter school must ensure that a student who is homeless or in substitute care has

the ability to earn the same endorsement categories, if applicable. If only one endorsement is offered, it must be multidisciplinary studies.

(c) To the extent possible, each school district and open-enrollment charter school shall ensure the continuation of a student's educational and course programs from the previous district or charter school and promote placement in academically challenging and career preparation courses.

§89.1611. Promotion of Access to Educational and Extracurricular Programs for Students Who Are Homeless or in Substitute Care.

(a) Each school district and open-enrollment charter school must provide opportunities for students who are homeless or in substitute care to participate in summer programs, electronic courses provided through the Texas Virtual School Network, and after-school tutoring programs at nominal or no cost.

(b) Each school district and open-enrollment charter school must encourage participation in tutoring programs and Communities in Schools or similar programs, when available, that provide tutoring, mentoring, after-school, and summer programs.

(c) Appropriate school district or open-enrollment charter school staff must complete and submit a University Interscholastic League (UIL) waiver of residence application form for a student who is homeless or in substitute care and plans to participate in varsity athletics or other UIL-sponsored activities.

(1) Districts and charter schools must comply with Texas Education Code, §25.001(f), and not prohibit a student in substitute care from fully participating in any activity sponsored by the school district.

(2) Students in foster care remaining in their school of origin but residing outside of the school district of attendance shall be afforded a waiver, as allowed under UIL Constitution and Contest Rules Section 442: Residence in School District and Attendance Zone.

§89.1613. Promotion of Postsecondary Information.

(a) School district and open-enrollment charter school counselors or other designated staff shall work with district homeless and foster care liaisons to ensure that all students who are identified as homeless or in substitute care are on track to graduate with endorsements, if applicable, and have postsecondary plans identified in their personal graduation plans, pursuant to Texas Education Code (TEC), §28.02121.

(b) School district and open-enrollment charter school counselors or other designated staff must inform unaccompanied homeless youths of their rights and status as independent students for the purpose of applying for financial aid for higher education and provide verification of such status for the Free Application for Federal Student Aid (FASFA), pursuant to 42 United States Code, §11432(g)(6)(A)(x).

(c) Each school district and open-enrollment charter school shall ensure that a student in substitute care who is enrolled in Grade 11 or 12 in that district or charter school is provided information regarding tuition and fee exemptions under TEC, §54.366, for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit.

§89.1615. Provision of Special Education Services.

(a) When a student who is homeless or in substitute care transfers into a school district or an open-enrollment charter school after being referred by a previous district or charter school for a special education evaluation, the receiving district or charter school must accept the referral and ensure that it meets timelines established in §89.1011 of this title (relating to Full Individual and Initial Evaluation).

(b) When a student who is already eligible for special education and is homeless or in substitute care transfers into a school district or an open-enrollment charter school during the school year, the receiving district or charter school must ensure that it meets the student transfer requirements of §89.1050(j) of this title (relating to The Admission, Review, and Dismissal Committee).

§89.1617. Notice to Student's Educational Decision-Maker and Caseworker.

Each school district and open-enrollment charter school must comply with Texas Education Code (TEC), §25.007(b)(10), and provide notice in writing to the educational decision-maker and caseworker of a student who is homeless or in substitute care regarding events that may significantly impact the education of the student.

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

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Cristina De La Fuente-Valadez  
Director, Rulemaking

Texas Education Agency

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



**CHAPTER 100. CHARTERS**  
**SUBCHAPTER AA. COMMISSIONER'S**  
**RULES CONCERNING OPEN-ENROLLMENT**  
**CHARTER SCHOOLS**  
**DIVISION 1. GENERAL PROVISIONS**  
**19 TAC §100.1010**

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §100.1010 is not included in the print version of the Texas Register. The figure is available in the on-line version of the November 22, 2019, issue of the Texas Register.)*

The Texas Education Agency (TEA) proposes an amendment to §100.1010, concerning charter school performance frameworks. The proposed amendment would adopt in rule the 2019 *Charter School Performance Frameworks (CSPF) Manual*, which would be updated to comply with statutory provisions and clarify the operation of the CSPF to rate the performance of open-enrollment charter schools in Texas.

**BACKGROUND INFORMATION AND JUSTIFICATION:** §100.1010 was adopted to be effective on September 18, 2014, and was last amended to be effective July 22, 2019. The rule is issued under TEC, §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools is measured. The performance frameworks consist of several indices within academic, financial, and operational categories with data drawn from various sources, as reflected in the CSPF Manual adopted as a figure in the rule and updated every year.

The proposed amendment would replace the 2018 CSPF Manual with the 2019 CSPF Manual as Figure: 19 TAC §100.1010(c). The 2019 version of the manual includes the following significant changes from the 2018 version.

The weight of component frameworks for a school's overall CSPF score would be altered to 70% academic indicators, 20% financial indicators, and 10% operational indicators. The alteration is intended to further emphasize the importance of academic achievement in establishing high-quality learning opportunities for Texas students.

The calculation method of a school's performance on its academic framework indicators would be updated to be based 80% on a school's overall academic accountability (A-F) score, 10% on achievement status for student groups, and 10% on campus status score. For charter schools evaluated under alternative education accountability (AEA) provisions of the Texas Accountability Rating System, the weighting of their academic framework scores would be 80% overall A-F score (AEA scaling), 10% Closing the Gaps score (AEA scaling), and 10% campus status score. These changes would further emphasize the goals set forth in Texas's A-F accountability system to establish high-quality learning opportunities for Texas students.

The financial framework solvency indicators would be renamed to be more accurate, and the weighting of a school's performance on financial framework indicators would be altered to be based 70% on its score on the Financial Integrity Rating System of Texas (Charter FIRST) and 7.5% on each of the other four indicators.

In the operational framework indicators, the description of the "not applicable" rating under indicator 3a would be clarified to explain that such a rating would result from a school's data being masked due to small numbers. The rating of "far below" would be eliminated for indicators 3b and 3c to standardize rating categories across indicators. Indicator 3d, "Program requirements: Career and technical education populations," would be removed because TEA will report on such information under different criteria. To help ensure that charter school board members and officers are prepared to provide quality learning opportunities for Texas students, indicator 3e would be amended to require that in order to achieve a "meets expectations" rating for training requirements, all affected charter board members and school officers must provide TEA with documentation of such training. The explanation of "meets expectations" in Indicator 3l would be amended to pertain to the student body makeup at the charter school level rather than at the campus level to be consistent with other rule language. Indicator 3n, which addresses appropriate handling of secure assessment materials, would be amended to clarify which data would be reviewed to obtain rating information.

The Adult High School Diploma and Industry Certification Public Charter School Performance Frameworks would be amended to cite statutory authority for each indicator. The explanation of "meets expectations" for indicator 1 would be revised to require 50% of the school's students to perform at or above the passing score on the Texas Success Initiative Assessment (TSIA) to meet statutory requirements for satisfactory performance on an exit-level exam. In keeping with statutory requirements to measure how many program participants successfully complete the program, indicator 2 would be revised to delete unnecessary language and explain that "meets expectations" could be achieved if the number of a school's graduates were equal to or greater than the number of students classified as 12th graders on its Texas Student Data System Public Education Information

Management System (TSDS PEIMS) snapshot date in the same academic year. The language of Indicator 3 would be revised to clarify that graduates would be the group addressed by that indicator, and the data source would be revised to take into account that the school may provide special industry-based certifications not necessarily delineated by the TEA.

The 2019 CSPF Manual would introduce and detail a tiering system by which charter schools' CSPF scores would be used to designate them as falling into one of three tiers, which would in turn inform TEA's authorizing decisions, including assigning appropriate levels of oversight and determining eligibility for expansion amendments as described in 19 TAC §100.1033, making decisions related to renewal or non-renewal for schools in the discretionary category as defined by TEC, §12.1141(c), and revoking charters that have failed to meet CSPF standards as described in TEC, §12.115(a)(5).

Throughout the manual, language would be revised to reflect the way Charter School Performance Frameworks are referred to in statute and include other technical edits.

**FISCAL IMPACT:** Joe Siedlecki, associate commissioner for charters and innovations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand the existing regulation in that it would revise the title of some indicators on the CSPF, alter the way charter schools' scores are calculated on the CSPF, revise criteria to meet expectations on certain indicators, and specify how CSPF scores would now be used as part of the TEA's authorizing decisions.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Siedlecki 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 ensuring that rule language is based on current law and that statutorily required charter school performance frameworks data is gathered and used as accurately as possible. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins November 22, 2019, and ends December 23, 2019. 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 November 22, 2019. 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/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §12.1181, which directs the commissioner of education to develop and adopt open-enrollment charter school performance frameworks; and TEC, §29.259, which directs the commissioner of education to establish an adult high school diploma and industry certification charter school program, including adoption of frameworks to measure the performance of such a school.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §12.1181 and §29.259.

*§100.1010. Performance Frameworks.*

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Frameworks [Framework] (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.

(c) The assignment of performance levels for charter schools on the 2019 [2018] CSPF report is based on specific criteria, which are described in the 2019 [2018] Charter School Performance Frameworks [Framework] Manual provided in this subsection.

Figure: 19 TAC §100.1010(c)

[Figure: 19 TAC §100.1010(e)]

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER RR. VALUATION MANUAL

###### 28 TAC §3.9901

The Texas Department of Insurance proposes to amend 28 TAC §3.9901, relating to the adoption of a valuation manual for reserving and related requirements. Section 3.9901 implements Senate Bill 1654, 84th Legislature, Regular Session (2015).

EXPLANATION. Amending §3.9901 is necessary to implement the provisions of SB 1654, which adopted Insurance Code §425.073. Section 425.073 requires the Commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC). The valuation manual adopted by the NAIC may be viewed at the following website: [www.naic.org/documents/cmte\\_a\\_latf\\_related\\_val\\_2020\\_edition.pdf](http://www.naic.org/documents/cmte_a_latf_related_val_2020_edition.pdf).

Under §425.073 the Commissioner must adopt the valuation manual, and any changes to it, by rule.

Under §425.073(c), when the NAIC adopts changes to the valuation manual, TDI must adopt substantially similar changes. This subsection also requires the Commissioner to determine that the NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75 percent of the direct written premiums as reported in the most recently available life insurance and accident and health annual statements, health annual statements, and fraternal annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with §425.073. On August 6, 2019, the NAIC voted to adopt changes to the valuation manual. Forty-nine jurisdictions, representing 94.92 percent of the relevant direct written premiums, voted in favor of adopting the amendments. The vote adopting changes to the NAIC valuation manual meets the requirements of §425.073(c).

Section 3.9901 adopts the valuation manual, as required by Insurance Code §425.073. Amending §3.9901 is necessary to adopt the updated valuation manual, as required by Insurance Code §425.073.

This proposal includes provisions related to NAIC rules, regulations, directives, or standards, and under Insurance Code §36.004 TDI must consider whether authority exists to enforce or adopt it. Additionally, under Insurance Code §36.007, an agreement that infringes on the authority of this state to regulate the business of insurance in this state has no effect unless the agreement is approved by the Texas legislature. TDI has determined that neither §36.004 nor §36.007 prohibit the proposed rule because §425.073 requires TDI to adopt a valuation manual that is substantially similar to the valuation manual approved by NAIC and §425.073(c) expressly requires TDI to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Ms. Walker expects that administering the proposed amendment will have the public benefit of ensuring that TDI's rules conform to Insurance Code §425.073.

Ms. Walker expects that the proposed amendment will not increase the cost of compliance with §425.073 because it does not impose requirements beyond those in the statute. Section 425.073 requires that changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, the cost associated with adopting the changes to the valuation manual does not result from the enforcement or administration of the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. This is because it does not impose any requirements beyond those required by statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons and no additional rule amendments are required under Government Code §2001.0045, because the proposed adoption of the amended valuation manual is necessary to implement legislation. The proposed rule implements Insurance Code §425.073, as added by SB 1654, 84th Legislature, Regular Session (2015).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendment is in effect the proposed rule:

- will not create or eliminate a government program;



- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., Central time, on December 23, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., Central time, on December 23, 2019. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the Commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by NAIC, and it provides that after a valuation manual has been adopted by the Commissioner by rule, any changes to the valuation manual must be adopted by rule.

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

CROSS-REFERENCE TO STATUTE. Section 3.9901 implements Insurance Code §425.073, enacted by SB 1654, 84th Legislature, Regular Session (2015).

*§3.9901. Valuation Manual.*

(a) The Commissioner adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 6, 2019 [September 10, 2018], as required by Insurance Code §425.073.

(b) The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

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 5, 2019.

TRD-201904112

James Person

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584

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## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 295. WATER RIGHTS, PROCEDURAL

#### SUBCHAPTER G. DESALINATION, PROCEDURAL

#### 30 TAC §295.302

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §295.302.

#### Background and Summary of the Factual Basis for the Proposed Rule

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.

HB 2031 required the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination process. The commission must adopt rules designating diversion and discharge zones by September 1, 2020. Until such time as the commission adopts rules designating diversion and discharge zones, an applicant for a permit to divert marine seawater or discharge waste resulting from the desalination process must consult with the TPWD and the GLO regarding the point(s) of diversion and discharge.

TPWD and GLO completed their study entitled Marine Seawater Desalination Diversion and Discharge Zones Study in September 2018 and developed a map depicting the diversion and discharge zones which is available on the GLO website on the Coastal Resources Management Viewer. The diversion zones created are applicable only to marine seawater. TPWD and GLO did not designate zones in bays or arms of the Gulf of Mexico where seawater may be diverted.

This rulemaking would implement the requirement in Texas Water Code (TWC), Chapter 18, for the commission to designate appropriate diversion zones by rule.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 297, Water Rights, Substantive; and 30 TAC Chapter 318, Marine Seawater Desalination Discharges, to designate appropriate diversion and discharge zones by rule.

#### Section Discussion

#### §295.302, Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater

The commission proposes to amend §295.302(k). Currently, §295.302(k) requires that an application for diversion of seawater from a bay or arm of the Gulf of Mexico for industrial purposes or for diversion of marine seawater from the Gulf of Mexico include documentation of the results of the consultation with the TPWD and the GLO regarding the point or points from which a facility the person proposes to construct may divert marine seawater or seawater. Proposed §295.302(k) would require that the application include documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and the GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

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

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The rulemaking is proposed in order to comply with state law to specify that the application for a water right to divert marine seawater for desalination contains documentation that the point is located in an approved zone for the diversion of marine seawater.

#### Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law regarding the permitting process associated with marine seawater desalination.

The proposed rule is not expected to result in fiscal implications for businesses or individuals.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and 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.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission 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. Texas Government Code, §2001.0225, applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with specific intent to "protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, 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."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. HB 2031 required TPWD and GLO to jointly conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater. TPWD and GLO were required to submit a report on the results of the study to the commission, and the commission by rule is required to designate appropriate diversion zones and discharge zones. The stated purpose of HB 2031 is to "streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination." HB 2031 further states that "the purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all of this state's water resources in order to balance this state's supply and demand for water, which is one of the most precious resources of this state." Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and to streamline the process for these permits. The proposed rulemaking streamlines the process by authorizing documentation that the point or points from which a facility the person proposes to construct for diversion of marine seawater

ter are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed amendment would not adversely affect in a material way the economy, 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. It is not anticipated that the cost of complying with the proposed amendment will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendment will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicable requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). 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 specific law." This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under specific state statutes enacted in HB 2031.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rule is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and streamline the process for these permits. The proposed rule would substantially advance this stated purpose by authorizing documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the proposed rule because the rule does not impact private real property. In HB 2031, the legislature expressed that "in this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." For marine seawater, there are no permanent water rights or real private property

rights that have been granted for uses of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, few water rights have been granted for this water. There is no potential for harm to other water rights by this rulemaking. The burden on private real property rights will be nonexistent to minimal because of the amount of water in the Gulf of Mexico or a bay or arm of the Gulf of Mexico. Diversions of seawater in a bay or arm of the Gulf of Mexico are also limited to industrial water and water for municipal and domestic needs cannot be taken from a bay or arm of the Gulf of Mexico under Chapter 295, Subchapter G.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rule include: Impoundments and diversion of state water within 200 stream miles of the coast.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies. The proposed rule is consistent with these CMP goals and policies because this rule does not create or have a direct or significant adverse effect on any CNRAs, and because the proposed rule requires diversion to be located in an approved diversion zone in the Gulf of Mexico or consultation with the TPWD and GLO regarding the location of any diversion point in a bay or arm of the Gulf of Mexico.

Written comments on the consistency of this rulemaking with CMP goals and policies may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 17, 2019, at 10:00 a.m. in Room 201S in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-102-295-OW. The comment period closes on January 6, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Kathy Alexander, Water Availability Division at (512) 239-0778.

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013(a)(1) concerning the commission's general jurisdiction over water and water rights; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103, concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission's approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; and TWC, §11.1405, concerning desalination of seawater for use for industrial purposes.

The proposed amendment implements TWC, §11.1405 and §18.003 and House Bill 2031 passed by the 84th Texas Legislature, 2015.

#### §295.302. *Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater.*

(a) An application for diversion of seawater from a bay or arm of the Gulf of Mexico for industrial purposes or for diversion of marine seawater must be submitted in accordance with §295.2 of this title (relating to Preparation of Application) and include, for each applicant, the full name, post office address, telephone number, and federal identification number. If the applicant is a partnership, it shall be designated by the firm name followed by the words "a partnership." If the applicant is acting as trustee for another, it shall be designated by the trustee's name followed by the word "trustee." If ~~someone~~ [one] other than the named applicant executes the application, the name, position, post office address, and telephone number of the person executing the application shall be given.

(b) The application shall include the signature of the applicant in accordance with §295.14 of this title (relating to Signature of Applicant). Each applicant shall subscribe and swear to the application before any person entitled to administer oaths, who shall also sign his or her name and affix his or her seal of office to the application.

(c) The application shall state the location of point(s) of diversion and provide latitude and longitude coordinates in decimal degrees to six decimal places for each point.

(d) The total amount of marine seawater or seawater from a bay or arm of the Gulf of Mexico to be diverted and used shall be stated in definite terms, i.e., a definite number of acre-feet annually and the application shall state the maximum rate of diversion in gallons per minute or cubic feet per second for each diversion point.

(e) The application shall state each purpose of use in definite terms. If the application requests authorization to use marine seawater for multiple purposes, the application shall expressly state an annual amount of marine seawater to be used for the multiple purposes as well as for each purpose of use.

(f) The applicant shall provide evidence that the marine seawater or seawater diverted from a bay or arm of the Gulf of Mexico

will be treated in accordance with applicable commission rules, based on the purpose for which the water is to be used, before it is used.

(g) The application must include a water conservation plan meeting the requirements contained in §297.208 of this title (relating to Consideration of Water Conservation).

(h) The application shall contain information describing how it addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan or, in the alternative, describe conditions that warrant a waiver of this requirement.

(i) The application must include a determination of the total dissolved solids concentration of the marine seawater or seawater at the water source based on monthly sampling and analysis, as described in §297.205 of this title (relating to Determination of Total Dissolved Solids Concentration), and provide the data collected to the commission.

(j) The application shall provide documentation that the applicant will take reasonable measures to minimize impingement and entrainment associated with the diversion of marine seawater or seawater as described in §297.209 of this title (relating to Impingement and Entrainment).

(k) The application shall include:

(1) documentation that points or points from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO) on the date that the application is submitted; or

(2) documentation of the results of the consultation with the TPWD [Texas Parks and Wildlife Department] and the GLO [Texas General Land Office] regarding the point or points from which a facility the person proposes to construct may divert [~~marine seawater or~~ seawater.

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 6, 2019.

TRD-201904147

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 293-1806



## CHAPTER 297. WATER RIGHTS, SUBSTANTIVE SUBCHAPTER K. DESALINATION, SUBSTANTIVE

### 30 TAC §297.202

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §297.202.

Background and Summary of the Factual Basis for the Proposed Rule

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.

HB 2031 required the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination process. The commission must adopt rules designating diversion and discharge zones by September 1, 2020. Until such time as the commission adopts rules designating diversion and discharge zones, an applicant for a permit to divert marine seawater or discharge waste resulting from the desalination process must consult with the TPWD and the GLO regarding the point(s) of diversion and discharge.

TPWD and GLO completed their study entitled Marine Seawater Desalination Diversion and Discharge Zones Study in September 2018 and developed a map depicting the diversion and discharge zones which is available on the GLO website in the Coastal Resources Management Viewer. The diversion zones created are applicable only to marine seawater. TPWD and GLO did not designate zones in bays or arms of the Gulf of Mexico where seawater could be diverted for industrial purposes.

This rulemaking would implement the requirement in Texas Water Code (TWC), Chapter 18, for the commission to designate appropriate diversion zones by rule.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 295, Water Rights, Procedural; and 30 TAC Chapter 318, Marine Seawater Desalination Discharges, to designate appropriate diversion and discharge zones by rule.

#### Section Discussion

##### §297.202, Approval Criteria for Diversion of Marine Seawater and Seawater

The commission proposes to amend §297.202(5) which currently states that the commission shall grant an application for a water right to divert marine seawater or seawater for desalination under this subchapter only if the applicant has provided documentation of the results of the consultation with the TPWD and the GLO (required by current §295.302). Proposed §297.202(5) states that the commission shall grant an application for a water right to divert marine seawater or seawater for desalination under this subchapter only if the application includes documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted; or documentation of the results of the consultation with the TPWD and the GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

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

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for

other units of state or local government as a result of administration or enforcement of the proposed rule.

The rulemaking is proposed in order to comply with state law to specify that the application for a water right to divert marine seawater for desalination contains documentation that the point is located in an approved zone for the diversion of marine seawater.

#### Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with the state law regarding the permitting process associated with marine seawater desalination.

The proposed rule is not expected to result in fiscal implications for businesses or individuals.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and 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.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission 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. Texas Government Code, §2001.0225, applies to a "Major environmental rule" which

is defined in Texas Government Code, §2001.0225(g)(3) as a rule with specific intent to "protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, 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."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. HB 2031 required TPWD and GLO to jointly conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater. TPWD and GLO were required to submit a report on the results of the study to the commission, and the commission by rule is required to designate appropriate diversion zones and discharge zones. The stated purpose of HB 2031 is to "streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination." HB 2031 further states that "the purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all of this state's water resources in order to balance this state's supply and demand for water, which is one of the most precious resources of this state." Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and to streamline the process for these permits. The proposed amendment in Chapter 297 streamlines the process by authorizing documentation that the point or points from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rule would not adversely affect in a material way the economy, 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. It is not anticipated that the cost of complying with the proposed rule will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendment will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicable requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). 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 specific law." This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being proposed under the TCEQ's

general rulemaking authority. This rulemaking is being proposed under specific state statutes enacted in HB 2031.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the proposed rule constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rule is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and streamline the process for these permits. The proposed rule would substantially advance this stated purpose by authorizing documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rule because this rule does not impact private real property. In HB 2031, the legislature expressed that "in this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." For marine seawater, there are no permanent water rights or private real property rights that have been granted for uses of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, few water rights have been granted for this water. There is no potential for harm to other water rights by this rulemaking. The burden on private real property rights will be nonexistent to minimal because of the amount of water in the Gulf of Mexico or a bay or arm of the Gulf of Mexico. Diversions of seawater in a bay or arm of the Gulf of Mexico are also limited to industrial water and water for municipal and domestic needs cannot be taken from a bay or arm of the Gulf of Mexico under Chapter 295, Subchapter G.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rule include: Impoundments and diversion of state water within 200 stream miles of the coast.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies. The proposed rule is consistent with these CMP goals and policies because this rule does not create or have a direct or significant adverse effect on any CNRAs, and because the proposed rule requires diversion to be located in an approved diversion zone in the Gulf of Mexico or consultation with the TPWD and GLO regarding the location of any diversion point in a bay or arm of the Gulf of Mexico.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 17, 2019, at 10:00 a.m. in Room 201S in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-102-295-OW. The comment period closes on January 6, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Kathy Alexander, Water Availability Division, at (512) 239-0778.

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013(a)(1) concerning the commission's general jurisdiction over water and water rights; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103, concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission's approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; and TWC, §11.1405, concerning desalination of seawater for use for industrial purposes.

The proposed amendment implements TWC, §11.1405 and §18.003 and House Bill 2031 passed by the 84th Texas Legislature, 2015.

§297.202. *Approval Criteria for Diversion of Marine Seawater and Seawater.*

The commission shall grant an application for a water right to divert marine seawater or seawater for desalination under this subchapter only if:

(1) the application conforms to the requirements prescribed by §295.302 of this title (relating to Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater) and is accompanied by the prescribed fee;

(2) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or the water contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter, in accordance with the requirements set out in §297.205 of this title (relating to Determination of Total Dissolved Solids Concentration);

(3) the diverted marine seawater or seawater is intended for a beneficial use and the marine seawater or seawater will be treated in accordance with applicable commission rules, based on the purpose for which the marine seawater or seawater is to be used, before it is used;

(4) the application is not detrimental to the public welfare;

(5) the applicant has provided documentation:

(A) that the point or points from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO) on the date that the application is submitted; or

(B) [øf] the results of the consultation with the TPWD and GLO regarding the location of a facility the person proposes to construct for diversion of seawater [Texas Parks and Wildlife Department and the Texas General Land Office];

(6) the application addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan unless the commission determines that new, changed, or unaccounted for conditions warrant waiver of this requirement; and

(7) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by §297.1 of this title (relating to Definitions).

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 6, 2019.

TRD-201904148

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 293-1806



## CHAPTER 318. MARINE SEAWATER DESALINATION DISCHARGES SUBCHAPTER A. GENERAL REQUIRE- MENTS FOR MARINE SEAWATER DESALINA- TION DISCHARGES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §318.9 and simultaneously proposes new §318.9.

#### Background and Summary of the Factual Basis for the Proposed Rules

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater. In HB 2031, the legislature created new Texas Water Code (TWC), Chapter 18, to address marine seawater desalination projects.

Additionally, HB 2031 required the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination process. The commission must adopt rules designating diversion and discharge zones by September 1, 2020. Until such time as the commission adopts rules designating diversion and discharge zones, an applicant for a permit to divert marine seawater or discharge waste resulting from the desalination process must consult with the TPWD and the GLO regarding the point(s) of diversion and discharge.

TPWD and GLO completed their study entitled *Marine Seawater Desalination Diversion and Discharge Zones Study* in September 2018 (TPWD/GLO study) and developed a map depicting the diversion and discharge zones which is available on the GLO website on the *Coastal Resources Management Viewer* (CRM Viewer).

This rulemaking would implement the requirement in TWC, Chapter 18, for the commission to designate appropriate discharge zones by rule.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 295, Water Rights, Procedural; and, 30 TAC Chapter 297, Water Rights, Substantive, to designate appropriate diversion zones by rule.

#### Section by Section Discussion

##### *§318.9. Discharge Zones for Near-Shore and Off-Shore Discharges.*

The commission proposes the repeal of §318.9 which requires applicants for near-shore and off-shore discharges from marine seawater desalination facilities to consult with TPWD and GLO regarding the discharge location which is required by TWC, §18.005(h) until the commission adopts rules under TWC, §18.005(g) designating discharge zones.

The commission proposes a new §318.9, which would require marine seawater desalination facilities for near-shore and off-shore discharges to locate their outfalls within a discharge zone recommended in the TPWD/GLO study and depicted in the CRM Viewer.

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

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rulemaking.

The rulemaking is proposed in order to adopt the zones that were identified in the report by TPWD and the GLO for the discharge of waste resulting from the desalination of marine seawater.

#### Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rulemaking is in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rulemaking is in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rules do not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission 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. Texas Government Code, §2001.0225, applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with specific intent to "protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, 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."



First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. HB 2031 required TPWD and GLO to jointly conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater. TPWD and GLO were required to submit a report on the results of the study to the commission, and the commission by rule is required to designate appropriate diversion zones and discharge zones. The stated purpose of HB 2031 is to "streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination." HB 2031 further states that "the purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all of this state's water resources in order to balance this state's supply and demand for water, which is one of the most precious resources of this state." Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and to streamline the process for these permits. The proposed rulemaking streamlines the process by authorizing marine seawater desalination facilities for near-shore and off-shore discharges to locate their outfalls within a discharge zone recommended in the TPWD/GLO study and depicted in the CRM Viewer.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rulemaking would not adversely affect in a material way the economy, 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. It is not anticipated that the cost of complying with the proposed rulemaking will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicable requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). 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 specific law." This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under specific state statutes enacted in HB 2031.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rulemaking constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and streamline the process for these permits. The proposed rulemaking would substantially advance this stated purpose by requiring marine seawater desalination facilities for near-shore and off-shore discharges to locate their outfalls within a discharge zone recommended in the TPWD/GLO study and depicted in the CRM Viewer

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rulemaking because these rules do not impact private real property. In HB 2031, the legislature expressed that "in this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." For marine seawater, there are no permanent water rights or real property rights that have been granted for uses of the water in the Gulf of Mexico. There is no potential for harm to other water rights by this rulemaking. The burden on private real property rights will be nonexistent to minimal because of the amount of water in the Gulf of Mexico.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rulemaking in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rulemaking includes: discharges must comply with water quality-based effluent limits; discharges that increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly degrade coastal water quality, unless necessary for important economic or social development; and to the greatest extent practicable, new wastewater outfalls must be located where they will not adversely affect critical areas.

Promulgation and enforcement of this rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies. The proposed rulemaking is consistent with these CMP goals and policies because this rulemaking does not create or have a direct or significant adverse effect on any CNRAs, and because the proposed rulemaking does not allow a discharge from marine seawater desalination projects into or adjacent to water in the state, except in accordance with an individual permit issued by the commission. Individual permits issued under this proposed rulemaking will include effluent limitations to ensure compliance with water quality standards. The proposed

rulemaking requires wastewater discharges to be located in an approved discharge zone in the Gulf of Mexico.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 17, 2019, at 10:00 a.m. in Room 201S in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-102-295-OW. The comment period closes on January, 6, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

### 30 TAC §318.9

#### Statutory Authority

The repeal of §318.9 is proposed under Texas Water Code (TWC), §5.013 concerning the commission's general jurisdiction; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103, concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission's approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; TWC, §26.011, concerning the commission's general authority to adopt rules for waste discharge or impending waste discharges under TWC, Chapter 26; TWC, §26.027, concerning the commission's authority to issue permits for the discharge of waste into or adjacent to water in the state; and TWC, §26.041, concerning the commission's authority to prevent a discharge of waste that is injurious to public health.

The proposed repeal implements TWC, §18.005 and House Bill (HB) 2031 passed by the 84th Texas Legislature, 2015.

#### *§318.9. Discharge Zones for Near-Shore and Off-Shore Discharges.*

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 6, 2019.

TRD-201904149

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 293-1806



### 30 TAC §318.9

#### Statutory Authority

New §318.9 is proposed under Texas Water Code (TWC), §5.013, concerning the commission's general jurisdiction; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103 concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission's approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; TWC, §26.011, concerning the commission's general authority to adopt rules for waste discharge or impending waste discharges under TWC, Chapter 26; TWC, §26.027, concerning the commission's authority to issue permits for the discharge of waste into or adjacent to water in the state; and TWC, §26.041, concerning the commission's authority to prevent a discharge of waste that is injurious to public health.

The proposed new section implements TWC, §18.005, and House Bill 2031 passed by the 84th Texas Legislature, 2015.

#### *§318.9. Discharge Zones for Near-Shore and Off-Shore Discharges.*

For near-shore discharges or off-shore discharges, the point at which a facility may discharge wastewater resulting from the desalination of marine seawater must be located in a discharge zone recommended and depicted by the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO) pursuant to Marine Seawater Desalination Diversion and Discharge Zones Study (September 2018) as amended, available on the TPWD website, and as depicted on the Coastal Resources Management Viewer, on the GLO website.

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 6, 2019.

TRD-201904150

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 293-1806



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

## SUBCHAPTER W. AMUSEMENT MACHINE REGULATION AND TAX

### 34 TAC §3.602

The Comptroller of Public Accounts proposes amendments to §3.602, concerning licenses and certificates, renewals and due dates, occupation tax permits and exemptions. The proposed amendments define terms used in the section, add information concerning license and registration holder's fees, and provide details relating to displaying occupational tax permits.

For consistency with the wording in Occupations Code, Chapter 2153 (Coin-Operated Machines), the comptroller replaces the term "operate" with the phrase "exhibit or display" throughout the section in reference to the activities for which a license is required.

The comptroller amends subsection (a) to add definitions. In paragraph (1), the comptroller defines the term "coin-operated amusement machine." The definition incorporates information from §3.601(a)(4) and (5) of this title, concerning Definitions, Changes in Ownership, Gross Receipts Regulations, and Record Keeping Requirements. §3.601 defines both "machine or amusement machine," which is a machine that vends or dispenses music or is operated for skill or pleasure, and "machines designed exclusively for children," which are machines that can only be used by a child under 12 years of age. The proposed definition is also consistent with the definitions of the terms "coin-operated machine," "music coin-operated machine," and "skill or pleasure coin-operated machine" in Occupations Code, §2153.002(1), (4), and (9) (Definitions). Throughout the section, the comptroller replaces the terms "amusement machine" and "coin-operated machine" with the defined term "coin-operated amusement machine."

The definitions for the different types of license holders (general business, import, and repair) in paragraphs (2), (3), and (6) come from Occupations Code, §2153.152 (Types of Licenses).

In paragraph (4), the comptroller gives the term "person" a meaning consistent with the definition of the term in Occupations Code, §2153.002(7). Because the definition of "person" in the Occupations Code begins with "includes," a term of enlargement, the comptroller adds the phrase "or other organization or legal entity," consistent with Business Organizations Code §1.002(69-b) (Definitions).

In paragraph (5), the comptroller gives "registration certificate holder" the meaning assigned in Occupations Code, §2153.156 (Registration Certificate Required).

In paragraph (7), the comptroller defines the term "tax permit" using the definition assigned to "permit" in §3.601 of this title. The comptroller uses the term "tax permit" in this section to be consistent with Occupations Code, §2153.406 (Tax Permit). The comptroller reletters subsequent subsections.

The comptroller amends relettered subsection (b)(1) to identify the annual fees for each type of license and for registration certificates. These fees are statutory. See Occupations Code, §2153.154 (License Fee). The comptroller removes the word "quarterly" from the statement that fees cannot be prorated quarterly because annual fees may not be prorated at all under the statute. Compare Occupations Code, §2153.154, providing for an annual license fee and stating that the comptroller may not refund any part of a license fee after a license is issued, with Occupations Code, §2153.403 (Prorated Tax), which provides

that the occupation tax on a coin-operated machine may be prorated quarterly.

The comptroller amends relettered subsection (b)(2), concerning the age requirement, to add a reference to registration certificates, as well as licenses. The comptroller replaces the phrase "natural person" with "individual" for consistency with other parts of the section and with Occupations Code, Chapter 2153. The subsection is also revised to make clear that the comptroller will not issue a license or registration certificate to a minor under 18 years of age.

The comptroller amends relettered subsection (b)(5), concerning the occasional sales exemption for a registration certificate holder, to make the section read more easily. A registration certificate holder is not required to obtain a general business license or import license if the certificate holder is not in the business of selling machines and falls under the occasional sales exemption.

The comptroller amends relettered subsection (c), concerning annual general business, import, and repair license renewals and annual occupation tax, to delete the phrase "and annual occupation tax." The occupation tax is addressed in relettered subsection (e). In addition, the comptroller adds additional information from Occupations Code, Chapter 2153 not currently contained in this subsection. New paragraph (3) explains that annual license fees cannot be prorated and must be submitted with an application. Occupations Code, §2153.153 (License Application Requirements). New paragraph (4) incorporates details for late-filed license renewal applications for unexpired licenses. See Occupations Code, §2153.162(a) (License and Registration Renewal). The comptroller adds paragraph (5) to incorporate details for late-filed license renewal applications for expired licenses pursuant to Occupations Code, §2153.162(b), (c). In paragraph (5), the comptroller also memorializes current agency practice requiring a person who has operated under an expired license for two or more years to pay all past due fees prior to applying for a new license.

The comptroller also amends relettered subsection (d), concerning annual registration certificate renewals and annual occupation tax, to delete the phrase "and annual occupation tax." The occupation tax is addressed in relettered subsection (e). In addition, the comptroller adds information from Occupations Code, Chapter 2153 not currently contained in this subsection. The comptroller amends paragraph (3) to remove the term "quarterly" and remove references to license fees because that information has been added in subsection (c)(3). The comptroller adds paragraphs (4) and (5) to incorporate details for late-filed applications for registration certificate renewals and memorialize current agency practice. See Occupations Code, §2153.162.

The comptroller amends relettered subsection (e), concerning occupation tax permits, to make the information easier to read. The comptroller revises subsection (e)(1) to explain when the occupation tax is due and to add that an owner pays the occupation tax by purchasing a tax permit. See Occupations Code, §§2153.401 (Imposition of Tax), 2153.404 (Collection), and 2153.406.

The comptroller amends subsection (e)(2) to remove the attached graphic with the rate schedule and incorporate the information directly into the section as new subparagraphs (A) through (D). Because there is no longer an attached rate schedule, the comptroller changes the heading of the paragraph to "tax rate."

The comptroller amends subsection (e)(3) to emphasize that the duplicate tax permits may only replace valid tax permits that are lost, stolen, or destroyed. The comptroller does not issue duplicate tax permits to replace invalid tax permits. The comptroller also revises the heading of the paragraph use the lower case, for consistency with the rest of the subsection.

The comptroller makes no substantive revisions to subsection (e)(4).

The comptroller amends subsection (e)(5) to explain how occupational tax permits must be affixed to the coin-operated amusement machine in order for the tax permits to be valid.

The comptroller adds new subsection (e)(6) explaining when a tax permit is invalid and the consequences of a not displaying a valid tax permit. Paragraph (6)(A) explains that a new tax permit affixed on top of an old tax permit is invalid because it is not affixed to a permanent surface of the machine. Similarly, a new tax permit affixed on any removable portion of the machine is invalid. Paragraph (6)(B) states that an invalid tax permit may only be replaced with a new tax permit. Paragraph (6)(C) is based upon Occupations Code, §2153.354 (Civil Penalty) and addresses the penalties for exhibiting or displaying a coin-operated amusement machine without a valid tax permit. Subsequent paragraphs are renumbered.

The comptroller amends renumbered paragraph (7), to use the term "owner" instead of "taxpayer." See Occupations Code, §2153.406.

The comptroller reorganizes the section to add new subsection (f), concerning exemptions, and reletters current subsections (d)(7) and (8) as subsections (f)(1) and (2). The comptroller adds paragraph (3) to address private ownership of machines. See Occupations Code, §2153.006 (Private Ownership Exempt).

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by memorializing the agency's current practices and definitions. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to James D. Arbogast, Chief Counsel, Hearings & Tax Litigation Division, P.O. Box 13528, Austin, Texas 78711-3528 or james.arbogast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Occupations Code, §2153.052 (Rulemaking Authority) and Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provide the comptroller with the authority to prescribe, adopt, and

enforce procedural and due process rules relating to the administration and enforcement of the provisions of Occupations Code, Chapter 2153 (Coin-Operated Machines).

The amendment implements Occupations Code, §2153.051 (General Duties of Comptroller) and all other statutory provisions identified in the preamble that are cited in relation to specific proposed amendments.

§3.602. *Licenses and Certificates, Renewals and Due Dates, Occupation Tax Permits and Exemptions.*

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

(1) Coin-operated amusement machine--Any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, that vends or dispenses music or is operated for skill or pleasure. The term does not include an amusement machine designed exclusively for children under 12 years of age.

(2) General business license holder--A person who may engage in the business of manufacturing, owning, buying, selling, renting, leasing, trading, maintaining, transporting, or exhibiting in Texas, or storing a coin-operated amusement machine.

(3) Import license holder--A person who may engage in the business of importing, transporting, owning, buying, repairing, selling, or delivering a coin-operated amusement machine for sale or delivery in this state.

(4) Person--An individual, association, trustee, receiver, partnership, corporation, or other organization or legal entity, or a manager, agent, servant, or employee of an individual, association, trustee, receiver, partnership, corporation, or other organization or legal entity.

(5) Registration certificate holder--A person who is exempt from the licensing and recordkeeping requirements in Occupations Code, Chapter 2153 (Coin-Operated Machines) but who may not exhibit a coin-operated amusement machine unless the machine is registered annually with the comptroller.

(6) Repair license holder--A person who may engage in the business of maintaining, transporting, or storing a coin-operated amusement machine.

(7) Tax permit--The decal issued by the comptroller to an owner of a coin-operated amusement machine evidencing the payment of the occupation tax.

(b) [(a)] Licenses and registration certificates.

(1) Annual general business, import, and/or repair license fees, and registration certificate fees. Annual license and registration certificate fees for a general business license holder, import license holder, repair license holder, and a registration certificate holder are payable in advance and cannot be prorated. The annual fees are as follows: [quarterly:]

(A) for a general business license applicant with 50 or fewer machines, the fee is \$200;

(B) for a general business license applicant with 51 to 200 machines, the fee is \$400;

(C) for a general business license applicant with over 200 machines, the fee is \$500;

(D) for an import license applicant, the fee is \$500;

(E) for a repair license applicant, the fee is \$50; and

(F) for a registration certificate applicant, the fee is \$150.

(2) Age requirement for issuance of a license or registration certificate. No individual [natural person] shall be issued a license or registration certificate by the comptroller for the operation of coin-operated amusement machines unless at the time the license or certificate is issued the applicant is [more than] 18 years of age or older.

(3) Information requirement for issuance of a license or registration certificate. An applicant for a license or registration certificate must provide all information required on the [by] comptroller's application before a license or registration certificate will be issued or renewed.

(4) General business license and registration certificate notification requirement. A general business license holder must notify the comptroller in writing within 10 days of any change in ownership of a coin-operated amusement machine. A registration certificate holder must notify the comptroller in writing of any change in ownership of a coin-operated amusement machine and each time the location of a machine is changed within 10 days of the change.

(5) Occasional sale exemption for registration certificate holder. A registration certificate holder may sell two [make one or two sales of] coin-operated amusement machines during any 12-month period without being required to obtain a general business or import license, if the certificate holder does not hold out as engaging (or does not habitually engage) in the business of selling coin-operated amusement machines [without losing the licensing exemption]. Before the third sale of a coin-operated amusement machine in a 12-month period by a registration certificate holder not previously in the business of selling, leasing, or renting coin-operated amusement machines, a general business or import license must be obtained. The transfer of title or possession of more than one machine in a single transaction will constitute one sale.

(c) [(b)] Annual general business, import, and repair license renewals, and annual occupation tax.

(1) License renewal applications are due November 30. License renewal applications will not be considered complete for processing unless the tax due and the license fee are remitted. Complete license renewal applications filed after the due date may result in the renewal license being issued after December 31, the expiration date of the existing license. In such a case a person may not operate coin-operated amusement machines after the expiration date until the renewal license is issued. A person who operates coin-operated amusement machines without a license or with an expired license is guilty of a Class A misdemeanor.

(2) An applicant who properly completes the license renewal application and remits all fees and taxes with it by the due date may continue to exhibit or display coin-operated [operate] amusement machines after the expiration date if the applicant's license renewal has not been issued unless the applicant is notified by the comptroller prior to the license expiration date of a problem with the license renewal.

(3) The annual license fee must be submitted with a license renewal application. License fees may not be prorated.

(4) Late-filed application for license renewal. If an application for renewal of an unexpired license is postmarked December 1 - December 31, the applicant must remit a late fee of \$50 in addition to the annual license fee listed in subsection (b)(1) of this section.

(5) Application for renewal of an expired license.

(A) A license holder may renew an expired license if it has not been expired for more than 90 days by paying to the comptroller a fee that is 1-1/2 times the amount of the annual license fee listed in subsection (b)(1) of this section.

(B) A license holder may renew an expired license if it has been expired for more than 90 days but less than two years by paying to the comptroller a fee that is two times the amount of the annual license fee listed in subsection (b)(1) of this section.

(C) A person whose license has been expired for two years or more may not renew their license and must comply with the requirements and procedures for obtaining a new license under subsection (b) of this section. In addition to other penalties allowed by law, each person whose license has been expired for two years or more and who has been engaged in business as a general business license holder, import license holder, or repair license holder must remit to the comptroller an amount equal to two times the amount of the annual license fee listed in subsection (b)(1) of this section for each year that the person engaged in business with an expired license.

(d) [(e)] Annual registration certificate renewals [and annual occupation tax].

(1) Registration certificate renewal applications are due November 30. Registration certificate renewal applications will not be processed unless the tax due and the registration fee are remitted. Registration certificate renewal applications filed after the due date may result in the renewal registration certificate being issued after December 31, the expiration date of the existing registration certificate. In such a case, a person may not exhibit or display coin-operated [operate] amusement machines after the expiration date until the renewal certificate is issued. A person who exhibits or displays coin-operated [operates] amusement machines without a registration certificate or with an expired registration certificate is guilty of a Class A misdemeanor.

(2) An applicant who properly completes the registration certificate renewal application and remits all fees and taxes with it by the due date may continue to exhibit or display coin-operated [operate] amusement machines after the expiration date even if the registration certificate renewal has not been issued, unless the applicant is notified by the comptroller prior to the registration certificate expiration date of a problem with the registration certificate renewal.

(3) Registration [License and registration] certificate fees may not be prorated [quarterly] and the [annual license or] registration fee must be submitted with the registration certificate renewal [an] application.

(4) Late-filed application for registration certificate renewal. If an application for renewal of an unexpired registration certificate is postmarked December 1 - December 31, the applicant must remit a late fee of \$50 in addition to the annual registration certificate fee listed in subsection (b)(1) of this section.

(5) Application for renewal of an expired registration certificate.

(A) A registration certificate holder may renew an expired registration if it has not been expired for more than 90 days by paying to the comptroller a fee that is 1-1/2 times the amount of the annual registration fee listed in subsection (b)(1)(F) of this section.

(B) A registration certificate holder may renew an expired registration if it has been expired for more than 90 days but less than two years by paying to the comptroller a fee that is two times the amount of the annual registration fee listed in subsection (b)(1)(F) of this section.

(C) A person whose registration has been expired for two years or more may not renew their registration and must comply with the requirements and procedures for obtaining a new registration certificate under subsection (b) of this section. In addition to other penalties allowed by law, each person whose registration has been expired for two years or more and who has been engaged in business as a registration certificate holder must remit to the comptroller an amount equal to two times the amount of the annual registration fee listed in subsection (b)(1) of this section for each year that the person engaged in business with an expired registration.

(e) ~~(d)~~ Occupation tax permits.

(1) Occupation tax. Each coin-operated amusement machine that an owner ~~is subject to the occupation tax at the time a person~~ exhibits, displays, or permits ~~[a machine]~~ to be exhibited or displayed in this state is subject to an annual occupation tax. With the exception of annual renewals, the occupation tax is due at the time the owner exhibits or displays the machine, or permits the machine to be exhibited or displayed, in this state. ~~[with the exception of annual renewals.]~~ The occupation tax for annual renewals for each machine exhibited or displayed or permitted to be exhibited or displayed in this state is due November 30 of each year. The purchase of a tax permit is payment of the occupation tax.

(2) Tax rate ~~[Rate schedule]~~. The tax rate is \$60 per year. When a coin-operated amusement machine is ~~[following rate schedule will be applicable to machines]~~ first exhibited or displayed or permitted to be exhibited or displayed in this state, the occupation tax for ~~[in any quarter of]~~ the calendar year is prorated as follows: [-]

(A) for a tax permit issued January 1 to March 31, the amount of tax is \$60;

(B) for a tax permit issued April 1 to June 30, the amount of tax is \$45;

(C) for a tax permit issued July 1 to September 30, the amount of tax is \$30; and

(D) for a tax permit issued October 1 to December 31, the amount of tax is \$15.  
[Figure: 34 TAC §3.602(d)(2)]

(3) Replacement of lost, stolen, or destroyed valid occupation tax permits ~~[Occupation Tax Permits]~~. The comptroller shall provide a duplicate tax permit if a valid tax permit has been lost, stolen, or destroyed. The fee for each duplicate tax permit is \$5.00. If a valid tax permit is lost, stolen, or destroyed, a written statement must be submitted explaining the circumstances by which the tax permit was lost, stolen, or destroyed, and must include ~~[including]~~ the number of the lost, stolen, or destroyed tax permit~~[-]~~ before a replacement tax permit can be issued. A tax permit for which a duplicate permit has been issued is void.

(4) Assignment of tax permits. Each coin-operated amusement machine exhibited or displayed in Texas ~~[operated]~~ for music, skill, or pleasure shall be registered with the comptroller by make, model, and serial number. A tax permit issued by the comptroller shall be affixed to each registered machine. Each coin-operated amusement machine shall have a serial number, and the name and telephone number of the owner of each ~~[said]~~ machine must be clearly visible on the outside surface of the machine ~~[cabinet]~~. If a coin-operated machine is not manufactured with a serial number, a license holder ~~[licensee]~~ or registration certificate holder shall assign a serial number to the machine and either stamp or engrave the assigned number on the machine cabinet. If all these requirements have been met, a tax permit may be assigned to a purchaser by submitting written notice, as described in subsection ~~(b)(4)~~ ~~[(a)(4)]~~ of this section, to the

comptroller within 10 days of the transfer of title or possession of a coin-operated amusement machine.

(5) Attachment of tax permits. Tax permits shall be conspicuously ~~[securely]~~ affixed to any permanent surface of the coin-operated amusement ~~[on a]~~ machine to make ~~[in such a manner that]~~ the tax permit visible for inspection without movement of the machine. Tax permits shall be securely and completely affixed to the coin-operated amusement machine so they ~~[permits may be clearly seen by the public and]~~ cannot be removed without ~~[the]~~ continued application of steam and water. Tax permits shall ~~[not]~~ be completely affixed ~~[attached]~~ to a permanent surface of the coin-operated amusement machine by use of the adhesive exposed on the back of the tax permit following complete removal of the protective backing. It is unlawful to enclose any tax permit in a plastic cover, or on a removable cover made of plastic, metal, or any other material, or to in any way affix the tax permit in a less than permanent manner so the tax permit can be removed or moved from one machine to another without the destruction of the tax permit resulting as a consequence of such removal. Tax permits shall not be affixed by the use of tape. Tax permits are not transferrable from one person to another or from one machine to another, and cannot be affixed to a machine that has not been registered with the comptroller ~~[that has not been registered with the comptroller]~~.

(6) Invalid tax permits.

(A) Any tax permit not properly displayed as described in paragraph (5) of this subsection is invalid. Any tax permit not affixed to a permanent surface of a coin-operated amusement machine as described in paragraph (5) of this subsection by use of the adhesive backing on the permit is invalid. Any tax permit removed from a coin-operated amusement machine is invalid.

(B) The comptroller will not issue a duplicate tax permit to replace a tax permit that is invalid. A new tax permit must be purchased to replace an invalid tax permit.

(C) The comptroller may assess a penalty of not less than \$50 or more than \$2,000 against an owner who permits a coin-operated amusement machine under the owner's control to be operated, exhibited, or displayed in this state without a valid tax permit or against a person who exhibits or displays a coin-operated amusement machine in this state without a valid tax permit. The comptroller may assess a penalty for each day a violation occurs.

(7) ~~[(6)]~~ Issuance of extra tax permits. The comptroller will issue tax permits only for coin-operated amusement machines that are exhibited or displayed on location. The owner ~~[taxpayer]~~ shall not stockpile permits or attach tax ~~[nor shall any]~~ permits ~~[be affixed]~~ to unregistered machines.

(f) ~~[(7)]~~ Exemptions.

(1) Establishing an exemption. In order to establish that an organization is exempt from the license requirements pursuant to ~~[the Coin-Operated Machines]~~ Occupations Code, §2153.005 (Exempt Corporations and Associations), the organization must do the following:

(A) submit a written statement to the comptroller explaining ~~[setting out]~~ in detail the nature of the activities conducted or to be conducted, a copy of the articles of incorporation if the organization is a corporation, a copy of the bylaws, a copy of any applicable trust agreement or a copy of its constitution, and a copy of any letter granting exemption from the Internal Revenue Service; and

(B) furnish any additional information requested by the comptroller including, but not limited to, documentation showing all

services performed by the organization and all income, assets, and liabilities of the organization.

(2) [(8)] Written notice. After a review of the material, the comptroller will inform the organization in writing if it qualifies for an exemption.

(3) Private ownership exemption. An individual who owns a coin-operated amusement machine for personal use in the individual's private residence is not required to obtain a license or pay a tax under this section.

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

Filed with the Office of the Secretary of State on November 6, 2019.

TRD-201904139

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 475-0387



### 34 TAC §3.603

The Comptroller of Public Accounts proposes amendments to §3.603, concerning denials; suspensions; revocations; violations; hearings. The proposed amendments provide additional guidance about the process for a license or permit suspension or revocation, or penalty imposition, consistent with applicable laws and current agency practice.

Throughout the section, the comptroller replaces the term "licensee" with "license holder" and the phrase "owner of the registration certificate" with the phrase "registration certificate holder" for consistency with Occupation Code, §2153.301 (Definition).

The comptroller adds new subsection (a) to add reference to the terms defined in §3.602 of this title, concerning Licenses and Certificates, Renewals and Due Dates, Occupation Tax Permits and Exemptions. The comptroller reletters subsequent subsections.

The comptroller amends relettered subsection (b) to add a reference to the Occupations Code and to provide 20 calendar days' notice to request a hearing, which is consistent with Occupations Code, §2153.306 (Determination Hearing), rather than the current 15 days. The comptroller adds a statement that the notice issued to an applicant, license holder, or registration certificate holder will include the proposed final action of the comptroller. This language was previously located in subsection (d).

The comptroller deletes existing subsection (b) because the material addressed in the existing subsection is addressed in new subsection (d).

The comptroller revises the punctuation of subsection (c) to make the subsection easier to read. The comptroller further amends the subsection for clarity. No substantive changes are intended as a result of these amendments.

The comptroller adds new subsection (d) to incorporate information formerly found in subsection (b) concerning the burden of proof for the applicant, license holder, or registration certificate holder. In the new subsection, the comptroller updates the refer-

ence to the Rules of Practice and Procedure, effective January 1, 2019, and revises the description of the "burden of proof" using the terminology of the Rules of Practice and Procedure. See §1.26 of this title, concerning Burden and Standard of Proof in Contested Cases.

The comptroller deletes the text of current subsection (d) because the information is now located in relettered subsection (b).

The comptroller amends subsection (e) to update the number of days in which a hearing may be requested from 15 days to 20 calendar days in accordance with Occupations Code, §2153.306.

The comptroller amends subsection (f) for clarity. No substantive change is intended as a result of these amendments.

The comptroller deletes subsection (g), concerning the requirement to provide a court reporter. All hearings pursuant to this section will be conducted by the State Office of Administrative Hearings.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by memorializing the agency's current practices and definitions. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to James D. Arbogast, Chief Counsel, Hearings & Tax Litigation Division, P.O. Box 13528, Austin, Texas 78711-3528 or james.arbogast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Occupations Code, §2153.052 (Rulemaking Authority) and Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provide the comptroller with the authority to prescribe, adopt, and enforce procedural and due process rules relating to the administration and enforcement of the provisions of Occupations Code, Chapter 2153 (Coin-Operated Machines).

The amendments implement Government Code, Chapter 2001 (Administrative Procedures Act); Occupations Code, Chapter 2153 (Coin-Operated Machines); and the relevant portions of §§1.1 - 1.35 of this title (relating to Rules of Practice and Procedure).

§3.603. *Denials; Suspensions; Revocations; Violations; Hearings.*

(a) License holder, when used in this section, means a general business license holder, import license holder, or a repair license holder as these terms are defined in §3.602 of this title (relating to Licenses and Certificates, Renewals and Due Dates, Occupation Tax Permits and Exemptions).

(b) [(a)] If the comptroller determines an applicant is not eligible for a new or renewal license under Occupations Code, Chapter 2153 (Coin-Operated Machines), or if the comptroller proposes to impose sanctions or suspend or revoke a license or registration certificate, the comptroller will notify the applicant, license holder, or registration certificate holder [licensee] in writing of the proposed action and will state the alleged violation or violations which constitutes grounds for a denial, suspension, or revocation of the license or certificate, or other sanctions. The notice will include the proposed final action of the comptroller. [reasons for such action.] The applicant, license holder [licensee], or registration certificate holder may make a written request for a hearing within 20 calendar [15] days of the date of service of the notice.

[(b)] The hearing will be conducted in accordance with the relevant portions of §§1.1-1.42 of this title (relating to Rules of Practice and Procedure). The burden of proof is upon the applicant, licensee, or registration certificate holder to establish its position by a preponderance of the evidence.]

(c) The comptroller may serve the notice in person or may send the notice [The notice will be served personally by the comptroller or an authorized representative upon an applicant or licensee or owner of a registration certificate or sent] by United States certified mail addressed to the applicant, license holder, [or licensee] or [owner of a] registration certificate holder at its last known address; or, in [ ] the event that notice cannot be delivered [effected] by either of these methods after due diligence, notice will be effective by publishing notice of the [ ] proposed action in a newspaper of general circulation in the area in which the license holder [licensee], applicant, or [owner of the] registration certificate holder conducts its business activities.

(d) The hearing will be conducted in accordance with the relevant portions of §§1.1-1.35 of this title (relating to Rules of Practice and Procedure). The applicant, license holder, or registration certificate holder has the burden of proof by a preponderance of the evidence. [The notice will state the alleged violation or violations which constitutes grounds for a denial, suspension, revocation, or other sanctions. The notice will include the proposed final action of the comptroller.]

(e) If the applicant, license holder [licensee], or registration certificate holder does not request a hearing within 20 calendar [15] days after the date of service of the notice of the comptroller's proposed action, the hearing is waived and the comptroller's proposed action shall be considered the final order or ruling of the comptroller.

(f) After a hearing, any [Any] order of the comptroller refusing an application or revoking or suspending a license or registration certificate or imposing other sanctions shall state the reasons therefor, and a copy of the order shall be served [delivered] immediately on [to] the applicant, license holder [licensee], or registration certificate holder in accordance with the procedure in subsection (c) of this section.

[(g)] A court reporter shall be present at every hearing involving an applicant, licensee, or registration certificate holder. The cost of transcribing the hearing by the reporter shall be assessed against the applicant, licensee, or registration certificate holder following the hearing. Should the comptroller determine a transcript of the hearing is required, the cost of the original transcript shall be assessed to the applicant, licensee, or registration certificate holder. They may purchase a copy of the transcript for their own use directly from the court reporter. Should the comptroller determine a transcript is not required, the applicant, licensee, or registration certificate holder may purchase a copy of the transcript for its own use directly from the court reporter. If they purchase a copy of the transcript, they shall provide, at their own cost, the original transcript to the comptroller.]

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 6, 2019.

TRD-201904140

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 475-0387

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT**

**CHAPTER 211. ADMINISTRATION**

**37 TAC §211.1**

The Texas Commission on Law Enforcement (Commission) proposes amendments to §211.1, concerning Definitions. Paragraphs (1) - (3) in subsection (a) are being amended to include any successors of the Southern Association of Colleges and Schools. Subsection (b) is amended to reflect the effective date of the changes.

The proposed amendments include any successors of the Southern Association of Colleges and Schools under Texas Occupations Code, Section 1701.151.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering the amendments.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by correctly listing those required to take the training.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;



(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability;

(8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendments are proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

No other code, article, or statute is affected by this proposal.

*§211.1. Definitions.*

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

(1) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(2) Academic provider--A school, accredited by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges or its successors, or an international college or university evaluated and accepted by a United States accredited college or university.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the commission.

(5) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(6) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(7) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status.

(8) Background investigation--An investigation completed by the enrolling or appointing entity into [an applicant's personal history that meets or exceeds the commission-developed questionnaire or] an applicant's personal history [statement] as set forth in §217.1(b)(10).

(9) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(10) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(11) Chief administrator--The head or designee of a law enforcement agency.

(12) Commission--The Texas Commission on Law Enforcement.

(13) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(14) Commissioners--The nine commission members appointed by the governor.

(15) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(16) Contract Jailer--A [a] person licensed as a Jailer in a Contract Jail or employed by an agency outside of a County Jail whose employing agency provides services inside of a County Jail which would require the person to have a Jailer License.

(17) Contractual training provider--A law enforcement agency or academy, a law enforcement association, alternative delivery trainer, distance education, academic alternative, or proprietary training provider that conducts specific education and training under a contract with the commission.

(18) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether: [--]

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(19) Community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(20) Diploma mill--An entity that offers for a fee with little or no coursework, degrees, diplomas, or certificates that may be used to represent to the general public that the individual has successfully completed a program of secondary education or training.

(21) Distance education--Study, at a distance, with an educational provider that conducts organized, formal learning opportunities for students. The instruction is offered wholly or primarily by distance study, through virtually any media. It may include the use of: [--] videotapes, DVD, audio recordings, telephone and email communications, and Web-based delivery systems.

(22) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(23) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(24) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(25) Family Violence--In this chapter, has the meaning assigned by Chapter 71, Texas Family Code.

(26) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(27) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity.

(28) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(29) Fit for duty review--A formal specialized examination of an individual, appointed to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status, to determine if the appointee is able to safely and/or effectively perform essential job functions. The basis for these examinations should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical and/or psychological condition or impairment. Objective evidence may include direct observation, credible third party reports; or other reliable evidence. The review should come after other options have been deemed inappropriate in light of the facts of the case. The selected Texas licensed medical doctor or psychologist, who is familiar with the duties of the appointee, conducting an examination should be consulted to ensure that a review is indicated. This review may include psychological and/or medical fitness examinations.

(30) High School Diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development test indicating a high school graduation level. Documentation from diploma mills is not acceptable.

(31) Home School Diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home. (Texas Education Code §29.916)

(32) Honorably Retired Peace Officer--An [an] unappointed person with a Texas Peace Officer license who has a cumulative total of 15 years of full-time service as a Peace Officer. An Honorably Retired Peace Officer does not carry any Peace Officer authority.

(33) Individual--A human being who has been born and is or was alive.

(34) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Texas Government Code §511.0092.

(35) Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(36) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(37) Law enforcement academy--A school operated by a governmental entity which may provide basic licensing courses and continuing education under contract with the commission.

(38) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Texas Transportation Code §546.003 and §547.702.

(39) Lesson plan--A plan of action consisting of a sequence of logically linked topics that together make positive learning experiences. Elements of a lesson plan include: [--] measurable goals and objectives, content, a description of instructional methods, tests and activities, assessments and evaluations, and technologies utilized.

(40) License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(41) Licensee--An individual holding a license issued by the commission.

(42) Line of duty--Any lawful and reasonable action, which an officer identified in Texas Government Code, Chapter 3105 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(43) Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(44) Officer--A peace officer or reserve identified under the provisions of the Texas Occupations Code, §1701.001.

(45) Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 5 power or less, that is carried by the individual officer in an official capacity.

(46) Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Texas Occupations Code, §1701.001.

(47) Personal Identification Number (PID)--A unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(48) Placed on probation--Has received an adjudicated or deferred adjudication probation for a criminal offense.

(49) POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(50) Precision rifle--Any rifle with a frame mounted optical sighting device greater than 5 power that is carried by the individual officer in an official capacity.

(51) Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(52) Public security officer--A person employed or appointed as an armed security officer identified under the provisions of the Texas Occupations Code, §1701.001.

(53) Reactivate--To make a license issued by the commission active after a license becomes inactive. A license becomes inactive at the end of the most recent unit or cycle in which the licensee is not appointed and has failed to complete legislatively required training.

(54) Reinstate--To make a license issued by the commission active after disciplinary action or failure to obtain required continuing education.

(55) Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Texas Occupations Code, §1701.001.

(56) School marshal--A person employed and appointed by the board of trustees of a school district, the governing body of an open-enrollment charter school, the governing body of a private school, or the governing board of a public junior college under Texas Code of Criminal Procedure, Article 2.127 and in accordance with and having the rights provided by Texas Education Code, §37.0811.

(57) Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(58) Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated, reported on the form currently prescribed by the commission, in accordance with Texas Occupations Code, §1701.452.

(59) SOAH--The State Office of Administrative Hearings.

(60) Successful completion--A minimum of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(61) TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

(62) Telecommunicator--A person employed as a telecommunicator under the provisions of the Texas Occupations Code, §1701.001.

(63) Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title.

(64) Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

(65) Training hours--Classroom or distance education hours reported in one-hour increments.

(66) Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(67) Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by or authorized under a training provider contract with the commission to provide preparatory or continuing training for licensees or potential licensees.

(68) Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is February 1, 2020 [May 1, 2018].

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 5, 2019.

TRD-201904114

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-7771



### 37 TAC §211.26

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §211.26, concerning Law Enforcement Agency Audits. Subsection (c) is amended to change if the audit will be forwarded the chief administrator or governing body. Subsection (g) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect who may get the audit report.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by allowing the agency audit report to be forwarded to the chief administrator or governing body.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability;

(8) the proposed rule does not positively or adversely affect/s this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.162, Records and Audit Requirements.

No other code, article, or statute is affected by this proposal.

§211.26. *Law Enforcement Agency Audits.*

(a) All law enforcement agencies shall be audited at least once every five years. Agencies with deficiencies will be evaluated more frequently, as determined by the commission.

(b) The commission may use the following information in auditing an agency:

(1) commission records to include but not limited to:

- (A) applications;
- (B) appointment records;
- (C) separation records; and
- (D) training records;

(2) history of previous violations;

(3) reports from past audits;

(4) on-site audits;

(5) reports and complaints from licensees, other law enforcement agencies, and citizens; and

(6) observations by commission staff.

(c) The results of the audit may [will] be forwarded to the chief administrator and governing body.

(d) If deficiencies are identified, the chief administrator must report to the commission in writing within 30 days what steps are being taken to correct deficiencies and on what date they expect to be in compliance.

(e) The commission may conduct a follow-up audit to verify the correction of deficiencies identified in subsection (d) of this section.

(f) Failure to correct deficiencies identified in subsection (d) may result in the imposition of administrative penalties and/or other disciplinary action as provided in §223.1 and §223.2 of this title.

(g) The effective date of this section is February 1, 2020 [July 14, 2014].

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 5, 2019.

TRD-201904115

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-7771



## CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

### 37 TAC §217.1

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.1, concerning Minimum Standards for Enrollment and Initial Licensure. Subsections are amended to clarify the requirements for enrollment and initial licensure pursuant to HB 4468 (86R). Subsection (j) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect statutory changes pursuant to HB 4468 (86R).

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the requirements for enrollment and initial licensure.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability;

(8) the proposed rule positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.251, Training Programs; Instructors, Texas Occupations Code §1701.253, School Curriculum, Texas Occupations Code §1701.255, Enrollment Qualifications, Texas Occupations Code §1701.256, Instruction in Weapons Proficiency Required, Texas Occupations Code §1701.306, Psychological and Physical Examination, Texas Occupations Code §1701.307, Issuance of Officer or County Jailer License, Texas Occupations Code §1701.308, Weapons Proficiency, Texas Occupations Code §1701.309, Age Requirement, Texas Occupations Code §1701.310, Appointment of County Jailer; Training Required, Texas Occupations Code §1701.311,

Provisional License for Workforce Shortage, Texas Occupations Code §1701.312, Disqualification: Felony Conviction or Placement on Community Supervision, Texas Occupations Code §1701.405, Telecommunicators.

No other code, article, or statute is affected by this proposal.

§217.1. *Minimum Standards for Enrollment and Initial Licensure.*

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation, acceptable to the Commission, that the individual meets eligibility for licensure. ~~[and:]~~

- (1) a high school diploma;
- (2) a high school equivalency certificate; or
- (3) ~~for the basic peace officer training course, an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;~~

(b) The commission shall issue a license to an applicant who meets the following standards:

(1) minimum age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

- (i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or
- (ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers and telecommunicators is 18 years of age;

(2) minimum educational requirements:

- (A) has passed a general educational development (GED) test indicating high school graduation level; ~~[or]~~
- (B) holds a high school diploma; or
- (C) for enrollment purposes in a basic peace officer academy only, has an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) has never been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) has never been convicted or placed on community supervision in any court of an offense involving family violence as defined under Chapter 71, Texas Family Code;

(8) for peace officers, is not prohibited by state or federal law from operating a motor vehicle;

(9) for peace officers, is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation completed by the enrolling or appointing entity into the applicant's

personal history. A background investigation shall include, at a minimum, the following:

(A) An enrolling entity shall:

(i) require completion of the Commission-approved personal history statement;

(ii) verify that the applicant meets each individual requirement for licensure under this rule based on the personal history statement and any other information known to the enrolling entity; and

(iii) contact all previous enrolling entities.

(B) In addition to subparagraph (A) of this paragraph, a law enforcement agency or law enforcement agency academy shall:

(i) require completion of a personal history statement that meets or exceeds the Commission-approved personal history statement.

(ii) contact at least three personal references;

(iii) contact all employers for at least the last ten years, if applicable;

(iv) contact the chief administrator or the chief administrator's designee at each of the applicant's previous law enforcement employers; and

(v) complete criminal history and driving records checks.

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code §501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has never received a dishonorable [or other] discharge [based on misconduct which bars future military service];

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) is a U.S. citizen.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) A person must meet the training and examination requirements:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course(s);

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s);

(4) training for telecommunicator license consists of telecommunicator course; and

(5) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency; or

(3) on failure to comply with the terms stipulated in the provisional license approval.

(g) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. A jailer appointed on a temporary basis shall be enrolled in a basic jailer licensing course on or before the 90th day after their temporary appointment. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license may not be renewed and expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the jailer licensing examination. ~~[On expiration of a temporary license, a person is not eligible for a new temporary jailer license for one year.]~~

(h) The commission may issue a temporary telecommunicator license, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator license. A temporary telecommunicator license expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the telecommunicator licensing examination.

On expiration of a temporary license, a person is not eligible for a new temporary telecommunicator license for one year.

(i) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(j) The effective date of this section is February 1, 2020~~[May 1, 2018]~~.

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 5, 2019.

TRD-201904116

Kim Vickers  
Executive Director  
Texas Commission on Law Enforcement  
Earliest possible date of adoption: December 22, 2019  
For further information, please call: (512) 936-7771



### 37 TAC §217.7

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.7, concerning Reporting Appointment and Separation of a Licensee. Subsection (b) is amended to clarify when the separation of the licensee must be reported. Subsection (e) is amended to reflect the effective date of the changes.

This amendment is necessary to clarify when the separation of the licensee must be submitted.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having the separation of a licensee submitted within a certain time frame.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

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

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.307, Issuance of Officer or County Jailer License, Texas Occupations Code

§1701.3071, Issuance of a Telecommunicator License, Texas Occupations Code §1701.451, Pre-employment Request for Employment Termination Report and Submission of Background Check Confirmation Form.

No other code, article, or statute is affected by this proposal.

#### §217.7. Reporting Appointment and Separation of a Licensee.

(a) Before a law enforcement agency may appoint a person licensed or seeking a license as a peace officer, county jailer, or telecommunicator the agency head or designee must:

- (1) obtain the person's written consent for the agency to view the person's employment records;
- (2) obtain a copy of the Personal Status Report (PSR) maintained by the commission;
- (3) obtain a completed, signed, and notarized Personal History Statement (PHS);
- (4) obtain a Computerized Criminal History (CCH) from TCIC and NCIC;
- (5) obtain proof of eligibility after separation from the military, if applicable;
- (6) conduct and document a background investigation;
- (7) for peace officers, obtain proof of weapons qualification within the 12 months preceding appointment;
- (8) for current licensees, electronically request and obtain the F-5 Return (F5R) from the commission, contact each of the person's previous law enforcement employers, and document the contact on the F5 return; and
- (9) in addition to the requirements listed in this section:
  - (A) For a licensee with more than 180 days since their last appointment:
    - (i) obtain a new declaration of psychological and emotional health (L3 Form);
    - (ii) obtain a new declaration of the lack of any drug dependency or illegal drug use (L2 Form); and
    - (iii) obtain new proof that the licensee has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record.
  - (B) For a person's initial appointment:
    - (i) obtain proof of meeting educational requirements;
    - (ii) obtain proof of meeting U.S. citizenship requirements;
    - (iii) obtain new proof that the person has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;
    - (iv) obtain a new declaration of psychological and emotional health (L3 Form), if more than 180 days from the graduation of the basic licensing course;
    - (v) obtain a new declaration of medical eligibility and lack of any drug dependency or illegal drug use (L2 Form), if more than 180 days from the graduation of the basic licensing course; and
    - (vi) submit an appointment application (L1 Form) and receive an approval of the application before the person discharges any duties related to the license sought.

(10) For current licensees, submit a Statement of Appointment (L1 Form) within 7 days of the appointment.

(b) When a person licensed by the commission separates from an agency, the agency shall, within 7 business days after any local employment appeals are exhausted:

(1) submit a Separation report (Form F5) to the commission; and

(2) provide a copy to the licensee in a manner prescribed by Texas Occupations Code section 1701.452.

(c) A law enforcement agency that is given a signed consent form shall make the person's employment records available to a hiring law enforcement agency as authorized by Texas Occupations Code section 1701.451.

(d) An agency must retain records kept under this section while the person is appointed and for a minimum of five years after the licensee's separation date with that agency. The records must be maintained under the control of the agency head or designee in a format readily accessible to the commission.

(e) The effective date of this section is February 1, 2020 [~~May 1, 2018~~].

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 5, 2019.

TRD-201904117

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

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For further information, please call: (512) 936-7771



## CHAPTER 218. CONTINUING EDUCATION

### 37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §218.3, concerning Legislatively Required Continuing Education for Licensees. Subsections are amended to clarify the requirements for continuing education for licensees pursuant to S.B. 11 (86R), S.B. 1827 (86R), H.B. 1415 (86R), H.B. 2195, (86R), H.B.1552 (86R), H.B. 3503 (86R), H.B. 1735 (86R), H.B. 292 (86R). Subsection (k) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect statutory changes pursuant to S.B. 11 (86R), S.B.1827 (86R), H.B. 1415 (86R), H. B. 2195, (86R), H. B.1552 (86R), H.B. 3503 (86R), H.B. 1735 (86R), and H.B. 292 (86R).

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the requirements for continuing education for licensees.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.253, School Curriculum, Texas Occupations Code §1701.351, Continuing Education Required for Peace Officers, Texas Occupations Code §1701.352, Continuing Education Programs, Texas Occupations Code §1701.353, Continuing Education Procedures, Texas Occupations Code §1701.354, Continuing Education for Deputy Constables, Texas Occupations Code §1701.3545, Initial Training and Continuing Education for Constables.

No other code, article, or statute is affected by this proposal.

§218.3. *Legislatively Required Continuing Education for Licensees.*

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years).

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit.

(2) Telecommunicators shall complete at least 20 hours of continuing education.

(c) Each training cycle (4 years).

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939),



Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislative required training under another commission license or certificate.

(d) Assignment specific training.

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable.

(B) Each 48 month cycle, at [At] least 40 hours of continuing education for constables [each 48 month cycle], as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district with an enrollment of 30,000 or more students must obtain a school-based law enforcement proficiency certificate within 180 [120] days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment (to be added September 1, 2019).

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training.

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270), within 2 years of being licensed [1 year after licensing].

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065), within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is February 1, 2020 [November 1, 2018].

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 5, 2019.

TRD-201904118

Kim Vickers  
Executive Director  
Texas Commission on Law Enforcement  
Earliest possible date of adoption: December 22, 2019  
For further information, please call: (512) 936-7771



### 37 TAC §218.9

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §218.9, concerning Continuing Firearms Proficiency Requirements. Subsection (a)(1) is amended to include firearms certified jailers. Subsection (a)(2)(B) is amended to clarify peace officer or jailer. Subsection (f) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect who is required to complete the required firearms proficiency requirements.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by correctly listing who shall complete the current firearms proficiency requirements.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminates a government program
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency
- (4) the proposed rule does not require an increase or decrease in fees paid to the agency
- (5) the proposed rule does not create a new regulation
- (6) the proposed rule expands, limits, or repeals an existing regulation
- (7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability
- (8) the proposed rule does not positively or adversely affect/s this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.308, Weapons

Proficiency, Texas Occupations Code §1701.355, Continuing Demonstration of Weapons Proficiency.

No other code, article, or statute is affected by this proposal.

§218.9. *Continuing Firearms Proficiency Requirements.*

(a) Each agency or entity that employs at least one peace officer or at least one firearms certified jailer shall:

(1) require each peace officer or firearm certified jailer that it employs to successfully complete the current firearms proficiency requirements at least once each calendar year for each type of firearm carried;

(2) designate a firearms proficiency officer to be responsible for the documentation of annual firearms proficiency. The documentation for each officer shall include:

- (A) date of qualification;
- (B) identification of peace officer or jailer;
- (C) firearm manufacturer, model;
- (D) results of qualifying; and
- (E) course(s) of fire;

(3) keep on file and in a format readily accessible to the commission a copy of all records of this proficiency.

(b) The annual firearms proficiency requirements shall include:

(1) an external inspection by the proficiency officer, range officer, firearms instructor, or gunsmith to determine the safety and functioning of the weapon(s);

(2) a proficiency demonstration in the care and cleaning of the weapon(s) used; and

(3) a course of fire that meets or exceeds the minimum standards.

(c) The minimum standards for the annual firearms proficiency course of fire shall be:

(1) handguns - a minimum of 50 rounds, fired at ranges from point-blank to at least 15 yards with at least 20 rounds at or beyond seven yards, including at least one timed reload;

(2) shotguns - a minimum of five rounds of ammunition fired at a range of at least 15 yards;

(3) precision rifles - a minimum of 20 rounds of ammunition fired at a range of at least 100 yards; however, an agency may, in its discretion, allow a range of less than 100 yards but not less than 50 yards if the minimum passing percentage is raised to 90;

(4) patrol rifles - a minimum of 30 rounds of ammunition fired at a range of at least 50 yards, including at least one timed reload; however, an agency may, in its discretion, allow a range of less than 50 yards but not less than 10 yards if the minimum passing percentage is raised to 90;

(5) fully automatic weapons - a minimum of 30 rounds of ammunition fired at ranges from seven to at least 10 yards, including at least one timed reload, with at least 25 rounds fired in full automatic (short bursts of two or three rounds), and at least five rounds fired semi-automatic, if possible with the weapon.

(d) The minimum passing percentage shall be 70 for each firearm.

(e) The executive director may, upon written agency request, waive a peace officer's demonstration of weapons proficiency based on a determination that the requirement causes a hardship.

(f) The effective date of this section is February 1, 2020[February 1, 2016].

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 5, 2019.

TRD-201904119

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-7771



## CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

### 37 TAC §219.2

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §219.2, concerning Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police. Subsection (b)(2) is amended to clarify which courses are required. Subsection (c)(2), (e)(2), and (g)(2) clarify the continuous years of service required.

This amendment is necessary to reflect the courses and years of service required.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the courses and the years of service required.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not creates or eliminates a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule creates a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability;

(8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.307, Issuance of Officer or County Jailer License, Texas Occupations Code §1701.316, Reactivation of Peace Officer License.

No other code, article, or statute is affected by this proposal.

*§219.2. Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police.*

(a) To be eligible to take a state licensing examination, an out of state, federal criminal investigator, or military police must comply with all provisions of §219.1 of this chapter and this section.

(b) A prospective out-of-state peace officer, federal criminal investigator, or military police applicant for peace officer licensing in Texas must:

(1) meet all statutory licensing requirements of the state of Texas and the rules of the commission;

(2) successfully complete a supplementary peace officer training course, the curriculum of which is developed by the commission, any other courses, as required by the commission; and

(3) successfully pass the Texas Peace Officer Licensing Examination as provided in §219.1 of this chapter.

(c) Requirements (Peace Officers): Applicants who are peace officers from other U.S. states must meet the following requirements:

(1) provide proof of successful completion of a state POST-approved (or state licensing authority) basic police officer training academy;

(2) have honorably served (employed, benefits eligible) as a sworn full time paid peace officer for 2 continuous years within the 4 years prior to application. Service time applied to this section must have been obtained following completion of a state POST approved basic training course;

(3) be subject to continued employment or eligible for re-hire (excluding retirement); and

(4) the applicant's license or certificate must never have been, nor currently be in the process of being, surrendered, suspended, or revoked.

(d) Requirements (Federal): The Texas Code of Criminal Procedures Section 2.122 recognizes certain named criminal investigators of the United States as having the authority to enforce selected state laws by virtue of their authority. These individuals are deemed to have the equivalent training for licensure consideration.

(e) Qualifying Federal Officers must:

(1) have successfully completed an approved federal agency law enforcement training course (equivalent course topics and hours) at the time of initial certification or appointment;

(2) have honorably served (employed, benefits eligible) in one of the aforementioned federal full time paid capacities for 2 continuous years within the 4 years prior to application. Service time applied to this section must have been obtained following completion of a federal agency law enforcement approved basic training course; and

(3) be subject to continued employment or eligible for re-hire (excluding retirement).

(f) Requirements (Military): Must have a military police military occupation specialty (MOS) or air force specialty code (AFSC) classification approved by the commission.

(g) Qualifying military personnel must provide proof of:

(1) successfully completed basic military police course for branch of military served; and

(2) active duty service for 2 continuous years within the 4 years prior to application. Service time applied to this section must have been obtained following completion of an approved basic military police course.

(h) The applicant must make application and submit any required fee(s) in the format currently prescribed by the commission to take the peace officer licensing exam. The applicant must comply with the provisions of §219.1 of this chapter when attempting the licensing exam.

(i) Required documents must accompany the application:

(1) a certified or notarized copy of the basic training certificate for a peace officer, a certified or notarized copy of a federal agent's license or credentials, or a certified or notarized copy of the peace officer license or certificate issued by the state POST or proof of military training;

(2) a notarized statement from the state POST, current employing agency or federal employing agency revealing any disciplinary action(s) that may have been taken against any license or certificate issued by that agency or any pending action;

(3) a notarized statement from each applicant's employing agency confirming time in service as a peace officer or federal officer or agent;

(4) a certified or notarized copy of the applicant's valid state-issued driver's license;

(5) a certified copy of the applicant's military discharge (DD-214), if applicable; and

(6) for applicants without a valid Texas drivers license, a passport-sized color photograph (frontal, shoulders and face), signed with the applicant's full signature on the back of the photograph.

(j) The commission may request that applicants submit a copy of the basic and advanced training curricula for equivalency evaluation and final approval.

(k) All out-of-state, federal, and military applicants will be subject to a search of the National Decertification Database (NDD), NCIC/TCIC, and National Criminal History Databases to establish eligibility.

(l) Any applicant may be denied because of disciplinary action, including suspension or revocation, or misconduct in another jurisdiction.

(m) [(4)] All documents must bear original certification seals or stamps.

(n) [(m)] The effective date of this section is February 1, 2020 [July 12, 2012].

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 5, 2019.

TRD-201904120

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-7771



### 37 TAC §219.11

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §219.11, concerning Reactivation of a License. Subsections (d),(e), and (h) are amended to clarify which license is being reactivated. Subsection (i) is added to reflect the effective date of the changes.

This amendment is necessary to reflect which license is being reactivated.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by correctly stating which license is being reactivated.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.316, Reactivation of a Peace Officer License, Texas Occupations Code §1701.3161, Reactivation of Peace Officer License: Retired Peace Officers.

No other code, article, or statute is affected by this proposal.

*§219.11. Reactivation of a License.*

(a) The commission will place all licenses in an inactive status at the end of the most recent training unit or cycle in which the licensee:

- (1) was not appointed at the end of the unit or cycle; and
- (2) did not meet continuing education requirements.

(b) The holder of an inactive license is unlicensed for all purposes.

(c) This section includes any permanent peace officer qualification certificate with an effective date before September 1, 1981.

(d) The requirements to reactivate a license for a peace officer [person] with less than 10 years of full-time service are:

- (1) If less than two years from last appointment:
  - (A) meet current licensing standards;
  - (B) successfully complete continuing education requirements; and
  - (C) make application and submit any required fee(s) in the format currently prescribed by the commission.
- (2) If two years but less than five years from last appointment:
  - (A) meet current licensing standards;
  - (B) successfully complete continuing education requirements, and, if applicable, a supplemental peace officer training course;
  - (C) make application and submit any required fee(s);and
  - (D) pass the licensing exam.
- (3) If more than five years but less than ten years from last appointment:
  - (A) meet current licensing standards;
  - (B) successfully complete continuing education requirements, and, if applicable, a supplemental peace officer training course and a skills assessment course;
  - (C) make application and submit any required fee(s);and
  - (D) pass the licensing exam.
- (4) Ten years or more from last appointment:
  - (A) meet current enrollment standards;
  - (B) meet current licensing standards;

- (C) successfully complete the applicable basic licensing course;
  - (D) make application and submit any required fee(s);
- and
- (E) pass the licensing exam.

(e) The requirements to reactivate a license for a peace officer [person] with 10 years but less than 15 years of full-time service are:

- (1) If less than two years from last appointment:
  - (A) meet current licensing standards;
  - (B) successfully complete continuing education requirements; and
  - (C) make application and submit any required fee(s) in the format currently prescribed by the commission.
- (2) If two years but less than five years from last appointment:
  - (A) meet current licensing standards;
  - (B) successfully complete continuing education requirements, and, if applicable, a supplemental peace officer training course;
  - (C) make application and submit any required fee(s);and
  - (D) pass the reactivation exam.

- (3) If more than five years from last appointment:
  - (A) meet current licensing standards;
  - (B) successfully complete continuing education requirements, and, if applicable, a supplemental peace officer training course and a skills assessment course;
  - (C) make application and submit any required fee(s);and
  - (D) pass the reactivation exam.

(f) Unless exempted by Texas Occupations Code Section 1701.356, the requirements to reactivate a license for an honorably retired peace officer are:

- (1) meet current licensing standards;
- (2) meet current continuing education requirements; and
- (3) make application and submit any required fee(s).

(g) School marshal licenses are subject to the reactivation and renewal procedures related to school marshals under Chapter 227 of this title.

(h) The requirements to reactivate a jailer or telecommunicator license are:

- (1) If less than two years from last appointment:
  - (A) meet current licensing standards;
  - (B) successfully complete continuing education requirements; and
  - (C) make application and submit any required fee(s) in the format currently prescribed by the commission.
- (2) If two years but less than five years from last appointment:
  - (A) meet current licensing standards;

- (B) successfully complete continuing education requirements,
- (C) make application and submit any required fee(s);
- and
- (D) pass the licensing exam.
- (3) If more than five years from last appointment:
  - (A) meet current licensing standards;
  - (B) successfully complete the applicable basic licensing course;
  - (C) make application and submit any required fee(s);
  - and
  - (D) pass the licensing exam.

(i) The effective date of this section is February 1, 2020 [February 1, 2016].

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 5, 2019.

TRD-201904121

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-7771



## CHAPTER 221. PROFICIENCY CERTIFICATES

### 37 TAC §221.1

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §221.1, concerning Proficiency Certificate Requirements. Subsection (a)(1) is added to clarify credit given towards proficiency certification pursuant to HB 971 (86R). Subsection (g) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect statutory changes pursuant to HB 971 (86R).

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying credit given toward proficiency certification.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not creates or eliminates a government program;

- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule does not require an increase or decrease in fees paid to the agency
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule expands, limits, or repeals an existing regulation;
- (7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability;
- (8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.257, Firearms Training Program for Supervision Officers, Texas Occupations Code §1701.258, Education and Training Programs on Trafficking of Persons, Texas Occupations Code §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

#### §221.1. Proficiency Certificate Requirements.

(a) The commission shall issue proficiency certificates in accordance with the Texas Occupations Code §1701.402. Commission certificates issued pursuant to §1701.402 are neither required nor a prerequisite for establishing proficiency or training. The commission shall give credit toward proficiency certification for successful completion of hours or degrees at accredited colleges and universities or for military service.

(b) To qualify for proficiency certificates, applicants must meet all the following proficiency requirements:

- (1) submit any required application currently prescribed by the commission, requested documentation, and any required fee;
- (2) have an active license or appointment for the corresponding certificate (not a requirement for Mental Health Officer Proficiency, Retired Peace Officer and Federal Law Enforcement Officer Firearms Proficiency, Firearms Instructor Proficiency, Firearms Proficiency for Community Supervision Officers, Firearms Proficiency for Juvenile Probation Officers or Instructor Proficiency);
- (3) must not have license(s) under suspension by the commission within the previous 5 years;
- (4) meet the continuing education requirements for the previous training cycle;
- (5) for firearms related certificates, not be prohibited by state or federal law or rule from attending training related to firearms or from possessing a firearm; and
- (6) academic degree(s) must be issued by an accredited college or university.

(c) The commission may refuse an application if:

(1) an applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) an applicant has not affixed any required signature;

(3) required forms are incomplete;

(4) required documentation is incomplete, illegible, or is not attached; or

(5) an application contains a false assertion by any person.

(d) The commission shall cancel and recall any certificate if the applicant was not qualified for its issue and it was issued:

(1) by mistake of the commission or an agency; or

(2) based on false or incorrect information provided by the agency or applicant.

(e) If an application is found to be false, any license or certificate issued to the appointee by the commission will be subject to cancellation and recall.

(f) The issuance date of a proficiency certificate may be changed upon submission of an application along with documentation supporting the proposed date of eligibility and payment of any required fee.

(g) The effective date of this section is February 1, 2020 [July 14, 2014].

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 5, 2019.

TRD-201904122

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-7771



### 37 TAC §221.43

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §221.43, concerning School-Based Law Enforcement Proficiency Certificate. Subsection (b) is amended to remove the size of the school district and change the number of days to complete the certificate pursuant to SB 11 (86R) and HB 2195 (86R). Subsection (c) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect statutory changes pursuant to SB 11 (86R) and HB 2195 (86R).

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be

a positive benefit to the public by requiring any school district with school district police or school resource officers to obtain a school-based law enforcement proficiency certificate.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule creates a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupation Code §1701.262, Training for School District Peace Officers and School Resource Officers, Texas Occupations Code §1701.263, Education and Training Program for School District Peace Offices and School Resource Officers, Texas Education Code 37.0812, Training Policy: School District Peace Officers and School Resource Officers.

No other code, article, or statute is affected by this proposal.

§221.43. *School-Based Law Enforcement Proficiency Certificate.*

(a) To qualify for a school-based law enforcement proficiency certificate, an applicant must complete a course approved by the commission under Texas Occupations Code §1701.262.

(b) School district peace officers and school resource officers providing law enforcement at a school district with an enrollment of 30,000 or more students must obtain a school-based law enforcement proficiency certificate within 180 [+20] days of the officer's commission or placement in the district or campus of the district.

(c) The effective date of this section is February 1, 2020[February 1, 2016].

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 5, 2019.

TRD-201904123

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-7771



### 37 TAC §221.45

The Texas Commission on Law Enforcement (Commission) proposes new §221.45, concerning Jailer Firearm Certificate. This new rule establishes requirements to obtain a jailer firearms certificate under Texas Education Code §1707.2561.

This new rule is necessary to follow the requirements of HB 1552 and HB 3503.

John Beauchamp, General Counsel, has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

Mr. Beauchamp, General Counsel, has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by promoting the furtherance of law enforcement professionalism through education and training.

Mr. Beauchamp, General Counsel, has determined for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small businesses, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule does require an increase or decrease in fees paid to the agency;

(5) the proposed rule creates a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy

Comments on the proposal may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority and Texas Occupations Code §1701.2561, Firearms Training for County Jailers.

No other code, article, or statute is affected by this proposal.

#### §221.45. Jailer Firearm Certificate.

(a) To qualify for a jailer firearms certificate, an applicant must complete a course as approved by the commission, under Texas Occupations Code 1701.2561, be currently appointed as a jailer, and make application to the commission.

(b) Jailers carrying a firearm as part of their assigned duties must first obtain the jailer firearms certificate before carrying the firearm and must maintain current firearms qualifications as shown in §218.9 of this title (relating to Continuing Firearms Proficiency Requirements).

(c) The effective date of this section is February 1, 2020.

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 5, 2019.

TRD-201904124

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 22, 2019

For further information, please call: (512) 936-7771





# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

##### SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

###### 19 TAC §4.85

The Texas Higher Education Coordinating Board withdraws the proposed amended §4.85, which appeared in the October 18, 2019, issue of the *Texas Register* (44 TexReg 5991).

Filed with the Office of the Secretary of State on November 8, 2019.

TRD-201904178

William Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 8, 2019

For further information, please call: (512) 427-6206



## TITLE 22. EXAMINING BOARDS

### PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

#### CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

## SUBCHAPTER B. STAFF

### 22 TAC §577.15

Proposed amended §577.15, published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2252), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on November 5, 2019.

TRD-201904106



## TITLE 37. EXAMINING BOARDS

### PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

#### CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

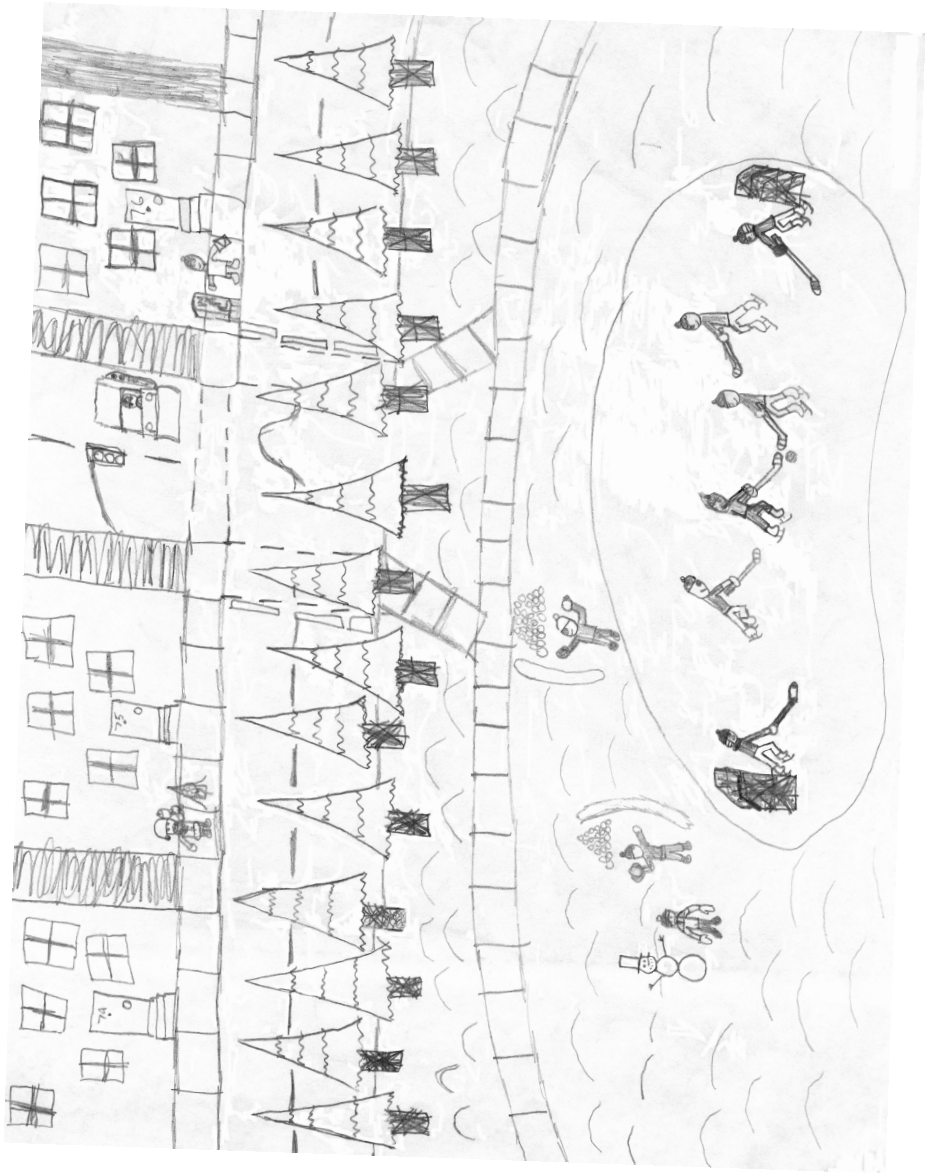
##### 37 TAC §217.1

Proposed amended §217.1, published in the May 3, 2019, issue of the *Texas Register* (44 TexReg 2258), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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TRD-201904107





# ADOPTED RULES

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

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

#### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

##### 10 TAC §1.10

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC §1.10, Public Comment Procedures, without changes to the text as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5222). The text will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this 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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the public comment procedures at the Department's Board meetings.

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

3. The repeal does not require additional future legislative appropriations.

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

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

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

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

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

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

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

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

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

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

**PUBLIC COMMENT.** The public comment period was held September 20, 2019, to October 21, 2019, to receive input on the proposed repeal. No comment was received.

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

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

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

Filed with the Office of the Secretary of State on November 8, 2019.

TRD-201904168

Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: November 28, 2019  
Proposal publication date: September 20, 2019  
For further information, please call: (512) 475-1762



## 10 TAC §1.10

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC §1.10, Public Comment Procedures, without changes to the text as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5223) and will not be republished. The purpose of the rule is to clarify when the registration form method of comment can be used. These forms had been intended to allow those present at a public meeting, but not wishing to actually speak, to have their comment noted. A person who is not present at a Board meeting but wishes to present comment on an agenda item has always been able to submit a written comment in accordance with the rule. However, because of lack of clarity in the rule on the purpose of the registration form, in several instances the forms are being submitted by a third party, on the day of the board meeting and often in large numbers, purporting to be the opinions of persons who are not present at the meeting. The rule was proposed to make clear when registration form method of comment will be accepted. Other changes reflected in the new rule include clarifying that deference may be provided to reading written communications from elected officials; clarifying that no new materials may be provided to the Board when the item for consideration is part of a competitive award process; and making other minor administrative and technical revisions.

Tex. Gov't Code §2001.0045(b) does apply to the new rule, as no exceptions are applicable, however, there are no costs associated with this action that would have warranted a need to be offset.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to the rule governing the public comment process at meetings of the Department's Board of Directors.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand, or repeal an existing regulation but merely revises procedures within a rule.

7. The new rule does technically increase the number of individuals to whom this rule applies, as there are those who may have attempted to utilize the registration form of public comment while not being present at a meeting of the Board and will no longer be able to do so; this rule change will not permit the registration forms to be presented to the Board by persons not in attendance at the meeting.

8. The new rule will not negatively nor positively affect the state's economy.

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

The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code Chapter 2306, Subchapter E.

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.

There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.

The Department has determined that because this rule relates only to the public comment process used at meetings of the Department's Board, there will be no economic effect on small or micro-business or rural communities.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the public comment process used at meetings of the Department's Board.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule only relates to the public comment process used at meetings of the Department's Board, there are 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 sections are in effect, the public benefit anticipated as a result of the new rule will be a clearer rule for how public comment will be accepted at meetings of the Department's Board. There will be no expected economic cost to any individuals required to comply with the proposed 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 sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as the implementation of this rule generates no fees, nor requires any cost.

**PUBLIC COMMENT.** The public comment period was held September 20, 2019, to October 21, 2019, to receive input on the proposed new rule. No comment was received.

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

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

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

Filed with the Office of the Secretary of State on November 8, 2019.

TRD-201904169

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: November 28, 2019

Proposal publication date: September 20, 2019

For further information, please call: (512) 475-1762



## CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

### 10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, §§12.1 - 12.10, without changes to the text as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5332) and will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this 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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

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

3. The repeal does not require additional future legislative appropriations.

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

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the issuance of PABs.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

#### c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The repeal does not contemplate or authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

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

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

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

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the issuance of PAB. There will not be economic costs to individuals required to comply with the repealed section.

#### f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE.** The Department accepted public comment between September 20, 2019, and October 11, 2019. No comment was received.

The Board adopted the final order adopting the repeal on November 7, 2019.

**STATUTORY AUTHORITY.** The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 8, 2019.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: September 20, 2019

For further information, please call: (512) 475-1762



## 10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, §§12.1 - 12.10, with changes to the text as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5333) and will be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.359 and to update the rule to: clarify the new submission requirements for the pre-application, clarify that development owners can select from supportive services identified in subsequent Qualified Allocation Plans adopted by the Department, and allow for the potential for certain fees to be modified through a Notice of Funding Availability, provided that the Department's bond applications are layered with Direct Loans.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this rule pursuant to item (9), which exempts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds (PAB).
2. The rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule does not require additional future legislative appropriations.
4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.
5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The rule does not increase nor decrease the number of individuals subject to the rule's applicability.

8. The rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between \$50,000 and \$60,000; which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average result in an increased cost of filing an application as compared to the existing program rules.

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

2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of \$8,500 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The filing fees associated with a full application for PAB which is layered with LIHTC may range from \$480 to \$3,600 which is based on \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. The rule places a limit on the maximum number of Units that can be proposed, at 120 Units.

These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, often involve a typical minimum investment of \$10 million in capital, and more commonly an investment from \$20 million to \$30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

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 significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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

foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between September 20, 2019, and October 11, 2019. No comment was received.

The Board adopted the final order adopting the new on November 7, 2019.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

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

§12.1. *General.*

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds (Bonds) by the Texas Department of Housing and Community Affairs (Department). The Department is authorized to issue Bonds pursuant to Tex. Gov't Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (Code), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this title (relating to the Housing Tax Credit Program Qualified Allocation Plan) for the current program year. In general, the Applicant will be required to satisfy the eligibility and threshold requirements of the Qualified Allocation Plan (QAP) in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board (TBRB). If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter except in an instance of a conflicting statutory requirement, which shall always take precedence.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs related to the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any point during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis. Taxable bonds will not be eligible for an allocation of tax credits.

(e) Waivers. Requests for any permitted waivers of program rules must be made in accordance with §11.207 of this title (relating to Waiver of Rules).

§12.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

#### §12.3. *Bond Rating and Investment Letter.*

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.

(b) Investment Letters. Bonds rated less than "A" or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds must also be qualified as Institutional Buyers and must execute and deliver to the Department an investor letter in a form satisfactory to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and must carry a legend requiring any purchasers of the Bonds to be Institutional Buyers and sign and deliver to the Department an investor letter in a form acceptable to the Department.

#### §12.4. *Pre-Application Process and Evaluation.*

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) Neighborhood Risk Factors. If the Development Site has any of the characteristics described in §11.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the

time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §11.101(a)(3)(B) of this title and the Applicant failed to disclose.

(c) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

(d) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Tex. Gov't Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359. Should two or more pre-applications receive the same score, the tie breaker will go to the pre-application with the highest number of points achieved under §12.6(8) of this chapter (relating to Underserved Area) to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

(e) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application or that an inducement resolution be approved despite the presence of neighborhood risk factors not fully evaluated by staff. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

#### §12.5. *Pre-Application Threshold Requirements.*

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11,



Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the required tabs of the Uniform Application as prescribed by the Department in the Multifamily Bond Pre-Application Procedures Manual;

(2) Submission of the completed Bond Pre-Application Supplement in the form prescribed by the Department;

(3) Completed Bond Review Board Residential Rental Attachment for the current program year;

(4) Site Control, evidenced by the documentation required under §11.204(10) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §11.204(10) of this title at the time of Application;

(5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(6) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable. The List of Organizations form, as provided in the pre-application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State; and

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this title (relating to Public Notifications (§2306.6705(9))). Notifications must not be older than three months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official holding any position or role described in §11.203 of this title change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

#### §12.6. Pre-Application Scoring Criteria.

This section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Tex. Gov't Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) set aside 50% of Units rent capped at 50% AMGI and the remaining 50% of Units rent capped at 60% AMGI; or

(ii) set aside 15% of Units rent capped at 30% AMGI and the remaining 85% of Units rent capped at 60% AMGI; or

(iii) set aside 100% of Units rent capped at 60% AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80% of the Units capped at 60% AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as either the Building Cost or the Hard Costs voluntarily included in Eligible Basis, as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs. Pre-applications that do not exceed \$95 per square foot of Net Rentable Area will receive one point. Rehabilitation will automatically receive (1 point).

(3) Unit Sizes. (5 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) Five-hundred-fifty (550) square feet for an Efficiency Unit;

(B) Six-hundred-fifty (650) square feet for a one Bedroom Unit;

(C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the State Restrictive Period for a Development to a total of 35 years.

(5) Unit and Development Construction Features. A minimum of (9 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The points selected at pre-application and/or Application will be required to be identified in the LURA and the points selected must be maintained throughout the State Restrictive Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. The common amenities include those listed in §11.101(b)(5) of this title and must meet the requirements as stated therein. The Owner may change, from time to time,

the amenities offered; however, the overall points as selected at Application must remain the same.

- (A) Developments with 16 to 40 Units must qualify for (4 points);
- (B) Developments with 41 to 76 Units must qualify for (7 points);
- (C) Developments with 77 to 99 Units must qualify for (10 points);
- (D) Developments with 100 to 149 Units must qualify for (14 points);
- (E) Developments with 150 to 199 Units must qualify for (18 points); or
- (F) Developments with 200 or more Units must qualify for (22 points).

(7) Resident Supportive Services. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this title, appropriate for the residents and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA and must be maintained throughout the State Restrictive Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Should the QAP in subsequent years provide different services that those listed in §11.101(b)(7)(A) - (E), the Development Owner may be allowed to select services listed therein as provided in §10.405(a)(2) of this title (related to Amendments) and will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(8) Underserved Area. An Application may qualify to receive up to (2 points) if the Development Site meets the criteria described in §11.9(c)(5)(A) - (H) of this title. The pre-application must include evidence that the Development Site meets this requirement.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and must be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the of-

ficial, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter.

- (A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;
- (B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);
- (C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);
- (D) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (E) All elected members of the Governing Body of the county in which the Development Site is located;
- (F) Superintendent of the school district in which the Development Site is located; and
- (G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (10 points) Preservation Developments, including Rehabilitation proposals on Properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

#### §12.7. Full Application Process.

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §11.201 of this title (relating to Procedural Requirements for Application Submission).

(b) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 11 of this title in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

(c) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. The Department will hold a public hearing to receive comments pertaining to the Development and the issuance of the Bonds. A representative of the Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed De-

velopment and providing handouts at the hearing that should include at minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, the presentation should include the proposed scope of work that is planned for the Development. The handouts must be submitted to the Department for review at least two days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits.

(e) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Appeals Process). To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

(f) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees. For Rehabilitation Developments, in instances where such permits will be not received prior to bond closing, the Department may, on a limited and case-by-case basis allow for the closing to occur, subject to receipt of confirmation, acceptable to the Department, by the lender and/or equity investor that they are comfortable proceeding with closing.

#### §12.8. Refunding Application Process.

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the applicable requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §11.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development;

therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

#### §12.9. Occupancy Requirements.

(a) Filing and Term of Regulatory Agreement. A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

(1) The longer of 30 years, from the date the Development Owner takes legal possession of the Development;

(2) The end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or

(3) The period required by the Code.

(b) Federal Set Aside Requirements.

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph. Regardless of an election that may be made under Section 42 of the Code relating to income averaging, a Development will be required under the Bond Regulatory and Land Use Restriction Agreement to meet one of the two minimum set-asides described in subparagraphs (A) and (B) of this paragraph.

(A) At least 20% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50% of the area median income; or

(B) At least 40% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60% of the area median income.

(2) The Development Owner must, at the time of Application, indicate which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit. However, should a tenant's income, as of the most recent determination thereof, exceed 140% of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

#### §12.10. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,500 (payable to the Department's bond counsel) and \$5,000 (payable to the Texas Bond Review Board (TBRB) pursuant to Tex. Gov't Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees associated with the Certificate of Reservation to the TBRB.

(b) **Application Fees.** At the time of Application the Applicant is required to submit a tax credit application fee of \$30 per Unit based on the total number of Units and a bond application fee of \$20 per Unit based on the total number of Units, unless otherwise modified by a specific program NOFA. Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as a portfolio the bond application fees may be reduced on a case by case basis at the discretion of Department staff.

(c) **Closing Fees.** The closing fee for Bonds, other than refunding Bonds, is equal to 50 basis points (0.005) of the issued principal amount of the Bonds, unless otherwise modified by a specific program NOFA. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to \$25/Unit (excludes market rate Units). Such compliance fee shall be applied to the third year following closing.

(d) **Application and Issuance Fees for Refunding Applications.** For refunding an Application the application fee will be \$10,000 unless the refunding is not required to have a public hearing, in which case the fee will be \$5,000. The closing fee for refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual.

(e) **Administration Fee.** The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount at the inception of each payment period and is paid as long as the Bonds are outstanding, unless otherwise modified by a specific program NOFA.

(f) **Bond Compliance Fee.** The Bond compliance monitoring fee is equal to \$25/Unit (excludes market rate Units), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement.

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

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-1762



## CHAPTER 25. COLONIA SELF-HELP CENTER PROGRAM RULE

### 10 TAC §§25.1 - 25.9

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, §§25.1 - 25.9, without changes to the text as published in the September 20, 2019, issue of the

*Texas Register* (44 TexReg 5340) and will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this 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.

Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the Colonia Self-Help Center Program.
2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce workload to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing Texas Housing Trust Fund Rule.
7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively nor positively affect this state's economy.

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

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

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

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

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal 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.

#### e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

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

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from September 20, 2019, through October 21, 2019, to receive input on the proposed repealed rule. No comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the repealed rule affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 8, 2019.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-1762



## 10 TAC §§25.1 - 25.10

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, §§25.1 - 25.10, with changes to the text as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5340) and will be republished. The purpose of the new rule is to detail processes for addressing Administrator failure to meet Expenditure Thresholds; allow the Department to issue one-time contract extensions; remove the requirement that the Department impose liens upon certain participating households; increase the maximum assistance amounts for certain program activities; outline inspection requirements for all activity types; and improve readability and consistency throughout with the re-ordering of phrases and updating of terms.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule making changes to the Colonia Self-Help Center Program Rule.

2. The new rule does not require a change in work that will require the creation of new employee positions, nor will the new rule reduce workload to a degree that any existing employee positions are eliminated.

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

4. The new 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 new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively nor positively affect the state's economy.

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

The Department has evaluated this new rule and determined that it will not create an economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new 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.

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 rule is in effect, the public benefit anticipated as a result of the new rule would be to further clarify the purpose and use of the Texas Housing Trust Fund. There will be no economic costs to 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 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.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from September 20, 2019, through October 21, 2019, to receive input on the new rule. Four commenters provided public comment: (1) Webb County Colonia Self-Help Center, (2) Colonia Resident Advisory Committee Member Elvira Torres, representing Webb County, (3) Colonia Resident Advisory Committee Member Bella Garcia, representing Webb County, and (4) El Paso County Colonia Self-Help Center. The comment summaries and reasoned responses

are below. Several revisions to the rule are recommended in response to the comments.

#### 1. §25.2, Definitions (Commenter 4)

Comment Summary, part 1: Commenter pointed out that no Implementation Manual, as defined in the definitions subsection, currently exists.

Staff Response: The Department provides the TxCDBG Implementation Manual to all participating Counties, which includes a subchapter on the Colonia Self-Help Center Program. For specific guidance and instruction, administrators utilize required Program forms on the CSHC webpage. TDHCA's Border Field Officers provide continuous technical assistance plus annual or biennial training opportunities to all CSHC Program Center administrators. No revisions to the rule are recommended.

Comment Summary, part 2: Commenter asked for confirmation that a Qualified Inspector, as defined in the definitions subsection, may be an eligible third-party inspector or an eligible staff inspector. Commenter asked about acceptability of International Code Council certification, and whether TDHCA provided inspection forms.

Staff Response: The Rule definition allows a variety of inspection professionals to be considered qualified to inspect CSHC Program activities, as long as the Administrator can certify that the inspector fully meets the definition. TDHCA requires the use of its initial inspection form, but inspectors may use their own format for final inspections. No revisions to the rule are recommended.

#### 2. §25.3, Eligible and Ineligible Activities (Commenter 1, 4)

Comment Summary, part 1: Commenter 4 asked for clarification on the principal residency requirements that must be met by households seeking surveying and platting assistance.

Staff Response: The Rule already allows for the surveying or platting of a residential property that an individual purchased (without a legal survey or plat) for principal residence in a participating colonia. No revisions to the rule are recommended.

Comment Summary, part 2: Commenter 1 stated that HUD-required credit and debt counseling for home purchase and finance will incur additional local costs and that their CSHC already provides counseling and training to households. Commenter 4 asked for clarification on the applicability of credit and debt counseling requirements to rehabilitation activities and to purchases of Manufactured Housing Units.

Staff Response: The requirements added to the CSHC rule on this issue are based on HUD's recent regulatory changes that require such counseling for any applicable federally-funded purchase or finance activities on August 1, 2020 and onwards. It does pertain to rehabilitation activities and to the purchase of Manufactured Housing Units, as well as to new construction and reconstruction. If the CSHC is already providing this counseling and as long as it meets HUD counseling requirements, it should incur no extra costs to adhere to this rule.

As a result of this comment, the following revision is submitted to further clarify the rule.

#### §25.3. Eligible and Ineligible Activities.

(7) Providing Housing Counseling related to all applicable single family activities that take place on or after August 1, 2020, and that satisfies HUD Counseling Requirements in 24 CFR Part 214;

#### 3. §25.5, Allocation, Deobligation and Termination, and Reobligation (Commenter 4)

Comment Summary: Commenter stated that more transparency on TDHCA's procedures for reviewing requests for environmental clearances would help Administrators to comply with Expenditure Thresholds and improve performance.

Staff Response: TDHCA has met internally to address concerns relating to Administrators obtaining environmental clearance within six months of the contract start date. If Administrators utilize the correct forms and instructions, TDHCA generally should be able to issue clearance within two months of receipt of the assessment. TDHCA has appropriate staffing for processing environmental clearances and provides online resources and training opportunities to Administrators year round. No revisions to the rule are recommended.

#### 3. §25.8, Colonia Self-Help Center Contract Operation and Implementation (Commenter 1, 2, 3)

Comment Summary, part 1: Commenter stated that Administrators should be notified in writing when TDHCA reduces an Administrator's request for payment due to insufficient documentation or unsatisfactory performance.

Staff Response: TDHCA is in communication with the CSHC Administrator during review of requests for payment, and provides the Administrators opportunities to address deficiencies in documentation before making any reductions. No revisions to the rule are recommended.

Comment Summary, part 2: Commenter stated that requiring a Contract amendment for any changes in contract deliverables or beneficiaries creates unnecessary delays. Commenter suggested that amendments be required only for contracts that seek to increase the award amount by more than 10% of total funds or to decrease deliverables or beneficiaries by more than 10%.

Staff Response: The Colonia Resident Advisory Committee and the TDHCA Board formally approve the contract deliverables and beneficiaries for each CSHC contract. The process to amend any CSHC deliverables adhere to the similar procedures in place for TDHCA's other contracts, namely requiring the approval of a TDHCA Director and Legal Division. Adjustments to beneficiaries in contract language typically occur towards the end of the contract term, so amendments should not negatively impact program implementation. No revisions to the rule are recommended.

Comment Summary, part 3: Commenter stated that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, has eliminated forgivable loans from the CSHC Program, and this will negatively impact colonia residents.

Staff Response: This is an incorrect interpretation of the Single Family Programs Umbrella Rule because it has not eliminated forgivable loans from the CSHC Program. In fact, the CSHC Rule states that "assistance may be provided in the form of a grant or a forgivable loan" in §25.8 (g). No revisions to the rule are recommended.

Comment Summary, part 4: Commenter asked that Rehabilitation funding limits be increased from \$60,000 to \$65,000, and that New Construction and Reconstruction funding limits be increased from \$75,000 to \$80,000. These increases are more realistic and would provide more flexibility to Administrators.

Staff Response: The proposed \$60,000 Rehabilitation funding limit is already an increase from the current limit of \$45,000. The

proposed \$75,000 New Construction and Reconstruction funding limits is already an increase from the current limit of \$45,000. Following the implementation of these newly increased limits, if the need for further increases appear to be substantiated, a subsequent increase can be considered by subsequent rulemaking. If an Administrator needs additional funds, they may leverage funding from other sources. No revisions to the rule are recommended.

Comment Summary, part 5: Commenters 1, 2, and 3 stated that requiring availability of Public Service Activities at least two Saturdays monthly is unnecessary because residents have traditionally not shown an interest in services on the weekends. This rule creates a hardship on CSHC staff.

Staff Response: Staff agrees and suggests the revision below to delete the Saturday requirement for access to Public Service Activities, and replace it with one weekday with extended hours.

§25.8. Colonia Self-Help Center Contract Operation and Implementation.

(m) Residents shall have access to all Public Service Activities identified in the Contract on at least one weekday each week, for a period long enough to provide access to activities after the typical workday.

4. §25.10, Expenditure Thresholds and Closeout Requirements (Commenter 1)

Comment Summary, part 1: The commenter stated that requiring the approval of an Administrator's Environmental Assessment within six months after their Contract start date could have negative consequences for Administrators because of the lack of control they have in TDHCA's Environmental Assessment approval process. Commenter suggested doing away with the proposed wording change and maintaining the existing requirement of submission of an Administrator's Environmental Assessment within six months after the Contract start date.

Staff Response: Staff agrees and will maintain the existing requirement of submission of an Administrator's Environmental Assessment within six months after the Contract start date.

§25.10. Expenditure Thresholds and Closeout Requirements.

(a)(1) Six-Month Threshold. An Environmental Assessment that meets the environmental clearance requirements of the Contract must be submitted to the Department within six months from the start date of the Contract;

Comment Summary, part 2: The commenter stated that the proposed adding of the phrase "in this section" for in §25.10 (b), which clarifies the term "expended and submitted" as it relates to Draw requests, will have a negative consequence for Administrators.

Staff Response: Adding the phrase "in this section" does not alter the applicability or intent of this rule. It is being added only for clarification. No revisions to the rule are recommended.

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

Except as described, herein the adopted new rule affects no other code, article, or statute.

§25.1. *Purpose and Services.*

The purpose of this Chapter is to establish the requirements governing the Colonia Self-Help Centers, created pursuant to Subchapter Z of

Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title (relating to Enforcement), Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements), and including the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (the Department) by the legislature of the annual Texas Community Development Block Grant (CDBG) allocation from the U.S. Department of Housing and Urban Development (HUD). Colonia Self-Help Centers are designed to assist individuals and families of low-income and very low-income to finance, refinance, construct, improve, or maintain a safe, suitable home in the designated Colonia service areas or in another area the Department has determined is suitable.

§25.2. *Definitions.*

The following words and terms, when used in this Chapter, shall have the following meanings unless the context or the Notice of Funding Availability (NOFA) indicates otherwise. Other definitions may be found in Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title (relating to Enforcement), Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), and Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements). Common definitions used under the CDBG Program are incorporated herein by reference.

(1) Beneficiary--A person or family benefiting from the Activities of a Colonia Self-Help Center Contract.

(2) Colonia Resident Advisory Committee (C-RAC)--As established by Tex. Gov't Code §2306.584, advises the Department's Governing Board regarding the needs of Colonia residents, appropriate and effective programs that are proposed or operated through the CSHCs, and activities that may be undertaken through the CSHCs to better serve the needs of Colonia residents.

(3) Colonia Self-Help Center (CSHC)--Those centers established by the Department through its authority under Tex. Gov't Code §2306.582.

(4) Colonia Self-Help Center Provider--An organization with which the Administrator has an executed Contract to administer Colonia Self-Help Center Activities.

(5) Community Action Agency--A political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C. §9902.

(6) Contract Budget--An exhibit in the Contract which specifies in detail the Contract funds by budget category, which is used in the Draw process. The budget also includes all other funds involved that are necessary to complete the Performance Statement specifics of the Contract.

(7) Direct Delivery Costs--Soft costs related to and identified with a specific housing unit. Eligible Direct Delivery Costs include:

(A) Preparation of work write-ups, work specifications, and cost estimates;

(B) Legal fees, recording fees, architectural, engineering, or professional services required to prepare plans, drawings or specifications directly attributable to a particular housing unit;

(C) Home inspections, inspections for lead-based paint, asbestos, termites, and interim inspections; and

(D) Other costs as approved in writing by the Department.

(8) Housing Assistance Guidelines (HAG)--The guidelines provided by the Unit of General Local Government that outline the process and procedures used to administer and implement the Colonia Self-Help Center Program. These guidelines cannot conflict with state statute, program rules, regulations and/or contract requirements.

(9) Implementation Manual--A set of guidelines designed by the Department as an implementation tool for the Administrator and/or Colonia Self-Help Center Subawardee that have been awarded Community Development Block Grant Funds, which provides terms, regulations, procedures, forms, and attachments.

(10) Income Eligible Household--

(A) Low-income households--households whose annual incomes do not exceed 80% of the median income of the area as determined by HUD Fair Market Rent Limits;

(B) Very low-income households--households whose annual incomes do not exceed 60% of the median family income for the area, as determined by HUD Fair Market Rent Limits; and

(C) Extremely low-income households--households whose annual incomes do not exceed 30% of the median family income for the area, as determined by HUD Fair Market Rent Limits.

(11) M Number--a several digit identification number, preceded by the letter "M" and assigned by the Texas Water Development Board to colonias that have been identified by the Office of the Attorney General of Texas.

(12) New Construction--A Single Family Housing Unit that is newly built by certified Community Housing Development Organizations (CHDOs) or Community Based Development Organizations (CBDOs) on a previously vacant lot that will be occupied by an Income Eligible Household.

(13) Performance Statement--An exhibit in the Contract which specifies in detail the scope of work to be performed.

(14) Public Service Activities--Activities other than New Construction, Reconstruction, and Rehabilitation activities that are provided by a Colonia Self-Help Center to benefit Colonia residents. These include, but are not limited to, construction skills classes, solid waste removal, tool lending library, technology classes, home ownership classes and technology access.

(15) Qualified Inspector--An individual that has been certified by the Administrator as having professional certifications, relevant education or a minimum of three years' experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing or electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.

(16) Reconstruction--The demolition and rebuilding of a Single Family Housing Unit on the same lot in substantially the same manner. The number of housing units may not be increased; however, the number of rooms may be increased or decreased dependent on the number of Household members living in the Single Family Housing Unit at the time of Application. Reconstruction of residential structures also permits replacing an existing standard Manufactured Housing Unit with a new, site-built housing unit or a new ENERGY STAR Certified Manufactured Housing Unit.

(17) Rehabilitation--The improvement or modification of an existing Single Family Housing Unit through an alteration, addition, or enhancement on the same lot.

(18) Unit of General Local Government (UGLG)--A city, town, county, or other general purpose political subdivision of the state.

### §25.3. *Eligible and Ineligible Activities.*

(a) A CSHC may only serve Income Eligible Households in the targeted Colonias by:

(1) Providing assistance in obtaining Loans or grants to build a home;

(2) Teaching construction skills necessary to repair or build a home;

(3) Providing model home plans;

(4) Operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in Colonias who are building or repairing a residence or installing necessary residential infrastructure;

(5) Assisting to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a Colonia, including potable water, wastewater disposal, drainage, streets, and utilities;

(6) Surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(7) Providing Housing Counseling related to all applicable single family activities that take place on or after August 1, 2020, and that satisfies HUD Counseling Requirements in 24 CFR Part 214;

(8) Applying for Grants and Loans to provide housing and other needed community improvements;

(9) Providing other services that the CSHC, with the approval of the Department, determines are necessary to assist Colonia residents in improving their physical living conditions such as Rehabilitation, Reconstruction, and New Construction, including help in obtaining suitable alternative housing outside of a Colonia area;

(10) Providing assistance in obtaining Loans or grants to enable an Income Eligible Household to acquire fee simple title to property that originally was purchased under a Contract for Deed, contract for sale, or other executory contract;

(11) Provide title-related services for unrecorded Contracts for Deed, clouded titles, property transfers, intestate estates, and other title ownership matters;

(12) Providing access to computers, the internet and computer training; and

(13) Providing monthly programs to educate Income Eligible Households on their rights and responsibilities as property owners.

(b) Ineligible Activities. Any Activity not allowed by the Housing and Community Development Act of 1974 (42 U.S.C. §§5301, et seq.) is ineligible for funding.

(c) A CSHC will only provide grants, financing, or Mortgage Loan services for New Construction, Reconstruction, and Rehabilitation of a home in a Colonia that is connected to a Department-approved source of potable water and wastewater disposal.

### §25.4. *Colonia Self-Help Centers Establishment.*

(a) Pursuant to Section 2306.582 of the Tex. Gov't Code, the Department has established CSHCs in El Paso, Hidalgo, Starr, Webb, Cameron (also serves Willacy), Maverick, and Val Verde Counties.

(b) The Department has designated:

(1) Appropriate staff in the Department who are designated to assist the CSHCs in understanding the requirements of the Program,



provide training, and access CDBG funding to enable the CSHCs to carry out Programs;

(2) Five Colonias in each service area are to be identified by the UGLG to receive concentrated attention from the CSHCs in consultation with the C-RAC; and

(3) A geographic area for the services provided by each CSHC.

(c) The Department shall make a reasonable effort to secure:

(1) Contributions, services, facilities, or operating support from the county commissioner's court of the county in which a CSHC is located which it serves to support the operation of that CSHC; and

(2) An adequate level of CDBG funds to provide each CSHC with funds for low interest Mortgage financing, Grants for Self-Help Programs, a revolving loan fund for septic tanks, a tool lending program, and other Activities the Department determines are necessary.

(d) Consistent with federal rules and regulations, as provided for in the General Appropriations Act, the CSHC in El Paso shall provide technology and computer access to residents of targeted colonias. Any CSHC may establish a technology center to provide internet access to Colonia residents.

*§25.5. Allocation, Deobligation and Termination, and Reobligation.*

(a) Allocation.

(1) The Department distributes CSHC funds to UGLGs from the 2.5% set-aside appropriated to the Department from the annual CDBG allocation to the state of Texas.

(2) The Department shall allocate no more than \$1 million per CSHC award except as provided by this Chapter. If there are insufficient funds available from any specific program year to fully fund an Application, the awarded Administrator may accept the amount available at that time and wait for the remaining funds to be committed upon the Department's receipt of the CDBG set-aside allocation from the next program year.

(3) A baseline award will first be calculated for a CSHC beginning at \$500,000 (or a lesser amount as provided for in paragraph (2) of this subsection). The Department will add to the baseline award up to an additional \$100,000 for each Expenditure Threshold that has been met on the current CSHC Contract, as defined in §25.10 of this Chapter (relating to Expenditure Thresholds and Closeout Requirements). An additional amount up to \$100,000 may be added for an accepted Application submitted by the deadline. An Administrator may request that the Board add additional funds to a baseline award, despite the failure to meet one or more Expenditure Thresholds. To add funds to a CSHC Contract being considered for award, the Board must find that the failure to meet each Expenditure Threshold requirement was principally related to factors beyond the control of the Administrator. If the Board decides to award these additional funds in whole or in part, it must also determine that the award of these funds to the Administrator does not create a substantial risk to the State of recapture of CDBG funds by HUD.

(b) Deobligation and Termination.

(1) At any point in which an Administrator has missed one of the Expenditure Thresholds required in §25.10 of this Chapter, the Department will send a notification of possible deobligation. An Administrator will have the opportunity to submit a mitigation plan that outlines how it will bring the Contract back into compliance, and how it will ensure that subsequent Expenditure Thresholds can be achieved. If the Department approves the mitigation plan, it will take no further

action on deobligation at that time. If the Department receives no response, or if the mitigation plan is insufficient to be approved by the Department, the Department will send notice to the Administrator and the UGLG official to announce the initiation of deobligation proceedings and to identify the Administrator's rights under Tex. Gov't Code, Chapter 2105 and 10 TAC §1.411 (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). Approval of such action will be presented to the Department's Board.

(2) At any point in which the Department has determined that a Contract should be terminated for violation of program requirements, the Department will send a notification of possible termination of Contract. A Subrecipient will have the opportunity to submit a mitigation plan that outlines how it will bring the Contract back into compliance. If the Department approves the mitigation plan, it will take no further action on termination at that time. If the Department receives no response, or if the mitigation plan is insufficient to be approved by the Department, the Department will send notice to the Administrator and the UGLG official to announce the initiation of deobligation proceedings and to identify the Administrator's rights under Tex. Gov't Code, Chapter 2105 and 10 TAC §1.411 (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). Approval of such action will be presented to the Department's Board.

(3) During the time that a deobligation or termination process is pending, the Department may reduce an Administrator's Contract by up to 24.99% of the Contract and may publish a Request for Administrators (RFA) to identify another UGLG to implement the CSHC Program in the affected service area. No award to a respondent of an RFA will be made in an amount greater than 24.99% of the original Administrator's Contract until the process provided by Tex. Gov't Code, Chapter 2105 has been completed. Once that process is completed, an Administrator awarded a Contract through the RFA may receive up to the maximum award available, subject to funding availability.

(c) Reobligation.

(1) When funds become available from the proceedings of subsection (b) of this section, they will be held for a period of at least 90 days while an RFA for the service area is initiated. Unless debarred by HUD or the Department, a prior Administrator is not precluded from applying under an RFA for this service area.

(2) In all cases, funds for a given service area will continue to be allocated to that service area unless no acceptable respondents are identified. Only in such cases that no qualified provider can be identified for a given service area will funds available for that area be reassigned to other CSHC Contracts for other service areas.

*§25.6. Colonia Self-Help Center Application Requirements.*

(a) At least three months prior to the expiration of its current Contract, or when 90% of the funds under the current Contract have been expended, whichever comes first, the current Administrator may submit its Application to the Department.

(b) If an Application is received from a CSHC that is requesting additional funds, at approximately the same time that an application is received from a CSHC whose Contract is reaching expiration, the Department will prioritize funds first to ensure continuity to a CSHC whose Contract is reaching expiration. Among all other non-expiring Applications, the Department shall review Applications on a first-come, first-served basis. Recommendations for award will be made until all CSHC funds for the current program year and deobligated CSHC funds are committed.

(c) Each Application must utilize the Department's forms and documents where applicable, and include:

(1) Evidence of the submission of the Administrator's current Single Audit, if applicable;

(2) A Colonia identification form and the M number assigned by the Texas Water Development Board for each Colonia to be served, including all required documentation as identified on the form;

(3) A boundary map for each of the five designated Colonias;

(4) A description of the method of implementation. For each Colonia to be served by the CSHC, the Administrator shall describe the services and Activities to be delivered.

(5) A proposed Performance Statement which must include the number of Colonia residents estimated to be assisted from each Activity, the Activities to be performed (including all Sub-Activities under each budget line item), and the corresponding budget;

(6) A proposed Contract Budget which must adhere to the following limitations:

(A) The Administration line item may not exceed 15% of the total Contract;

(B) At least 8% but not more than 10% of the total Contract must be used for the Public Service Activities;

(C) For UGLGs self-administering the Program, Direct Delivery Costs for all New Construction and Reconstruction Activities cannot exceed 10% per unit provided by the CSHC Program. Direct Delivery Costs for Rehabilitation are limited to 15% per unit provided by the CSHC Program.

(7) The CSHC's Proposed Housing Assistance Guidelines, which must include an Affirmative Fair Housing Marketing Plan as described under Chapter 20 of this title and all program parameters for Rehabilitation, Reconstruction, or New Construction;

(8) Evidence of model subdivision rules adopted by the County;

(9) Written policies and procedures, as applicable, for:

(A) Solid waste removal;

(B) Construction skill classes;

(C) Homeownership classes;

(D) Technology access, including any technology hardware inventory purchased with CSHC funds;

(E) Homeownership assistance; and/or

(F) Tool lending library, including any library inventory purchased with CSHC funds. All CSHCs are required to operate a tool lending library;

(10) Authorized signatory form and direct deposit authorization;

(11) UGLG resolution authorizing the submission of the Application and appointing the primary signatory for all Contract documents;

(12) Acquisition report (even if there is no acquisition activity);

(13) Certification of exemption for HUD funded projects;

(14) Initial disclosure report for the Texas Department of Agriculture;

(15) All required forms needed for a Previous Participation Review under §1.302 of this title (relating to Previous Participation

Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter); and

(16) All required forms required by §20.9 of this title, (relating to Fair Housing, Affirmative Marketing and Reasonable Accommodations).

(d) Upon receipt of the Application, the Department will perform an initial review to determine whether the Application is complete and that each Activity meets a national objective as required by §104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(b)(3)).

(e) The Department may reduce the funding amount requested in the Application in accordance with subsection §25.5(a) of this chapter. Should this occur, the Department shall notify the appropriate Administrator before the Application is submitted to C-RAC for review, comments and approval. The Department and the Administrator will work together to jointly agree on the performance measures and proposed funding amounts for each Activity.

(f) The Department shall execute a four-year Contract with the Administrator. If the Administrator requirements are completed prior to the end of the four-year Contract period, the Administrator may submit a new Application. Contract extensions may be granted for up to six months by the Department.

(g) The Department may decline to fund any Application if the Activities do not, in the Department's sole determination, represent a prudent use of CSHC funds. The Department is not obligated to proceed with any action pertaining to any Application which is received, and may decide it is in the Department's best interest to refrain from pursuing any selection process.

#### §25.7. *Colonia Residents Advisory Committee Duties and Award of Contracts.*

(a) The Board shall appoint one committee member to represent each of the counties in which a CSHC is located to serve on the C-RAC. The members of the C-RAC shall be selected from lists of candidates submitted to the Department by local nonprofit organizations and the Commissioners Court of the county in which a CSHC is located. Each committee member:

(1) Must be a resident of a Colonia in the county the member represents;

(2) May not be a board member, contractor, or employee of the Administrator;

(3) May not have any ownership interest in an entity that is awarded a Contract under this Chapter; and

(4) Must undergo the Department's previous participation review and cannot be in default on any Department obligation.

(b) The C-RAC members' terms will expire every four years. C-RAC members may be reappointed by the Board; however, the Board shall review and reappoint members at least once every four years. In the event that a C-RAC member is unable to complete the four-year term, Counties may propose an eligible candidate to be appointed by the Board to fulfill the remainder of the term.

(c) The Department may also select to have an alternate member from the list for each county in the event that the primary member is unable to attend meetings.

(d) The C-RAC shall advise the Board regarding:

(1) The housing needs of Colonia residents;

(2) Appropriate and effective programs that are proposed or are operated through the CSHCs; and

(3) Activities that might be undertaken through the CSHCs to serve the needs of Colonia residents.

(e) The C-RAC shall advise the Colonia initiatives coordinator as provided by §775.005 of the Tex. Gov't Code.

(f) Award of Contracts.

(1) The Department will schedule C-RAC meetings for the review of satisfactorily completed CSHC applications from Administrators. The C-RAC shall meet no less than 30 days prior to the board meeting at which the Board is scheduled to award a CSHC Contract, and may meet at other times as needed.

(2) Any Administrator whose Application is being considered at the C-RAC meeting must be present to answer questions that C-RAC may have.

(3) After the C-RAC makes a recommendation on an Application, the recommendation will then proceed through the Department's award process.

(g) Reimbursement to C-RAC members for their reasonable travel expenses in the manner provided by §25.9(1) of this Chapter (relating to Administrative Thresholds) is allowable and shall be paid by the Administrator or Administrators whose Applications were considered at the meeting.

#### *§25.8 Colonia Self-Help Center Contract Operation and Implementation*

(a) The Department shall contract with an UGLG for the operation of a CSHC. The UGLG may subaward the activity to a Nonprofit Organization, Community Action Agency, or Housing Authority that has demonstrated the ability to carry out all or part of the functions of a CSHC.

(b) The Administrator is required to complete an environmental review in accordance with 24 CFR Part 58, and receive the Authority to Use Grant Funds from the Department before:

(1) Any commitment of CDBG funds (i.e., execution of a legally binding Agreement and expenditure of CDBG funds) for Activities other than those that are specifically exempt from environmental review; and

(2) Any commitment of non-CDBG funds associated with the scope of work in the Contract that would have an adverse environmental impact (i.e., demolition, excavating, etc.) or limit the choice of alternatives (i.e., acquisition of real property, Rehabilitation of buildings or structures, etc.).

(c) Request for Payments. The Administrator shall submit a properly completed request for reimbursement, as specified by the Department, at a minimum on a quarterly basis; however, the Department reserves the right to request more frequent reimbursement requests as it deems appropriate. The Department shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment request until the Department has reviewed and approved such request. Payments under the Contract are contingent upon the Administrator's full and satisfactory performance of its obligations under the Contract. The Department may reduce a request for payment if documentation is insufficient or the performance is unsatisfactory.

(1) \$2,500 is the minimum amount for a Draw to be processed, unless it is the final Draw request. If an Administrator fails to submit a draw for 12 consecutive months the Contract may be subject to termination for failure to meet the Contract obligations.

(2) Draw requests will be reviewed to comply with all applicable laws, rules and regulations. The Administrator is responsible

for maintaining a complete record of all costs incurred in carrying out the Activities of the Contract.

(3) Draw requests for all housing Activities will only be reimbursed upon satisfactory completion of types of Activities (e.g., all plumbing completed, entire roof is completed, etc.), consistent with the construction contract.

(4) The Administrator will be the principal contact responsible for reporting to the Department and submitting Draw requests.

(d) Reporting. The Administrator shall submit to the Department reports on the operation and performance of the Contract on forms as prescribed by the Department. Quarterly Reports shall be due no later than the tenth calendar day of the month after the end of each calendar quarter. The Administrator shall maintain and submit to the Department up-to-date accomplishments in quarterly reports identifying quantity and cumulative data including the expended funds, Activities completed and total number of Beneficiaries. Processing of draws may be suspended until the Administrator's quarterly reports are submitted and approved by the Department. If an Administrator fails to submit Activity data within a 24-consecutive-month period, the Contract may be subject to termination for failure to meet the Contract obligations.

(e) Amendments. The Department's executive director or its designee, may authorize, execute, and deliver amendments to any Contract.

(1) One Contract Extension of no more than six months may be granted beyond the four-year Contract period.

(2) Changes in beneficiaries. Any changes in contractual deliverables and beneficiaries shall require a Contract amendment.

(3) The Department, at its discretion and in coordination with an Administrator, may increase a Contract Budget amount and the number of Activities and beneficiaries to be assisted based on the availability of CSHC funds, the exemplary performance in the implementation of an Administrator's current Contract, and the time available in the four-year Contract period. Upon Board approval, the cap on the maximum Contract amount may be exceeded if the terms of this paragraph are met by the Administrator.

(f) Participating Households must provide at least 15% of the labor necessary to construct or Rehabilitate the Single Family Housing Unit by contributing the labor personally and/or through non-contract labor assistance from family, friends, or volunteers. Volunteer hours at the CSHC may also fulfill the 15% labor requirement.

(g) Program funds can be used for Rehabilitation, Reconstruction or New Construction. Assistance may be provided in the form of a grant or a forgivable loan to the household. Additional funds from other sources may be leveraged with Program funds. Program funds cannot exceed the following limits:

(1) Program funds for Rehabilitation cannot exceed \$60,000 in Program funds per unit per Income Eligible Household.

(2) Program funds for Reconstruction or New Construction cannot exceed \$75,000 in Program funds per unit per Income Eligible Household.

(3) An additional \$5,000 in Program funds is available for properties with non-functioning and/or unpermitted cesspools or septic tanks that need replacement with an appropriately sized on-site sewage facility, or connection to a Department-approved source of potable water and wastewater disposal.

(h) All Direct Delivery Costs must be eligible and based on actual expenses for the specific housing unit. Subawardees acting on

behalf of an UGLG shall incorporate Direct Delivery Costs into its bid proposals.

(i) Prior to Department approval of CSHC construction activity, the CSHC must document that existing on-site sewage facilities (septic systems) have been inspected by a Texas Commission on Environmental Quality-authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366 and the rules adopted under that chapter. Cesspools that have not been previously permitted are unacceptable and must be replaced by an appropriately sized on-site sewage facility or the home must be connected to a Department-approved source of potable water and wastewater disposal.

(j) New Construction, Reconstruction, and Rehabilitation activities under the CSHC Program must adhere to TDHCA's Minimum Energy Efficiency Requirements for Single Family Construction Activities under Chapter 21 of this Title.

(k) Inspections. A Qualified Inspector shall conduct all inspections with respect to applicable construction standards and documentation protocol prescribed by the Department.

(1) New Construction Requirements.

(A) No initial inspection is required, however building construction plans must be submitted to the Department for approval.

(B) A Certificate of Occupancy is acceptable confirmation of meeting construction requirements. If the activity occurs in a jurisdiction that does not issue Certificates of Occupancy, a Qualified Inspector shall inspect the property applying all applicable construction standards and forms prescribed by the Department.

(2) Reconstruction Requirements.

(A) The initial inspection must identify all substandard conditions as described by Texas Minimum Construction Standards (TMCS) and any health or safety concerns that are beyond repair; confirm that a governmental entity has condemned the unit; or identify the unit as an MHU that will not be rehabilitated. The work write-up and cost estimate shall address all substandard conditions in sufficient detail to justify the need for reconstruction.

(B) A Certificate of Occupancy is acceptable confirmation of meeting construction requirements. If the activity occurs in a jurisdiction that does not issue Certificates of Occupancy, a Qualified Inspector shall inspect the property applying all applicable construction standards and forms prescribed by the Department.

(C) Administrator must demonstrate compliance with §2306.514 Tex. Gov't Code, "Construction Requirements for Single Family Affordable Housing".

(3) Rehabilitation Requirements.

(A) The initial inspection must identify all substandard conditions as described by TMCS and any health or safety concerns. The work write-up and cost estimate shall address all substandard conditions in sufficient detail.

(B) The final inspection shall document that all elements incorporated into the contracted work-write up have been addressed satisfactorily prior to the final draw request.

(l) The Administrator's initial HAG, as well as any amendments to the HAG, shall be approved by commissioners' court and the Department prior to implementation.

(m) Residents shall have access to all Public Service Activities identified in the Contract on at least one weekday each week, for

a period long enough to provide access to activities after the typical workday.

(n) The purchase of new tools, new computers and computer equipment, if included in the approved budget, shall only occur within the first 24 months of the Contract Term. Any purchases of these items after 24 months must be approved by the Department in writing prior to purchase.

§25.9. *Administrative Thresholds.*

Administrative Draw request. Administrative Draw requests are funded out of the portion of the Contract budget specified for administrative cost (administration line item of the Contract budget). These costs are not directly associated with an Activity. The administration line item will be disbursed as described in paragraphs (1) - (8) of this section:

(1) Threshold 1. The initial administrative Draw request allows up to 10% of the administration line item may be drawn down prior to the start of any project Activity included in the Performance Statement of the Contract (provided that all Pre-Draw requirements, as described in the Contract, for administration have been met). Subsequent administrative funds will be reimbursed in proportion to the percentage of the work that has been completed as identified in paragraphs (2) - (8) of this section.

(2) Threshold 2. Up to an additional 15% (25% of the total) of the administration line item to be drawn down after a start of project Activity has been demonstrated. For the purposes of this threshold, if Davis-Bacon labor standards are required for a given Program Activity, the "start of project Activity" is evidenced by the submission of a start of construction form. If labor standards are not required on a given project Activity that has commenced (and for which reimbursement is being sought), the submission of a Draw request that includes sufficient back-up documentation for expenses of non-administrative project Activities evidences a start of project Activity. Direct Delivery Costs charges will not constitute a start of project Activity.

(3) Threshold 3. Up to an additional 25% (50% of the total) of the administration line item may be drawn down after compliance with the 20-month threshold requirement has been demonstrated as described in §25.10 of this chapter (relating to Expenditure Thresholds and Closeout Requirements).

(4) Threshold 4. Up to an additional 25% (75% of the total) of the administration line item may be drawn down after compliance with the 32-month threshold requirement has been demonstrated as described in §25.10 of this chapter.

(5) Threshold 5. Up to an additional 15% (90% of the total) of the administration line item may be drawn down after compliance with the 44-month threshold requirement has been demonstrated as described in §25.10 of this chapter (relating to Expenditure Thresholds and Closeout Requirements).

(6) Threshold 6. Up to an additional 5% (95% of the total) of the administration line item may be drawn down upon receipt of all required close-out documentation.

(7) Threshold 7. The final 5% (100% of the total), less any administrative funds reserved for audit costs as noted on the Project Completion Report of the administration line item, may be drawn down following receipt of the programmatic close-out letter issued by Department.

(8) Threshold 8. Any funds reserved for audit costs will be released upon completion and submission of an acceptable audit. Only the portion of audit expenses reasonably attributable to the Contract is eligible.

§25.10. *Expenditure Thresholds and Closeout Requirements.*

(a) Administrators must meet the expenditure threshold requirements described in paragraphs (1) - (4) of this subsection. If an Administrator fails to expend and submit expenditure documentation by the due date, the deobligation process outlined in §25.5 of this chapter may be initiated. A Contract may also be subject to termination for failure to meet the Contract obligations, and the Department may elect not to provide future funds to the Administrator. In such cases, the Administrator will be notified in writing of the processes described in Tex. Gov't Code, Chapter 2105 and §1.411 of this Title (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code).

(1) Six-Month Threshold. An Environmental Assessment that meets the environmental clearance requirements of the Contract must be submitted to the Department within six months from the start date of the Contract;

(2) Twenty-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 30% of the total CSHC funds awarded within 20 months from the start date of the Contract;

(3) Thirty-two-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 60% of the total CSHC funds awarded within 32 months from the start date of the Contract; and

(4) Forty-four-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 90% of the total CSHC funds awarded within 44 months from the start date of the Contract.

(b) For purposes of meeting a threshold in this section, "expended and submitted" means that a Draw request was received by the Department, is complete, and all costs needed to meet a threshold are adequately supported. The Department will not be liable for a threshold violation if a Draw request is not received by the threshold date.

(c) The final Draw request and complete closeout documents must be submitted no later than 60 days after the Contract end date. If closeout documents are not received by this deadline, the remaining Contract balance may be subject to Deobligation as the Department's liability for such costs will have expired. If an Administrator has reserved funds in the project completion report for a final Draw request, the Administrator has 90 days after the Contract end date to submit the final Draw request, with the exception of the Department's portion of audit costs which may be reimbursed upon submission of the final Single Audit.

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

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Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
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**TITLE 16. ECONOMIC REGULATION**

**PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

**CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT  
SUBCHAPTER K. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES**

**16 TAC §60.518**

The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter K, §60.518, regarding the Procedural Rules of the Commission and the Department, with changes to the proposed text as published in the October 4, 2019, issue of the *Texas Register* (44 TexReg 5689). The adopted changes are referred to as "adopted rule." The adopted rule will be republished.

**EXPLANATION OF AND JUSTIFICATION FOR THE RULES**

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, regarding the Texas Department of Licensing and Regulation, and Chapter 55, regarding Licensing of Military Service Members, Military Veterans, and Military Spouses.

The adopted rule implements Senate Bill (SB) 1200, 86th Legislature, Regular Session (2019), which amends Texas Occupations Code, Chapter 55, to authorize a military spouse to engage in a business or occupation for which a license is required without obtaining the applicable license if the military spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in Texas. SB 1200 also authorizes a licensing agency to issue a license to a military spouse who meets such requirements.

The adopted rule is necessary to establish a process for the Department to identify which jurisdictions have licensing requirements that are substantially equivalent to the requirements in Texas and to verify that a military spouse is licensed in good standing in one of such jurisdictions. The adopted rule also provides for the issuance of a three-year license to a military spouse who meets these qualifications and successfully passes a criminal history background check.

**SECTION-BY-SECTION SUMMARY**

The adopted rule adds new §60.518(a) to specify the statute that the rule implements.

The adopted rule adds new §60.518(b) to specify the individuals to whom the rule is applicable.

The adopted rule adds new §60.518(c) to designate the method by which military spouses notify the Department of their intent to engage in a business or occupation.

The adopted rule adds new §60.518(d) to establish the process for the Department to identify the jurisdictions that have licensing requirements substantially equivalent to the requirements in Texas.

The adopted rule adds new §60.518(e) to establish the Department's process to verify that a military spouse is licensed in good standing in another jurisdiction.

The adopted rule adds new §60.518(f) to specify that the Department may not charge a fee for either the authority to engage in a business or occupation, or for a three-year license. Changes were made to the proposed text previously published in the *Texas Register* to correct grammar by adding a comma and to create consistency in references by adding the word "subsection."

The adopted rule adds new §60.518(g) to specify the time period during which a military spouse who receives Department confirmation is authorized to engage in a business or occupation; to establish the duty of the military spouse to immediately notify the Department when the military spouse no longer qualifies for such authorization; and to specify that a criminal history background check is not a prerequisite to such authorization.

The adopted rule adds new §60.518(h) to provide for the issuance of a license to a military spouse who receives Department confirmation of authority to practice in Texas and successfully passes a criminal history background check. Such license expires three years after the Department provides confirmation that the military spouse is authorized to practice in Texas.

The adopted rule adds new §60.518(i) to specify the enforcement provisions applicable to an individual who receives confirmation of authority to practice or a license under §60.518.

#### PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 4, 2019, issue of the *Texas Register* (44 TexReg 5689). The deadline for public comments was November 4, 2019. The Department received comments from 11 interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comment--Two commenters are opposed to the proposed rule because they believe it is unfair to existing license holders, who have to pay annual renewal fees and take annual continuing education courses, to allow a three-year license for individuals who do not have to meet these requirements.

Department Response--The Department disagrees with the comments because the three-year license will only be issued to individuals who hold licenses in other jurisdictions with licensing requirements that are substantially equivalent to Texas requirements. Therefore, holders of the three-year Texas license will still have to comply with similar licensing requirements in other jurisdictions, such as renewal and continuing education requirements. With regard to the length of the license term, the proposed rule implements SB 1200's three-year limitation on a military spouse's authority to practice in Texas. The Department did not make any changes to the proposed rule in response to these comments.

Comment--One commenter is in favor of the proposed rule because it supports military families who have to make difficult relocations due to change of stationing and removes obstacles to their economic success.

Department Response--The Department appreciates the comment in favor of the proposed rule. The Department did not make any changes to the proposed rule in response to this comment.

Comment--One commenter questioned whether the proposed rule could apply to the Speech-Language Pathologists and Audiologists (SPA) program because its licenses are linked to the requirements of the American Speech-Language-Hearing Association (ASHA) and published standards of ethics.

Department Response--The proposed rule implements SB 1200, which applies to "a business or occupation for which a license is required." This would necessarily include licenses of the SPA program. However, SB 1200 limits recognition of out-of-state licenses to other jurisdictions with "licensing requirements that are substantially equivalent to the requirements for the license in this state." Therefore, if the requirements of an out-of-state license deviate significantly from the requirements in Texas, the individual would be denied the ability to practice in Texas under the out-of-state license. The Department did not make any changes to the proposed rule in response to this comment.

Comment--Three commenters oppose the proposed rule because the commenters believe it will allow people to perform licensed work in Texas that does not meet the standards of Texas licensees.

Department Response--The Department disagrees with the comments because the proposed rule would only apply to individuals who are currently licensed in other jurisdictions with licensing requirements that are substantially equivalent to Texas requirements. Those individuals would also be subject to the laws and regulations of Texas, including standards of practice, applicable to the occupation they are practicing. The Department did not make any changes to the proposed rule in response to these comments.

Comment--One commenter questioned whether the proposed rule only applies to military personnel or whether it also applies to civilians.

Department Response--The proposed rule applies only to a military spouse, defined as "a person who is married to a military service member." The Department did not make any changes to the proposed rule in response to this comment.

Comment--One commenter opposes the proposed rule and offers an alternative rule whereby a temporary Texas license is issued to the holder of an out-of-state license that meets all the Texas requirements, and the temporary Texas license would expire when the out-of-state license expires, at which point the licensee would be required to apply for a regular Texas license.

Department Response--The Department disagrees with the comment because its suggested alternative would contradict SB 1200's language granting out-of-state license holders the authority to practice in Texas for up to three years, as long as they meet the qualifications established by SB 1200. The Department did not make any changes to the proposed rule in response to this comment.

Comment--One commenter opposes the proposed rule because the commenter does not believe that military spouses need the benefits derived from the proposed rule. The commenter proposes an alternative rule that would apply instead to all individuals who live below the poverty line.

Department Response--The Department disagrees with the comment because its suggested alternative would contradict the language of SB 1200 regarding its applicability only to military spouses. The Department did not make any changes to the proposed rule in response to this comment.

Comment--One commenter opposes the proposed rule because the commenter believes it improperly imposes the licensing requirements of Texas on other jurisdictions. The commenter also believes the proposed rule unfairly grants privileges to certain individuals on the sole basis of being married to a military service member.

Department Response--The Department disagrees with the comment. The proposed rule does not impose licensing requirements on other jurisdictions; rather, it recognizes the licenses of other jurisdictions that have licensing requirements that are substantially equivalent to Texas requirements. Regarding the commenter's second point, the proposed rule implements SB 1200, which applies exclusively to military spouses. The Department did not make any changes to the proposed rule in response to this comment.

#### RECOMMENDATIONS AND COMMISSION ACTION

The Department staff recommended that the Commission adopt the proposed rule with changes to the proposed text as published in the *Texas Register*. At its meeting on November 5, 2019, the Commission adopted the proposed rule with changes, as recommended by the staff.

#### STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 55, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The adopted rule is also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 55. In addition, the following statutes may be affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Alcoholic Beverage Code, Chapter 106, §106.115 (Alcohol Education Program for Minors); Texas Code of Criminal Procedure, Chapter 42A, Articles 42A.403, 42A.405, and 42A.406 (DWI Education Program); Articles 42A.404, 42A.405, and 42A.406 (DWI Intervention Program); and Article 42A.511 (Responsible Pet Owner); Texas Education Code, Chapter 1001 (Driver Education and Safety); Texas Health and Safety Code, Chapter 401, Subchapter M (Laser Hair Removal); Chapter 754 (Elevators, Escalators, and Related Equipment); and Chapter 755 (Boilers); Texas Government Code, Chapter 469 (Elimination of Architectural Barriers); Texas Labor Code, Chapter 91 (Professional Employer Organizations); Texas Occupations Code Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavior Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Regulation of Barbering and Cosme-

tology); 1703 (Polygraph Examiners); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); and 2402 (Transportation Network Companies); and Texas Transportation Code, Chapter 521, §§521.375 - 521.376 (Drug Offender Education Program). No other statutes, articles, or codes are affected by the adoption.

§60.518. *Recognition of Out-of-State License of Military Spouse.*

(a) This section implements Texas Occupations Code §55.0041 (as added by Senate Bill 1200, 86th Legislature, Regular Session (2019)).

(b) This section applies to a military spouse, as defined under §60.501, who meets the requirements of Texas Occupations Code §55.0041.

(c) The notice required by Texas Occupations Code §55.0041(b)(1) must be provided by submitting the notice to the department on a completed department-approved form.

(d) The department will determine whether the licensing requirements of another jurisdiction are substantially equivalent to the licensing requirements of Texas as prescribed under §60.34.

(e) To be eligible for the confirmation described in Texas Occupations Code §55.0041(b)(3), a military spouse must provide the department with sufficient documentation to verify that the military spouse is currently licensed in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license.

(f) The department may not charge a fee for the authority to engage in a business or occupation, or for a three-year license, as set forth in subsections (g) and (h) below.

(g) Authority to engage in business or occupation.

(1) An individual who receives from the department the confirmation described in Texas Occupations Code §55.0041(b)(3):

(A) may engage in the authorized business or occupation only for the period during which the individual meets the requirements of Texas Occupations Code §55.0041(d); and

(B) must immediately notify the department if the individual no longer meets the requirements of Texas Occupations Code §55.0041(d).

(2) An individual is not required to undergo a criminal history background check to be eligible for the authority granted under this subsection.

(h) Three-year license.

(1) An individual who receives from the department the confirmation described in Texas Occupations Code §55.0041(b)(3) is eligible to receive a license issued by the department if the individual:

(A) submits a completed application on a department-approved form; and

(B) undergoes and successfully passes a criminal history background check.

(2) A license issued under this subsection expires on the third anniversary of the date the department provided the confirmation described in Texas Occupations Code §55.0041(b)(3) and may not be renewed.

(i) An individual who engages in a business or occupation under the authority or license established by this section is subject to the enforcement authority granted under Texas Occupations Code, Chapter 51, and the laws and regulations applicable to the business or occupation in Texas.

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

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



## CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

### 16 TAC §§66.20, 66.21, 66.25, 66.70, 66.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 66, §§66.20, 66.21, 66.25, 66.70, and 66.80, regarding the Property Tax Consultants (PTC) program, without changes to the proposed text as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3494). The adopted changes are referred to as "adopted rules." The adopted rules will not be republished.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 66 implement Texas Occupations Code, Chapter 1152, Property Tax Consultants. The adopted amendments clarify registration requirements; extend the license term from one-year to two-years; increase the number of continuing education hours from 12 to 24; and reduce registration fees. This rulemaking considered comments submitted in response to rule reviews conducted pursuant to Texas Government Code §2001.039.

#### 2014 Rule Review

The Department published a Notice of Intent to Review its Property Tax Consultants Program rules as part of the four-year rule review required under Texas Government Code §2001.039 in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10483). The Department received four public comments in response to this Notice of Intent to Review. The comments were considered in the drafting of the proposed rules and are summarized and addressed in this preamble to finalize the 2014 rule review. One commenter believes the rules are adequate as currently written. One commenter suggested removing the senior tax consultant sponsor requirement; however, this is a statutory requirement that cannot be changed in the rule review process. One commenter recommended that continuing education be taken every other year instead of every year; however, the Department has determined that the current continuing education requirements adequately serve registrants in the program.

One commenter is opposed to the 40-hour class and exam requirement; however, this is a statutory requirement that cannot be changed in the rule review process. At its meeting on April 1, 2015, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 66, Registration of Property Tax Consultants, in their current form. No changes to the proposed rules have been made as a result of the comments received in this rule review.

#### 2018 Rule Review

The Department published a Notice of Intent to Review its Property Tax Consultants Program rules as part of the four-year rule review required under Texas Government Code §2001.039 in the August 24, 2018, issue of the *Texas Register* (43 TexReg 5545). The public comment period closed on September 24, 2018. The Department received one public comment in response to this Notice of Intent to Review. The comment was considered in the drafting of the proposed rules and is summarized and addressed in this preamble to finalize the 2018 rule review. The sole comment inquired about the Department's plans for future administrative rule changes for property tax consultants. In response, the proposed rules are the Department's plans for future rule changes. At its meeting on January 11, 2019, the Commission readopted the rules at 16 TAC, Chapter 66, Registration of Property Tax Consultants, in their current form. No changes to the proposed rules have been made as a result of the comment received in this rule review.

#### Proposed Rules

The Rules Workgroup of the Property Tax Consultants Advisory Council (Council) met on August 16, 2018 and, after considering comments received during the 2014 and 2018 rule reviews, it was determined no changes would be made as result of those comments. Based on recommendations by Department staff and Council members, the Rules Workgroup formulated the proposed rules. The Council met on October 10, 2018, and recommended that the proposed rules be published for public comment. The proposed rules were published in the November 16, 2018, issue of the *Texas Register* (43 TexReg 7509). The public comment period closed on December 17, 2018. The Department received no public comments. The Council met on January 23, 2019, and recommended adoption of the proposed rules to the Commission as published. The Department withdrew the proposed rules in the March 15, 2019 issue of the *Texas Register* (44 TexReg 1435) to allow for modification of the implementation date for changes to continuing education hours associated with the increase in the registration term. The Department's Education, Examination and School Services Team met with the Council's Rules Workgroup on March 28, 2019, and recommended non-substantive changes to §66.25(b), (c) and (d) of the proposed rules that relate to continuing education.

The Department proposed amendments to the rules at 16 TAC, Chapter 66, as recommended by the Council at its meetings of October 10, 2018 and January 23, 2019, with non-substantive changes to §66.25(b), (c), and (d) as recommended by the Department's Education, Examination, and School Services Team, and the Council's Rules Workgroup.

#### SECTION-BY-SECTION SUMMARY

The adopted rules amend §66.20 to update language to be consistent with the format employed by the Texas Legislative Council Drafting Manual (September 2018).



The adopted rules amend §66.21 to extend the review date by Department staff for each educational program or course to every two years.

The adopted rules amend §66.25 to:

- extend the license renewal term for certificates of registration from one to two years;
- increase the continuing education requirement for registrants from 12 hours to 24 hours, consistent with the change in registration term length;
- increase the number of continuing education instruction hours in Texas law and ethics training;
- clarify the manner by which continuing education hours are computed for late renewal applications;
- modify the registrant retention time of certificates of course completion to two years; and
- remove inapplicable requirements for continuing education providers.

The adopted rules amend §66.70 to clarify the limitations imposed on a registered property tax consultant during his/her regular duties.

The adopted rules amend §66.80 to reduce fees on registrants and remove the imposition of fees on private providers.

#### PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3494). The deadline for public comments was August 12, 2019. The Department received comments from one interested party on the proposed rules during the 30-day public comment period. The public comment is summarized below.

**Comment--**One commenter expressed concern about the proposed fee changes in the Property Tax Consultants Program. The commenter noted a fee increase for registrants to \$135 and a fee decrease to zero for private providers in the proposed rules. The commenter also noted the proposed rules reduced the fees charged to continuing education providers from \$200 to zero. The commenter was concerned that the fee adjustments were an attempt to subsidize the costs associated with providers by increasing the fee amounts on PTC registrants. The commenter suggested a modified adjustment by reducing the fee charged to continuing education providers and raising the fee charged to PTC registrants to the amount of \$100 for both registration type.

**Department Response--**The Department appreciates the commenter's concerns and notes that the fee increase for PTC registrants reflects the costs associated with the issuance of a two-year registration renewal as opposed to one year in the past. The \$135 fee increase for a two-year registration renewal represents a 10% decrease in the previous cost of a renewal registration, which was \$75 per year.

Continuing education providers are governed under Title 16, Chapter 59 of the Texas Administrative Code and the proposed rules do not address that chapter. The proposed rules at issue amend Title 16, Chapter 66 of the Texas Administrative Code. The current fees related to continuing education provider application and renewal fees remains unchanged at \$200 and are not a subject of this rulemaking.

The recognition and application fees for private providers were reduced to zero. Private providers for the PTC Program are regulated by the Texas Workforce Commission under Title 40, Texas Administrative Code, Chapter 807, Career Schools and Colleges. Consequently, neither the recognition fee nor application fee were previously assessed on the private providers. Thus, the fees were removed from the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

#### ADVISORY COUNCIL RECOMMENDATIONS AND COMMISSION ACTION

The Council met on September 19, 2019, to discuss the proposed rules and the comment received. The Council recommended adopting the proposed rules without changes. At its meeting on November 5, 2019, the Commission adopted the proposed rules without changes.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1152, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1152. No other statutes, articles, or codes are affected by the proposal.

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

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For further information, please call: (512) 463-3671



## CHAPTER 73. ELECTRICIANS

### 16 TAC §73.20

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.20, regarding the Electricians program, without changes to the proposed text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3727). The adopted changes are referred to as the "adopted rule." The adopted rule will not be republished.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 73 implement Texas Occupations Code, Chapter 1305, Electricians. The adopted rule removes the restriction on the number of hours of on-the-job experience an applicant for any electrical license may claim within a given year. The existing rule allows applicants to claim no more than 2,000 hours of on-the-job experience annually. The adopted rule is necessary to remove this limit and allow the De-

partment to credit applicants for all on-the-job experience earned by an applicant.

## SECTION-BY-SECTION SUMMARY

The adopted amendments to TAC §73.20 remove the restriction on the maximum number of hours of on-the-job experience that may be earned within a year. Subsection (c) of the former rule is repealed, thus removing the 2,000-hour limitation. Subsection (d) of the former rule has become subsection (c).

## PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3727). The deadline for public comments was August 26, 2019. The Department received comments from 38 interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

**Comment--**Ten commenters stated clear support for the proposed rule, adding that it would allow electricians to receive full credit for their work.

**Department Response--**The Department appreciates these comments in support of the proposed rule. The Department did not make any changes to the rule in response to these comments.

**Comment--**Thirteen commenters expressed clear opposition to the proposed rule. Among the reasons stated were:

- Reported hours of on-the-job experience often include travel, breaks, and loading and unloading of equipment;
- Working more than 50 hours in one week is not productive;
- Too many apprentice electricians work more than 40 hours per week and still do not have the skill to be an electrical journeyman;
- Many apprentices are mostly performing manual labor rather than electrical work; and
- Raising the number of allowable hours will result in an increase in fraudulent hours logged.

**Department Response--**The Department appreciates these comments and understands the commenters' concerns. The Department understands that on-the-job experience may include manual labor as well as electrical work, and requires a supervising electrician to verify the type and number of hours of work performed by an applicant. The Department also has procedures in place to prevent applicants from claiming credit for hours that cannot be verified. The Department did not make any changes to the rule in response to these comments.

**Comment--**Five commenters recommended modifying the existing rule to increase the number of hours of on-the-job experience that could be claimed in one year. The recommendations were:

- 2,360 hours per year;
- 2,600 hours per year;
- 3,000 hours per year;
- A number between 2,000 and 4,368 hours per year; and
- 5,840 hours per year.

**Department Response--**The Department appreciates these comments, but believes removing the existing limitation was the best option to ensure that applicants receive full credit for

the hours worked within a given year. The Department did not make any changes to the rule in response to these comments.

**Comment--**One commenter recommended modifying the language of §73.20(c) to state that "there shall be no limitation upon the job training hours that may be earned within one year which can be verified as specified in 73.26."

**Department Response--**The Department appreciates this comment, but believes the proposed rule is adequate as published. The Department did not make any changes to the rule in response to the comment.

**Comment--**One commenter asked whether the proposed rule would allow a person who did not work 2,000 hours in a year to be credited for that amount of time nonetheless.

**Department Response--**No. The proposed rule simply allows an applicant to receive credit for all hours of on-the-job experience earned in a given year. The Department did not make any changes to the rule in response to this comment.

**Comment--**One commenter stated his desire to use experience earned outside the United States to become a licensed journeyman electrician.

**Department Response--**This comment was forwarded to the Regulatory Program Management Division for a response. The Department did not make any changes to the rule in response to this comment.

**Comment--**One commenter asked for a link to the list of public comments.

**Department Response--**The Department sent the comments to the requestor. The Department did not make any changes to the rule in response to this comment.

**Comment--**One commenter asked whether the proposed rule would allow him to apply for a master electrician license without meeting the required number of hours of on-the-job experience.

**Department Response--**No. The proposed rule simply allows an applicant to receive credit for all hours of on-the-job experience earned in a given year. The Department did not make any changes to the rule in response to this comment.

**Comment--**One commenter asked whether the proposed rule would allow him to apply for a journeyman electrician license without meeting the required number of hours of on-the-job experience.

**Department Response--**No. The proposed rule simply allows an applicant to receive credit for all hours of on-the-job experience earned in a given year. The Department did not make any changes to the rule in response to this comment.

**Comment--**One commenter stated his concern that "every individual should have to earn their hours."

**Department Response--**The proposed rule does not change in any way the number of hours of on-the-job experience required for a given license. The Department did not make any changes to the rule in response to this comment.

**Comment--**One commenter requested his apprentice electrician license number.

**Department Response--**The request was forwarded to the Licensing Division. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter expressed that he is an HVAC technician and is unable to prove the required number of hours of work. The commenter requested a decrease in the number of hours of work required to obtain a license.

*Department Response*--This comment is outside the scope of this rulemaking and would require a statutory change to implement. The Department did not make any changes to the rule in response to this comment.

Comment--One commenter expressed that "all hours should be verified with binding documentation."

*Department Response*--Existing Department rules require all hours of on-the-job experience to be verified. The Department did not make any changes to the rule in response to this comment.

#### ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Electrical Safety and Licensing Advisory Board (Advisory Board) met on September 26, 2019, to discuss the proposed rule and the comments received. The Advisory Board recommended adoption of the proposed rule without changes. At its meeting on November 5, 2019, the Commission adopted the proposed rule without changes.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on November 8, 2019.

TRD-201904173

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: December 1, 2019

Proposal publication date: July 26, 2019

For further information, please call: (512) 463-3671



## CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 77, §77.42, and the repeal of §77.44, regarding the Service Contract Providers and Administrators Program, without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4615). The adopted changes are referred to as "adopted rules." The adopted rules will not be republished.

## EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules under 16 TAC Chapter 77 implement Texas Occupations Code, Chapter 1304, relating to Service Contract Providers and Administrators.

The adopted rules are necessary to implement House Bill (HB) 4120 of the 86th Legislature (2019 Regular Session), which amends Chapter 1304 by allowing service contract providers, who are automobile dealers offering service contracts on vehicles that they sell, to reduce the financial security deposit (aka "funded reserve") of \$250,000 to a minimum of \$25,000, \$50,000, or \$75,000 depending on the provider's annual gross revenue in this state from the sale of service contracts during the preceding year. These rules are applicable to automobile service contract providers who meet the above requirements and who choose to demonstrate financial security during the licensure process by utilizing the funded reserve option available under Chapter 1304.

Additionally, the adopted rules repeal a portion of the existing rules which is outdated and no longer relevant.

#### SECTION-BY-SECTION SUMMARY

The adopted rule amends §77.42, Financial Security--Funded Reserve Account and Security Deposit, by providing options to automobile dealers to reduce the financial security deposit (funded reserve) required by Chapter 1304. It also sets the financial security deposit (funded reserve) minimum at \$25,000 and provides instruction on how a dealer with a funded reserve account in existence prior to September 1, 2019 may reduce their account to the applicable amount.

The adopted repeal of §77.44, Financial Security--Transition Provisions, applies to previous provisions which are outdated and no longer relevant to service contract providers of any type.

#### PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4615). The deadline for public comments was September 30, 2019. The Department received comments from one interested party on the proposed rules during the 30-day public comment period. The public comment is summarized below.

Comment--The Texas Independent Automobile Dealers Association (TIADA) expresses their support of the clarifying amendments to implement statutory changes to Chapter 1304 as mandated by HB 4120 during the 86th Texas Legislature.

*Department Response*--The Department appreciates the comment in support of the clarifying amendments in the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

#### RECOMMENDATIONS AND COMMISSION ACTION

The staff recommended the Commission to adopt the amendments to the existing rule at 16 Texas Administrative Code, Chapter 77, §77.42, and the repeal of §77.44, as published in the *Texas Register* without changes. At its meeting on November 5, 2019, the Commission adopted the proposed rules without changes.

### 16 TAC §77.42

#### STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 1304, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1304 and any other statutes affected by the adopted rules. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 8, 2019.

TRD-201904177  
Brad Bowman  
General Counsel  
Texas Department of Licensing and Regulation  
Effective date: December 1, 2019  
Proposal publication date: August 30, 2019  
For further information, please call: (512) 463-8179



### 16 TAC §77.44

The repeal is adopted under Texas Occupations Code, Chapters 51 and 1304, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 1304, and any other statutes affected by the adopted rules. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 8, 2019.

TRD-201904181  
Brad Bowman  
General Counsel  
Texas Department of Licensing and Regulation  
Effective date: December 1, 2019  
Proposal publication date: August 30, 2019  
For further information, please call: (512) 463-8179



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 1. GENERAL LAND OFFICE

#### CHAPTER 3. GENERAL PROVISIONS

## SUBCHAPTER F. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

### 31 TAC §§3.60 - 3.78

The General Land Office (GLO) adopts new rules in Subchapter F, Title 31, Part 1, §§3.60 - 3.78, relating to negotiation and mediation of certain contract disputes. The rules are adopted without changes to the proposed text as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5371), and the text will not be republished.

The GLO did not receive any comments on the amendments.

The Commissioner is authorized by Texas Natural Resources Code Section 31.051 to make and enforce suitable rules consistent with the law. The new rules are adopted to comply with Texas Government Code Section 2260.052(c), which requires units of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under Texas Government Code Chapter 2260.

The adopted new rules affect Title 31, Part 1, Chapter 3, of the Texas Administrative Code.

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

Filed with the Office of the Secretary of State on November 5, 2019.

TRD-201904103  
Mark Havens  
Chief Clerk, Deputy Land Commissioner  
General Land Office  
Effective date: November 25, 2019  
Proposal publication date: September 20, 2019  
For further information, please call: (512) 475-1859



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

##### SUBCHAPTER E. CLAIMS PROCESSING-PURCHASE VOUCHERS

### 34 TAC §5.58

The Comptroller of Public Accounts adopts amendments to §5.58, concerning recovery of certain state agency overpayments, without changes to the proposed text as published in the October 4, 2019, issue of the *Texas Register* (44 TexReg 5758). The rules will not be republished.

The amendments to subsection (a) update the format of the definitions, without changing the substance of the definitions, so that they are presented in the same format as other definitions listed in Chapter 5, and clarify the language in subsection (a)(11)(R).

The amendments to subsection (b) implement the amendments to Government Code, §2115.003, which were recently enacted by the legislature in Senate Bill 1571, 86th Legislature, 2019. The amendments to this subsection also revise the criteria under which a state agency that has a low proportion of its expenditures made to vendors is exempted from the recovery audit process under Government Code, §2115.003(b).

The amendments to subsection (c) delete the language of the subsection as unnecessary. The subsequent subsection will be re-lettered.

The amendments to relettered subsection (c) clarify the language of the subsection.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Government Code, §2115.003, which authorizes the comptroller to adopt rules concerning criteria under which a state agency may be exempted from the mandatory recovery audit process.

The amendments implement Government Code, Chapter 2115, concerning recovery of certain state agency overpayments.

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

Filed with the Office of the Secretary of State on November 6, 2019.

TRD-201904138

Victoria North

Chief Counsel, Fiscal and Agency Affairs Legal Services Division

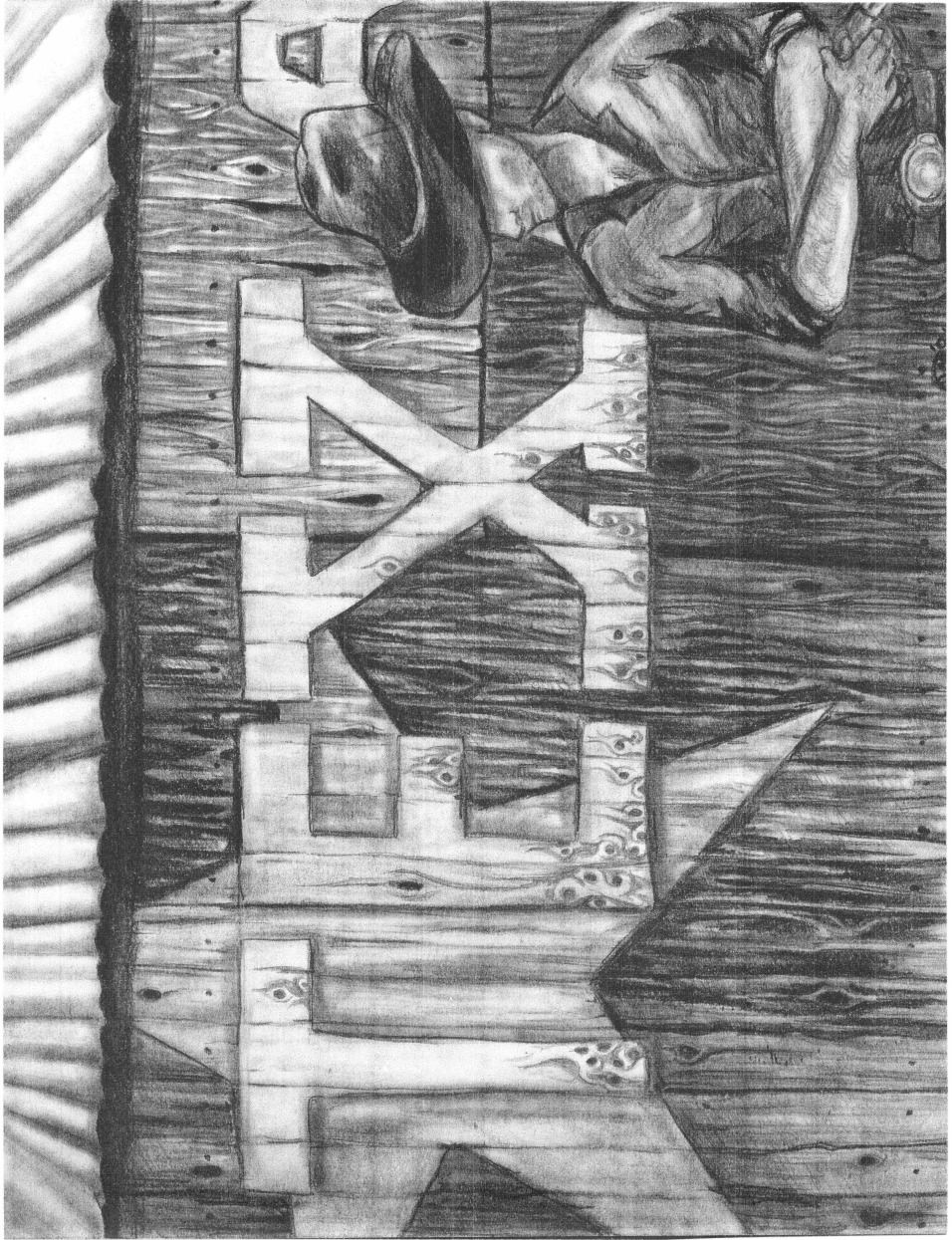
Comptroller of Public Accounts

Effective date: November 26, 2019

Proposal publication date: October 4, 2019

For further information, please call: (512) 475-0387





# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Department of Information Resources

### Title 1, Part 10

The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 211, §§211.1 - 211.21, Information Resources Managers. The review and consideration of the rules are conducted in accordance with Texas Government Code §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Christi Koenig Brisky, Assistant General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to [rule.review@dir.texas.gov](mailto:rule.review@dir.texas.gov). The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201904142  
Robert Schneider  
General Counsel  
Department of Information Resources  
Filed: November 6, 2019



The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 212, §§212.1-212.50, Purchases of Commodity Items. The review and consideration of the rules are conducted in accordance with Texas Government Code §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Christi Koenig Brisky, Assistant General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to [rule.review@dir.texas.gov](mailto:rule.review@dir.texas.gov). The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in

the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201904143  
Robert Schneider  
General Counsel  
Department of Information Resources  
Filed: November 6, 2019



The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 216, §§216.1-216.22, Project Management Practices. The review and consideration of the rules are conducted in accordance with Texas Government Code §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Christi Koenig Brisky, Assistant General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to [rule.review@dir.texas.gov](mailto:rule.review@dir.texas.gov). The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201904145  
Robert Schneider  
General Counsel  
Department of Information Resources  
Filed: November 6, 2019



The Texas Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 1, Chapter 217, §§217.1 - 217.31, Procurement of Information Resources. The review and consideration of the rules are conducted in accordance with Texas Government Code §2001.039. The review will include, at a minimum, an assessment by

DIR of whether the reasons the rules were initially adopted continue to exist and whether the rules should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Christi Koenig Brisky, Assistant General Counsel, via mail at P.O. Box 13654, Austin, Texas 78711, via facsimile transmission at (512) 475-4759, or via electronic mail to [rule-review@dir.texas.gov](mailto:rule-review@dir.texas.gov). The deadline for comments is thirty (30) days after publication of this notice in the *Texas Register*. Any proposed changes to the rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to the final adoption or repeal of the rule by DIR in accordance with the requirements of the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201904146  
Robert Schneider  
General Counsel  
Department of Information Resources  
Filed: November 6, 2019



Credit Union Department

### Title 7, Part 6

The Texas Credit Union Commission (Commission) will review and consider for re-adoption, revision, or repeal, Chapter 91, Subchapter C, concerning Members, consisting of §91.301, concerning Field of Membership; §91.302, concerning Election or Other Membership Vote by Electronic Balloting, Early Voting, Absentee Voting, or Mail Balloting; §91.310, concerning Annual Report to Membership; and §91.315, concerning Members' Access to Credit Union Documents.

The Commission will also review and consider for re-adoption, revision, or repeal, Subchapter O, concerning Trust Powers, consisting of §91.6001, concerning Fiduciary Duties; §91.6002, concerning Fiduciary Capacities; §91.6003, concerning Notice Requirements; §91.6004, concerning Exercise of Fiduciary Powers; §91.6005, concerning Exemption from Notice; §91.6006, concerning Policies and Procedures; §91.6007, concerning Review of Fiduciary Accounts; §91.6008, concerning Recordkeeping; §91.6009, concerning Audit; §91.6010, concerning Custody of Fiduciary Assets, §91.6011, concerning Trust Funds; §91.6012, concerning Compensation, Gifts, and Bequests; §91.6013, concerning Bond Coverage, §91.6014, concerning Errors and Omissions Insurance; and §91.6015, concerning Litigation File.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission believes that the reasons for adopting the rules contained in this chapter continue to exist. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist. The commission also invites comments on how to make these rules easier to understand. For example:

- Does the rule organize the material to suit your needs? If not, how could the material be better organized?
- Does the rule clearly state the requirements? If not, how could the rule be more clearly stated?
- Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

-- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

-- Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Each rule will also be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Any questions or written comments pertaining to this notice should be directed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to [cudmail@cud.texas.gov](mailto:cudmail@cud.texas.gov). Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201904141  
John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: November 6, 2019



## Adopted Rule Reviews

Texas Commission on Environmental Quality

### Title 30, Part 1

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 112, Control of Air Pollution from Sulfur Compounds, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2853).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 112 are required to control emissions of sulfur dioxide (SO<sub>2</sub>), hydrogen sulfide, sulfuric acid, and total reduced sulfur throughout the state. These rules were initially adopted in 1968 by the Texas Air Control Board in accordance with the Texas Clean Air Act of the 60th Texas Legislature, 1967. These rules were later submitted as a part of the state implementation plan for the SO<sub>2</sub> National Ambient Air Quality Standard (NAAQS) in accordance with 42 United States Code (USC), §7409, National Primary and Secondary Ambient Air Quality Standards; and 42 USC, §7410, State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards. The rules in Chapter 112 are necessary for compliance with the federal Clean Air Act, and they are necessary for maintaining attainment of the SO<sub>2</sub> NAAQS.

#### Public Comment

The public comment period closed on July 9, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 112 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904162



Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: November 8, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 216, Water Quality Performance Standards for Urban Development, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2854).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 216 provide specific procedures and measures to implement Texas Water Code (TWC), §26.177. The rules and statute address the commission's authority to require a city with a population of 10,000 or more and water pollution that is attributable to non-permitted sources to develop a water pollution control and abatement program. Non-permitted sources of water pollution are those not authorized by a valid permit, general permit, or rule pursuant to TWC, Chapter 26, the federal Clean Water Act, or other applicable state or federal law. Because TWC, §26.177 is still effective, the rules in Chapter 216 are still needed.

#### Public Comment

The public comment period closed on July 9, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 216 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904163  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: November 8, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 293, Water Districts, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2854).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 293 are required because of several statutory provisions: Texas Water Code (TWC), §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under the provisions of TWC or other laws of this state; TWC, §5.235, which specifies applicable fees; TWC, §49.011(b), which directs the commission to adopt rules establishing a procedure for public notice and hearing on applications for creation of a district; and Local Government Code, §395.080, which directs the commission to adopt rules on processing of applications for approval of impact fees. In addition, Chapter 293 implements commission responsibilities and

duties arising from the provisions of the Texas Constitution, Article III, §52 and Article XVI, §59; TWC, Chapters 36, 49, 50, 51, 53, 54, 56, 57, 58, 59, 65, and 66; and Local Government Code, Chapters 42, 375, and 395.

#### Public Comment

The public comment period closed on July 9, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 293 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904165  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: November 8, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 303, Operation of the Rio Grande, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2733).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 303 are required because the rules are necessary to implement the procedures and powers provided to the commission relating to watermaster operations contained in Texas Water Code, Water Rights, Chapter 11, including §§11.325 - 11.458.

#### Public Comment

The public comment period closed on July 1, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 303 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904166  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: November 8, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 331, Underground Injection Control, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2854).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 331 are required for federal delegation of the Underground Injection Control Program consistent with the

Safe Drinking Water Act. The rules also implement Texas Water Code, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

Public Comment

The public comment period closed on July 9, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 331 continue to exist and readopts

these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904164

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 8, 2019



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/18/19 - 11/24/19 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/18/19 - 11/24/19 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201904218

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 12, 2019

◆ ◆ ◆  
**Court of Criminal Appeals**

In the Court of Criminal Appeals of Texas

# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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Misc. Docket No. 19-011  
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**ORDER ADOPTING TEXAS RULE OF APPELLATE PROCEDURE 73.8**  
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**ORDERED** that:

1. By order dated June 3, 2019, in Misc. Docket No. 19-005, The Court of Criminal Appeals proposed adopting Rule 73.8 of the Texas Rules of Appellate Procedure and invited public comments. The public comment period has expired.
2. The Court has reviewed any comments received. This order incorporates all revisions and contains the final version of these rule amendments.
3. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals adopts Rule 73.8 of the Texas Rules of Appellate Procedure. The proposed rule will take effect on December 1, 2019.
4. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

Dated: November 4, 2019.

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Sharon Keller, Presiding Judge

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Michael Keasler, Judge

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Barbara P. Hervey, Judge

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Bert Richardson, Judge

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Kevin P. Yeary, Judge

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David Newell, Judge

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Mary Lou Keel, Judge

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Scott Walker, Judge

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Michelle M. Slaughter, Judge

### **73.8. Rules of Evidence**

The Texas Rules of Evidence apply to a hearing held on a postconviction application for a writ of habeas corpus filed under Code of Criminal Procedure Article 11.07 or 11.071.

Comment to 2019 change: Rule 73.8 is added to clarify that the Rules of Evidence apply in hearings held in Article 11.07 and 11.071 habeas corpus cases. This rule does not the limit the ability of an applicant to attach supporting documents to an application for a writ of habeas corpus.

TRD-201904160  
Deana Williamson  
Clerk of the Court  
Court of Criminal Appeals  
Filed: November 7, 2019

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In the Court of Criminal Appeals of Texas

# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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Misc. Docket No. 19-012  
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**ORDER ADOPTING TEXAS RULE OF APPELLATE PROCEDURE 80.1, DELETING  
RULE OF APPELLATE PROCEDURE 68.11, AND AMENDING RULES OF  
APPELLATE PROCEDURE 70.3 AND 79.7**  
=====

**ORDERED** that:

1. On June 3, 2019, the Court of Criminal Appeals signed Misc. Docket No. 19-006 proposing the adoption of Rule 80.1, the deletion of Rule 68.11, and the amendment of Rules 70.3 and 79.7 of the Texas Rules of Appellate Procedure. The public comment period has expired.
2. The Court has reviewed any comments received. This order incorporates all revisions and contains the final version of these rule amendments.
3. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals adopts Rule 80.1 of the Texas Rule of Appellate Procedure, the deletion of Rule of Appellate Procedure 68.11 and amendments to Rules of Appellate Procedure 70.3 and 79.7. The proposed rule and amendments will take effect on December 1, 2019.
4. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

Dated: November 4, 2019.

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Sharon Keller, Presiding Judge

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Michael Keasler, Judge

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Barbara P. Hervey, Judge

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Bert Richardson, Judge

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Kevin P. Yeary, Judge

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David Newell, Judge

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Mary Lou Keel, Judge

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Scott Walker, Judge

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Michelle M. Slaughter, Judge



**~~Rule 68.11. Service on State Prosecuting Attorney~~**

~~In addition to the service required by Rule 9.5, service of the petition, the reply, and any amendment or supplementation of a petition or reply must be made on the State Prosecuting Attorney.~~

\* \* \*

**Rule 70.3. Brief Contents and Form**

Briefs must comply with the requirements of Rules 9 and 38, except that they need not contain the appendix (Rule 38.1(k)). ~~Copies must be served as required by Rule 68.11.~~

\* \* \*

**Rule 79.7. Service**

The requirements of Rule ~~68.11~~80.1 apply.

\* \* \*

**Rule 80. State Prosecuting Attorney**

**Rule 80.1. Service on State Prosecuting Attorney**

The State Prosecuting Attorney must be served on every petition for discretionary review or brief filed by any party or amicus curiae in the Court of Criminal Appeals, including replies, responses, amendments, and supplements.

Comment to 2019 change: This rule incorporates and expands former Rule 68.11 to require service on the State Prosecuting Attorney of all petitions for discretionary review and all substantive briefing in the Court of Criminal Appeals. In using the phrase “brief filed by any party or amicus curiae in the Court of Criminal Appeals,” the rule does not intend to require service on the State Prosecuting Attorney of petitions for a writ of mandamus (or responses) or applications for a writ of habeas corpus (or answers) and their accompanying memoranda. However, if the Court of Criminal Appeals has filed and set a

mandamus petition or habeas corpus application, the rule does require service on the State Prosecuting Attorney of the briefs filed in the case.

TRD-201904161  
Deana Williamson  
Clerk of the Court  
Court of Criminal Appeals  
Filed: November 7, 2019

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**Texas Commission on Environmental Quality**

**Agreed Orders**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is December 30, 2019. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on December 30, 2019. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 4-D Water Company, LLC; DOCKET NUMBER: 2019-0716-PWS-E; IDENTIFIER: RN102320660; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and TCEQ Agreed Order Docket Number 2017-0252-PWS-E, Ordering Provision Number 2.a.iii, by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director for the July 1, 2017 - December 31, 2017, January 1, 2018 - June 30, 2018, and July 1, 2018 - December 31, 2018, monitoring periods; PENALTY: \$1,722; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: 4-S Manufacturing Texas Limited Liability Company; DOCKET NUMBER: 2019-0791-AIR-E; IDENTIFIER:

RN100889872; LOCATION: Hempstead, Waller County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.115(c) and §116.615(10), Standard Permit Registration Number 86593, Special Conditions Numbers (3)(E) and (6)(C), and Texas Health and Safety Code, §382.085(b), by failing to pave all entry and exit roads and main traffic routes associated with the operation of the concrete batch plant and failing to minimize dust emissions from all in-plant roads and traffic areas associated with the operation of the plant; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Centex Materials LLC; DOCKET NUMBER: 2019-1044-EAQ-E; IDENTIFIER: RN102190592; LOCATION: Buda, Hays County; TYPE OF FACILITY: quarry; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$1,150; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(4) COMPANY: City of Buda and Guadalupe-Blanco River Authority; DOCKET NUMBER: 2019-0916-MWD-E; IDENTIFIER: RN101703288; LOCATION: Buda, Hays County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011060001, Permit Condition 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$4,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,875; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: Juan Martin Villarreal dba El Chore Pit 2; DOCKET NUMBER: 2019-0922-MSW-E; IDENTIFIER: RN103915807; LOCATION: Mission, Hidalgo County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Alain Elegebe, (512) 239-6924; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: LYNDELL BRAZORIA REALTY, LLC dba Salt Grass Kountry 1; DOCKET NUMBER: 2019-0888-PWS-E; IDENTIFIER: RN104422159; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90200571 for Fiscal Years 2001 - 2011 and 2015 - 2019; and 30 TAC §290.106(e), by failing to provide the results of nitrate sampling to the executive director for the January 1, 2018 - December 31, 2018, monitoring period; PENALTY: \$54; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: MEHAT ENTERPRISES, INCORPORATED dba Chevron at Wurzbach; DOCKET NUMBER: 2019-1313-PST-E;

IDENTIFIER: RN102266525; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: OZ MARKET INC dba Bob's Town & Country; DOCKET NUMBER: 2019-1031-PST-E; IDENTIFIER: RN101869915; LOCATION: Canton, Van Zandt County; TYPE OF FACILITY: convenience store with retail sales of diesel; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every 30 days and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,839; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Reagent Chemical & Research, Incorporated; DOCKET NUMBER: 2019-1022-IWD-E; IDENTIFIER: RN100916907; LOCATION: Houston, Harris County; TYPE OF FACILITY: trucking yard; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0005239000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001, 002, 003, and 004, by failing to comply with permitted effluent limitations; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: TSS Business, Incorporated dba Corner Food Mart; DOCKET NUMBER: 2019-1232-PST-E; IDENTIFIER: RN102371986; LOCATION: Pharr, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,873; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-201904203

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 12, 2019



#### Notice of Availability of the Draft 2020 Texas Integrated Report of Surface Water Quality for the Federal Clean Water Act, §305(b) and §303(d)

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft 2020 Texas Integrated Report of Surface Water Quality (IR). The IR is developed as a requirement of the federal Clean Water Act (CWA), §305(b) and §303(d). The IR is an overview of the status of surface waters in the state. Factors considered in evaluating the status of water bodies include concerns for public health, viability for use by aquatic species and other wildlife,

and specific pollutants and their potential sources. The IR includes summaries of water bodies that do not support beneficial uses or water quality criteria and those water bodies that demonstrate cause for concern. The IR is used by the TCEQ to support water quality management activities including monitoring, water quality standards revisions, total maximum daily loads, watershed protection plans, and best management practices to control pollution sources.

#### Draft 2020 IR Information

The draft 2020 IR will be available November 22, 2019, on the TCEQ's website at: [https://www.tceq.texas.gov/waterquality/assessment/public\\_comment](https://www.tceq.texas.gov/waterquality/assessment/public_comment). Information regarding the public comment period may also be found on this website. Review and comment on individual waterbodies and the summaries, as described in the draft 2020 IR contained on this website, are encouraged through the comment period that ends on January 3, 2020.

After the public comment period for the draft 2020 IR, the TCEQ will evaluate all additional data or information received. Changes made in response to any additional data or information submitted will be reflected in the draft 2020 IR which will be submitted to the United States Environmental Protection Agency (EPA) for approval.

#### Public Comments

The TCEQ will consider and respond to comments received during the comment period, in a "Response to Comments" document. The Response to Comments and the draft 2020 IR will be posted on the website when the TCEQ sends the draft 2020 IR to the EPA. **Written comments must be received by 5:00 p.m. on January 3, 2020.** Comments must be submitted in writing via e-mail, post, or special delivery, and will not be accepted by phone.

E-mail comments to [303d@tceq.texas.gov](mailto:303d@tceq.texas.gov). Individuals unable to access the documents on the TCEQ's website may contact Andrew Sullivan by mail at Texas Commission on Environmental Quality, Water Quality Planning Division, MC 234, P.O. Box 13087, Austin, Texas 78711-3087 or by telephone at (512) 239-4587.

TRD-201904213

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 12, 2019



#### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 295, 297, and 318

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 295, Water Rights, Procedural, §295.302; Chapter 297, Water Rights, Substantive, §297.202; and Chapter 318, Marine Seawater Desalination, §318.9; under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill 2031 from the 84th Legislature, 2015, Regular Session, by designating appropriate discharge and diversion zones according to the Marine Seawater Desalination Diversion and Discharge Zone Study completed by the Texas Parks and Wildlife Department and the General Land Office.

The commission will hold a public hearing on this proposal in Austin on December 17, 2019, at 10:00 a.m. in Room 201S in Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called

upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2019-102-295-OW. The comment period closes January 6, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Kathy Alexander, Water Availability Division at (512) 239-0778.

TRD-201904144

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 6, 2019



## Notice of Water Rights Application

APPLICATION NO. 13531; GeoSouthern Operating II, LLC.; 1425 Lake Front Circle, The Woodlands, Texas 77380, Applicant, seeks a temporary water use permit to divert and use not to exceed 125 acre-feet of water within a period of one year from a point on an unnamed tributary of Indian Creek, Brazos River Basin at a maximum diversion rate of 4.68 cfs (2,100 gpm) for mining purposes in Washington County. The application and partial fees were received on December 4, 2018. Additional information and fees were received on March 1, 2019 and April 15, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 26, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, stream-flow restrictions and installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by November 26, 2019.

APPLICATION NO. 13532; GeoSouthern Operating II, LLC.; 1425 Lake Front Circle, The Woodlands, Texas 77380, Applicant, seeks a temporary water use permit to divert and use not to exceed 125 acre-feet of water within a period of one year from a point on an unnamed tributary of East Mill Creek, Brazos River Basin at a maximum diversion rate of 4.68 cfs (2,100 gpm) for mining purposes in Washington County. The application and partial fees were received on December 4, 2018. Additional information and fees were received on March 1, 2019 and April 15, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 26, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, stream-flow restrictions and installation of a measuring device for diversions.

The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by November 26, 2019.

1 APPLICATION NO. 13532; GeoSouthern Operating II, LLC.; 1425 Lake Front Circle, The Woodlands, Texas 77380, Applicant, seeks a temporary water use permit to divert and use not to exceed 125 acre-feet of water within a period of one year from a point on an unnamed tributary of East Mill Creek, Brazos River Basin at a maximum diversion rate of 4.68 cfs (2,100 gpm) for mining purposes in Washington County. The application and partial fees were received on December 4, 2018. Additional information and fees were received on March 1, 2019 and April 15, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 26, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, stream-flow restrictions and installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by November 26, 2019.

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

TRD-201904222

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 13, 2019

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## Texas Facilities Commission

Request for Proposals (RFP) #303-1-20683

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-1-20683. TFC seeks a five (5) or ten (10) year lease of approximately 5,012 square feet of office space in City of Paris, Lamar County, Texas.

The deadline for questions is December 13, 2019, and the deadline for proposals is December 20, 2019, at 3:00 p.m. The award date is February 20, 2020. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at Evelyn.Esquivel@tfc.state.tx.us. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmartbuy.com/sp/303-1-20683>.

TRD-201904221

Rico Gamino

Director of Procurement

Texas Facilities Commission

Filed: November 13, 2019

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## General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 28, 2019 to November 8, 2019. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, November 15, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, December 15, 2019.

FEDERAL AGENCY ACTIONS:

**Applicant:** Golden Triangle Properties, LLC

**Location:** The project site is located in wetlands adjacent to Taylor Bayou, approximately 1.25 miles south of the intersection of State Highways 73 and 93, in Port Arthur, Jefferson County, Texas.

**Latitude & Longitude (NAD 83):** 29.874389 -93.993627

**Project Description:** The applicant proposes to retain 12.2 acres of wetlands that have been filled with clean fill material, retain the conversion of 5.2 acres of forested wetlands that have been converted to herbaceous wetlands and proposes to discharge clean fill material into an additional 0.3 acres of wetlands for the purpose of developing an

offloading facility for railroad tank cars. This offloading facility facilitates the transfer of unrefined hydrocarbons to tank barges.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2014-00661. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Railroad Commission as part of its certification under Section 401 of the Clean Water Act.

**CMP Project No:** 16-1374-F1

**Applicant:** Williams Gulf Coast Gathering Company, LLC

**Location:** The project site is located in the Gulf of Mexico, starting at approximately 3 miles offshore from Padre Island National Seashore (PINS) and extending to approximately 9 miles from PINS to the onshore site.

**Latitude & Longitude (NAD 83):** Start: Latitude: 27.133056 North; Longitude: 97.323056 West Finish: Latitude: 27.192555 North; Longitude: 97.450371 West

**Project Description:** The applicant proposes to decommission approximately 9 miles of pipeline identified as Segment 5995 in place, starting at 27.133056, -97.323056 (approximately 3 miles offshore from PINS) and ending onshore at 27.192555, -97.450371. This proposed modification of Segment 5995 is under the National Seashore and under the Intra Coastal Water Way (ICWW). The applicant has proposed to cut, flush, cap and fill with native seawater. The applicant has stated that no impacts to the sea floor or waters of the US are anticipated.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2016-01074. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899. Note: The consistency review for this project may be conducted by the Texas Railroad Commission

**CMP Project No:** 20-1055-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at [pialegal@glo.texas.gov](mailto:pialegal@glo.texas.gov). Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).

TRD-201904228

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: November 13, 2019

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## Texas Health and Human Services Commission

Public Notice - Methodology for Determining Caseload Reduction Credit for the Temporary Assistance for Needy Families (TANF) Program for Federal Fiscal Year 2020

The Texas Health and Human Services Commission (HHSC) announces its intent to seek comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) Program caseload reduction credit for Federal Fiscal Year (FFY) 2020. HHSC will base the methodology on caseload reduction occurring from FFY 2005 to FFY 2019. This methodology and the resulting estimated caseload reduction credit will be submitted

for approval to the United States Department of Health and Human Services, Administration for Children and Families.

Section 407(b)(3) of the Social Security Act provides for a TANF caseload reduction credit, which gives a state credit for reducing its TANF caseload between a base year and a comparison year. To receive the credit, a state must complete and submit a report that, among other things, describes the methodology and the supporting data that the state used to calculate its caseload reduction estimates. See 45 C.F.R. §261.41(b)(5). Prior to submitting the report, the state must provide the public with an opportunity to comment on the estimate and methodology. See 45 C.F.R. §261.41(b)(6).

As the state agency that administers the TANF program in Texas, HHSC believes it is eligible for a caseload reduction credit and has developed the requisite estimate and methodology. HHSC hereby notifies the public of the opportunity to submit comments.

HHSC will post the methodology and the estimated caseload reduction credit on the HHSC website for FFY 2020 at <https://hhs.texas.gov/about-hhs/records-statistics/data-statistics/temporary-assistance-needy-families-tanf-statistics> by November 22, 2019. The public comment period begins November 22, 2019, and ends December 6, 2019.

**Written Comments.** Written comments may be sent by U.S. mail, fax, or email.

#### U.S. Mail

Texas Health and Human Services Commission Attention: Hilary Davis 909 W. 45th Street Bldg. 2, MC 2115 Austin, Texas 78751

Phone number for package delivery: (512) 206-5556

**Fax** Attention: Access and Eligibility Services - Program Policy, Hilary Davis

Fax Number: (512) 206-5141

**Email** [Hilary.Davis@hhsc.state.tx.us](mailto:Hilary.Davis@hhsc.state.tx.us)

TRD-201904172

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 8, 2019

## Texas Department of Housing and Community Affairs

### 2019 HOME Investment Partnerships Program (HOME) General Set-Asides Notice of Funding Availability

#### Notice of Funding Availability

The Texas Department of Housing and Community Affairs (the Department) is making available 2019 HOME Investment Partnerships Program (HOME) funding for single family activities for General Set-Asides.

Funds will be available through the 2019 HOME Single Family Programs Notice of Funding Availability (NOFA). The NOFA is for approximately \$16,991,183 to be funded through participation in the Reservation System. Funding made available through the Reservation System may be increased from time to time as funds become available. Approval to receive a Reservation System Participant (RSP) agreement is not a guarantee of funding availability.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10

TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at <http://www.tdhca.state.tx.us/nofa.htm>.

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at <http://www.tdhca.state.tx.us/home-division/applications.htm>.

Applications submitted in response to the NOFA will be accepted in accordance with deadlines based on an open application cycle.

TRD-201904198

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: November 8, 2019



### 2020-2 Multifamily Direct Loan Special Purpose Notice of Funding Availability (NOFA)

**1. Summary.** The Texas Department of Housing and Community Affairs (the Department) announces the availability of a certain amount of National Housing Trust Fund (NHTF), **not to exceed \$11,383,833**, and the final amount will consist solely of unrequested funds under the Supportive Housing/ Soft Repayment set-aside of the 2019-1 Multifamily Direct Loan NOFA as of November 26, 2019, at 5:00 p.m. Austin Local Time. These funds are available under the 4% HTC and Bond Layered Set-Aside for the new construction or reconstruction of affordable multifamily rental housing for extremely low-income Texans. All NHTF available under this NOFA is currently available statewide. **Applications under the 2020-2 NOFA will be accepted from December 3, 2019, to January 6, 2020, with all Applications having an Application Acceptance Date of January 6, 2020.** Applications will be subject to the 2020 Qualified Allocation Plan (10 TAC Chapter 11), Multifamily Housing Revenue Bond Rules (10 TAC Chapter 12), and Multifamily Direct Loan Rule (10 TAC Chapter 13). **Capitalized Terms in this NOFA are defined in 24 CFR Part 93, 10 TAC Chapters 1, 11, 12, or 13, or in Tex. Gov't Code Chapter 2306, as applicable.**

**2. Eligible Applications.** Eligible Applications under this NOFA are limited to those that meet all of the following requirements:

- a. Must concurrently be requesting 4% Housing Tax Credits.
- b. Must have advance notice of Certificate of Reservation from the Texas Bond Review Board under the 2020 Lottery.
- c. Must be proposing NHTF Units that:
  - i. Must be available for households earning the greater of the federal poverty limit or 30% AMI or less, and have rents no higher than the rent limits for Extremely low-income Tenants in 24 CFR §93.302(b);
  - ii. May not receive any project-based subsidy;
  - iii. May not be receiving tenant-based voucher or tenant-based rental assistance, to the extent that there are other available Units within the Development that the voucher-holder may occupy; and
  - iv. May not be restricted to 30% AMI or less by Housing Tax Credits, or any other fund source.

d. Must be proposing new construction or reconstruction (as defined in 24 CFR §93.2) in areas that meet the requirements of 24 CFR §93.301(f) as further described in CPD Notice 16-14, and the Site and Neighborhood Standards in 24 CFR §93.150.

e. If the Applicant proposes to make the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code, the Application may not have more than 15% of the Units in the Development designated as Market Rate Units.

**3. Maximum Per Application Request and Loan Structure.**

a. The maximum per Application request under this NOFA is \$3,000,000.

b. The only loan structure available for Construction-to-Permanent loans under this NOFA is Surplus Cash, with interest rates as low as 0%, but determined in accordance with 10 TAC Chapter 11, Subchapter D.

c. The loan structure may be Construction Only with a 0% interest rate and repayment due at Construction Completion.

d. Permanent Refinance Loans are not eligible under this NOFA.

**4. Maximum Per Unit Subsidy Limits.** The maximum per unit subsidy limits that an Applicant can use to determine the amount of Direct Loan funds they may request are listed in the table below:

<b>Bedrooms</b>	<b>Non-elevator property</b>	<b>Elevator-served property</b>
0 bedroom	\$142,411	\$149,868
1 bedroom	\$164,203	\$171,802
2 bedroom	\$198,034	\$208,913
3 bedroom	\$253,490	\$270,266
4 bedroom or more	\$282,398	\$296,666

Smaller per unit subsidies are allowable and incentivized as point scoring items in 10 TAC §13.6. To determine the minimum number of NHTF Units required either by scoring, maximum per unit subsidy limits, or the cost allocation analysis - ensuring that, which will ensure the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible NHTF Development costs, please use the 2020 Multifamily Direct Loan Unit Calculator Tool found here: <https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>

**5. Application Submission Requirements.**

**a. Applications under this NOFA will be accepted starting at 8:00 a.m. Austin local time on December 3, 2019, through January 6, 2020, at 5:00 p.m. Austin local time.**

b. 2020 Application materials, including manuals, NOFAs, program guidelines, and rules, will be available on the Department's website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Applications will be required to adhere to the requirements in effect at the time of the Application Acceptance Date including any requirements of federal rules that may apply and subsequent guidance provided by HUD.

c. An Applicant may have only one active Application per Development at a time.

d. A 2020 Application must be on forms provided by the Department, and cannot be altered or modified, and must be in final form before submitting it to the Department. An Applicant must submit the Application materials as detailed in the Multifamily Programs Procedures Manual (MPPM) in effect at the time of the Application Acceptance Date. All scanned copies must be scanned in accordance with the guidance provided in the MPPM in effect at the time the Application Acceptance Date.

e. If an Applicant has an active Application (i.e. the Board has not made a Direct Loan Award), but wishes to apply for additional funds, it must withdraw that Application and submit a new Application.

f. The request for funds may not be less than \$300,000. However, if the underwriting report indicates that the Development will be feasible with an award of less than \$300,000, staff may recommend a lower award.

g. In addition to the NHTF Units, Applicants must provide a Matching Contribution to HOME Eligible Units as described in 10 TAC §13.(2)(9) in the amount of at least 5 percent of the Direct Loan funds requested. Except for Match in the form of the net present value of a below market interest rate loan or a property tax exemption under Sections 11.111, 11.18, 11.181, 11.182, 11.1825, or 11.1827 of Texas Property Tax Code, Match must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of NHTF funds.

h. An Application must be uploaded to the Department's secure web transfer server in accordance with 10 TAC §11.201(1)(C).

**6. Post Award Requirements.** Applicants are strongly encouraged to review the applicable Post Award requirements in 10 TAC Chapter 10, Subchapter E, Post Award and Asset Management Requirements and 10 TAC Chapter 13, as well as the Monitoring requirements in 10 TAC Chapter 10.

a. Awarded Applicants may, at the Department's discretion, be charged fees for underwriting, legal fees, asset management, and ongoing monitoring.

b. An Applicant will be required to record a Land Use Restriction Agreement (LURA) limiting residents' income and rent for the greater amount of Units required by the Direct Loan Unit Calculation Tool, or as represented in the Application for the term of the LURA.

c. An Applicant must have a current Data Universal Numbering System (DUNS) number and be registered in the federal System for Award Management (SAM) prior to execution of a Direct Loan contract. Applicants may apply for a DUNS number at [dnb.com](http://dnb.com).

Once you have the DUNS number, you can register with the SAM at <https://www.sam.gov/portal/public/SAM/>.

d. An awarded Applicant may be required to meet additional documentation requirements in order to draw funds, in accordance with its Previous Participation results.

e. Notwithstanding any other deadlines in 10 TAC Chapter 11, 12, or 13, if the Department and the Applicant are unable to execute a Contract by October 2, 2020, and the Department loses access to all or a portion of its 2018 NHTF funding, the Application may be subject to a partial or total reduction of the NHTF award.

#### 7. Miscellaneous.

a. This NOFA does not include text of the various applicable regulatory provisions pertinent to NHTF. For proper completion of the application, the Department strongly encourages potential Applicants to review the State and Federal regulations.

b. All Applicants must comply with public notification requirements in 10 TAC §11.203.

c. For questions regarding this NOFA, please contact Andrew Sinnott, Multifamily Loan Program Administrator, at [andrew.sinnott@tdhca.state.tx.us](mailto:andrew.sinnott@tdhca.state.tx.us).

#### Attachment A

##### Rules and Resource Links

##### State of Texas

##### Texas Administrative Code

10 TAC Chapter 1 (Administration)

10 TAC Chapter 2 (Enforcement)

10 TAC Chapter 10 (Uniform Multifamily Rules)

10 TAC Chapter 11 (Qualified Allocation Plan)

10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)

10 TAC Chapter 13 (Multifamily Direct Loan Rule)

[http://texreg.sos.state.tx.us/public/readtac\\$ext.View-TAC?tac\\_view=3&ti=10&pt=1](http://texreg.sos.state.tx.us/public/readtac$ext.View-TAC?tac_view=3&ti=10&pt=1)

##### Texas Government Code

Tex. Gov't. Code Chapter 2306

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>

##### Department of Housing and Urban Development (HUD)

##### HUD Program Regulations (NHTF)

24 CFR Part 93 ("NHTF Interim Rule")

[http://www.ecfr.gov/cgi-bin/text-idx?SID=222584118d192eb177d111b97b45cda8&mc=true&tpl=/ecfrbrowse/Title24/24cfr93\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=222584118d192eb177d111b97b45cda8&mc=true&tpl=/ecfrbrowse/Title24/24cfr93_main_02.tpl)

##### Federal Cross-Cutting Requirements

Visit <https://www.tdhca.state.tx.us/program-services/training.htm> for TDHCA training regarding the following requirements:

Fair Housing

<https://www.tdhca.state.tx.us/fair-housing/index.htm>

Environmental Review and Clearance

<https://www.tdhca.state.tx.us/program-services/environmental/index.htm>

Minimizing Resident Displacement

<https://www.tdhca.state.tx.us/program-services/ura/index.htm>

Employment Opportunities for Low-Income People: HUD Section 3

<https://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm>

TRD-201904201

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: November 8, 2019



#### Multifamily Direct Loan 2019-1 Notice of Funding Availability (NOFA) Fifth Amendment

This amendment reprograms \$1,500,000 in Tax Credit Assistance Program Repayment Funds (TCAP RF) from the Supportive Housing/ Soft Repayment (SH/SR) set-aside to the General set-aside, adds \$990,000 in TCAP RF received in April and May 2019 to the General set-aside, and releases \$500,000 in Neighborhood Stabilization Program Round 1 Program Income (NSP1 PI) from the General set-aside for single family activities. Additionally, this amendment changes the application submission deadline for applications submitted under the Community Housing Development Organization (CHDO), Preservation, and General set-asides to 5:00 p.m. Austin local time on October 11, 2019. Applications submitted under the SH/SR set-aside will continue to be received until 5:00 p.m. Austin local time on November 26, 2019.

This amendment replaces in its entirety sections 1, 2a, 2b, 2c, 2d, and 6a. All other sections of the 2019-1 NOFA remain as amended by the First, Second, Third, and Fourth Amendments.

**Summary.** The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to **\$68,093,832.50** in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans. **Applications submitted under the Supportive Housing/ Soft Repayment (SH/SR) set-aside under the 2019-1 NOFA will be accepted from January 14, 2019, through November 26, 2019 (if sufficient funds remain), while applications submitted under the CHDO, General, and Preservation set-asides under the 2019-1 NOFA will be accepted from January 14, 2019, through October 11, 2019.** From September 20, 2019, through October 21, 2019, an Applicant applying for NHTF Funds is limited to the amount available in the region as provided in the 2019 NHTF Regional Allocation Formula found in Attachment B. An Applicant that submits a complete application for NHTF funds from September 20, 2019, through October 21, 2019, requesting a greater amount than is available in the Region, will have an Application date of receipt of October 22, 2019. The availability and use of these funds are subject to the following rules, as applicable:

##### Texas Administrative Code

10 TAC Chapter 1 (Administration)

10 TAC Chapter 2 (Enforcement)

10 TAC Chapter 10 (Uniform Multifamily Rules)

10 TAC Chapter 11 (Qualified Allocation Plan)

10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)

10 TAC Chapter 13 (Multifamily Direct Loan Rule)

##### Texas Government Code

Tex. Gov't. Code Chapter 2306



## **U.S. Department of Housing and Urban Development (HUD) Program Regulations**

24 CFR Part 92 (HOME Investment Partnerships Program Final Rule)

24 CFR Part 93 (Housing Trust Fund Interim Rule)

24 CFR Part 570, as modified by Federal Register Notice (Neighborhood Stabilization Program Round 1)

### **Fair Housing**

Federal Fair Housing Act, 42 U.S.C. 3601-19.

Other Federal laws and regulations may that apply depending on funding source:

### **Environmental Compliance**

All federal sources must have some type of environmental review in accordance with 24 CFR Part 93 or 24 CFR Part 58 as applicable.

### **Minimizing Resident Displacement**

All federal sources must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; HOME and NSP1 PI must follow Section 104(d) of Housing and Community Development Act of 1974; and all federal sources must follow the HUD Handbook 1378.

### **Labor Standards**

HOME and NSP1 PI funds are regulated by Davis-Bacon and Related Labor Acts (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs).

### **Employment Opportunities**

HOME, NHTF, and NSP1 PI require compliance with 24 CFR Part 135 (Section 3).

**Except as otherwise noted in this NOFA**, Applicants proposing development of affordable multifamily rental housing should assume HOME, NSP1 PI and/or NHTF funds will be awarded and be prepared to comply with applicable regulations. An Applicant must familiarize itself with all of the applicable state and federal rules that govern the program. **If HOME, NSP1 PI and/or NHTF funds are used and**

## **Federal regulations or subsequent guidance imposes additional requirements, such Federal regulations or guidance shall govern.**

An Applicant that proposes refinancing with minimal rehabilitation must have a Market Analysis in accordance with 10 TAC §11.303 (unless an exception applies under 10 TAC §13.5(d)), and a PCA in accordance with 10 TAC §11.306, both of which must support the proposed level of rehabilitation. The Applicant must receive a waiver from the Board of the rehabilitation amounts listed in 10 TAC §11.101(b)(3). An Application proposing Refinancing with Minimal Rehabilitation, or that requests supplemental funds for an Application that has received funding or allocation in a previous year, generally will only receive Tax Credit Assistance Program Repayment Funds ("TCAP RF"), but, except as otherwise noted in this NOFA, may receive HOME, NSP and/or NHTF funds if it is an eligible activity for a federal fund source. An award to a Development that proposes to refinance with minimal rehabilitation, or to obtain supplemental financing, will not be made in amount that exceeds the amount necessary to replace lost funding or maintain the anticipated levels of feasibility in the original Application, as determined by the Board.

**2. a. CHDO Set-Aside.** At least \$500,000 in HOME funds are set aside for nonprofit organizations that can be certified as Community Housing Development Organizations (CHDOs).

**b. Supportive Housing/ Soft Repayment Set-Aside.** Up to **\$19,498,832.50 (all \$19,498,832.50 in NHTF)** is available in this set-aside. Applicants proposing new construction (or reconstruction as defined in 24 CFR §93.3) within this set-aside must restrict all Direct Loan-assisted units to 30% AMI.

**c. Preservation Set-Aside.** Up to \$2,000,000 in TCAP RF is available in this set-aside. Eligible activities under this set-aside include: (1) acquisition and rehabilitation; (2) rehabilitation without acquisition; and (3) refinancing with minimal rehabilitation (less than \$30,000 per unit).

**d. General Set-Aside.** All remaining TCAP RF, HOME, and NSP1 PI funds available, currently anticipated to be **\$45,595,000**. Eligible activities under this set-aside include those mentioned in the Preservation set-aside as well as New Construction.

Set-Aside	Eligible Activities	Amount Available		Maximum Request*
CHDO	NC, A/R, R	HOME	\$500,000	\$500,000
Supportive Housing / Soft Repayment	A/R, R	TCAP RF	\$500,000	\$500,000
	NC	NHTF	\$19,498,833	\$3,000,000
Preservation	A/R, R, Refi MR	TCAP RF	\$2,000,000	\$2,000,000
General	NC, A/R, R, Refi MR	HOME	\$27,945,000	\$4,000,000 if NC; \$2,000,000 if A/R, R, Refi MR
		TCAP RF	\$13,650,000	
		NSP1 PI	\$4,000,000	

\* This total includes any other Multifamily Direct Loan Funds previously awarded to the Applicant by the Department.

**Key:**

- NC – New Construction
- R – Rehabilitation
- A/R – Acquisition/Rehabilitation
- Refi MR – Refinancing with Minimal Rehabilitation

**6) Application Submission Requirements**

Applications under the SH/SR set-aside under this NOFA will be accepted starting at 8:00 a.m. Austin local time on January 14, 2019 through November 26, 2019, at 5:00 p.m. Austin local time (if sufficient funds remain). Applications under the CHDO, Preservation, and General set-asides under this NOFA will be accepted starting at 8:00 a.m. Austin local time on January 14, 2019 through October 11, 2019, at 5:00 p.m. Austin local time.

TRD-201904202  
 Bobby Wilkinson  
 Executive Director  
 Texas Department of Housing and Community Affairs  
 Filed: November 8, 2019

◆ ◆ ◆  
**Texas Department of Insurance**

Company Licensing

Application to do business in the state of Texas USA Underwriters, a foreign fire and/or casualty company. The home office is in Royal Oak, Michigan.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201904223

James Person  
 General Counsel  
 Texas Department of Insurance  
 Filed: November 13, 2019

◆ ◆ ◆  
**Texas Department of Insurance, Division of Workers' Compensation**

Rule 129.5 Work Status Reports

EXTENSION OF COMMENT DEADLINE FOR AMENDMENTS TO 28 TAC §129.5

On October 11, 2019, the Texas Department of Insurance, Division of Workers' Compensation (DWC) proposed amendments to §129.5 (concerning Work Status Reports) in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5878). These amendments will conform §129.5 to the changes to Texas Labor Code §408.025(A-1) made by House Bill 387, 86th Legislature, Regular Session (2019). These changes authorize a treating doctor to delegate authority to complete, sign, and file a work status report to a licensed advanced practice registered nurse.

DWC hereby extends the deadline for comments and the deadline for requesting a public hearing on the proposed amendments to December 23, 2019. To be considered, comments must be received by 5:00 p.m., Central time. Written comments or a request for a public hearing may be submitted by e-mail to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov) or by mail or delivery to Cynthia Guillen, Office of the General Counsel, MS-4D,

Texas Department of Insurance, Division of Workers' Compensation,  
7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

TRD-201904220

Nicholas Canaday III

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: November 12, 2019



## Texas Lottery Commission

Scratch Ticket Game Number 2241 "BINGO TIMES 20"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2241 is "BINGO TIMES 20". The play style is "bingo".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2241 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2241.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: CHERRY SYMBOL, DIAMOND SYMBOL, HORSESHOE SYMBOL, BOAT SYMBOL, ANCHOR SYMBOL, WATERMELON SYMBOL, BAG OF MONEY SYMBOL, GOLD BAR SYMBOL, HEART SYMBOL, STAR SYMBOL, B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE SYMBOL and X20 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2241 - 1.2D

PLAY SYMBOL	CAPTION
CHERRY SYMBOL	CHERRY
DIAMOND SYMBOL	DIAMND
HORSESHOE SYMBOL	HRSHOE
BOAT SYMBOL	BOAT
ANCHOR SYMBOL	ANCHOR
WATERMELON SYMBOL	WTRMLN
BAG OF MONEY SYMBOL	BAG
GOLD BAR SYMBOL	BAR
HEART SYMBOL	HEART
STAR SYMBOL	STAR
B01	
B02	
B03	
B04	
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FREE SYMBOL	
X20 SYMBOL	

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2241), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2241-0000001-001.

H. Pack - A Pack of the "BINGO TIMES 20" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BINGO TIMES 20" Scratch Ticket Game No. 2241.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BINGO TIMES 20" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose the Play Symbols as indicated per the game instructions from the total one hundred eighty-one (181) Play Symbols. BINGO TIMES 20 PLAY INSTRUCTIONS: The player scratches the "CALLER'S CARD" area and the "5 BONUS NUMBERS" area to reveal a total of twenty-nine (29) Bingo Numbers. The player scratches only those Bingo Numbers on the six (6) "BINGO CARDS" that match the "CALLER'S CARD" Bingo Numbers and the "5 BONUS NUMBERS" Bingo Numbers. The player also scratches the "X20" spaces and the "FREE" spaces on the six (6) "BINGO CARDS". If a player matches all Bingo Numbers in a complete vertical, horizontal or diagonal line (five (5) Bingo Numbers, four (4) Bingo Numbers + "FREE" space, four (4) Bingo Numbers + "X20" space, or three (3) Bingo Numbers + "X20" space + "FREE" space), the player wins the prize in the corresponding prize legend for that "BINGO CARD". If the player matches all Bingo Numbers in all four (4) corners, the player wins the prize in the corresponding prize legend for that "BINGO CARD". If the player matches all Bingo Numbers to complete an "X" (eight (8) Bingo Numbers + "FREE" space), the player wins the prize in the correspond-

ing prize legend for that "BINGO CARD". X20 PLAY INSTRUCTIONS: If a completed LINE pattern in any of the six (6) "BINGO CARDS" contains a "X20" symbol, the player wins 20 TIMES the LINE prize in the corresponding prize legend for that "BINGO CARD". Note: Only the highest prize per "BINGO CARD" will be paid. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly one hundred eighty-one (181) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly one hundred eighty-one (181) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;



15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the one hundred eighty-one (181) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one hundred eighty-one (181) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to six (6) times.

D. BONUS GAME: Winning Tickets will contain two (2) matching Play Symbols in the "BONUS GAME" play area and will win as per the prize structure.

E. BINGO: The number range used for each letter (B, I, N, G, O) will be as follows: B (1-15), I (16-30), N (31-45), G (46-60) and O (61-75).

F. BINGO: On winning and Non-Winning Tickets, there will be no matching "CALLER'S CARD" or "BONUS NUMBERS" Play Symbols.

G. BINGO: Each of the "CALLER'S CARD" and "BONUS NUMBERS" Play Symbols will appear on at least one of the six (6) "BINGO CARDS".

H. BINGO: Each "BINGO CARD" will contain twenty-three (23) numbers, one (1) "FREE" Play Symbol in the center of the CARD and one (1) "X20" Play Symbol.

I. BINGO: The "I20" CALLER'S CARD and 5 BONUS NUMBERS Play Symbols will never appear in the "CALLER'S CARD" or the "5 BONUS NUMBERS" play areas.

J. BINGO: The "20" BINGO CARDS Play Symbol will never appear on a "BINGO CARD".

K. BINGO: There can only be one winning pattern on each "BINGO CARD".

L. BINGO: There will be no matching Play Symbols on each "BINGO CARD" play area.

M. BINGO: The "X20" Play Symbol will appear once per "BINGO CARD" but will never appear in a corner or inside the "X" pattern of a "BINGO CARD".

N. BINGO: The "X20" Play Symbol will win 20 TIMES the prize and will win as per the prize structure.

O. BINGO: Prizes for "BINGO CARDS" 1-6 are as follows:

CARD 1: LINE=\$5. 4 CORNERS=\$20. X=\$100.

CARD 2: LINE=\$10. 4 CORNERS=\$25. X=\$200.

CARD 3: LINE=\$15. 4 CORNERS=\$50. X=\$400.

CARD 4: LINE=\$20. 4 CORNERS=\$100. X=\$500.

CARD 5: LINE=\$25. 4 CORNERS=\$300. X=\$1,000.

CARD 6: LINE=\$50. 4 CORNERS=\$500. X=\$100,000.

P. BINGO: Each "BINGO CARD" on a Ticket will be different. Two (2) cards match if they have the same number Play Symbols in the same spots.

Q. BINGO: Non-winning "BINGO CARDS" will match a minimum of three (3) number Play Symbols.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BINGO TIMES 20" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200, \$300, \$400 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$30.00, \$50.00, \$100, \$200, \$300, \$400 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BINGO TIMES 20" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BINGO TIMES 20" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the

event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "BINGO TIMES 20" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "BINGO TIMES 20" Scratch Ticket Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 15,120,000 Scratch Tickets in Scratch Ticket Game No. 2241. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2241 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	1,663,200	9.09
\$10	705,600	21.43
\$15	352,800	42.86
\$20	252,000	60.00
\$25	235,200	64.29
\$30	151,200	100.00
\$50	109,830	137.67
\$100	52,500	288.00
\$200	4,410	3,428.57
\$300	2,730	5,538.46
\$400	2,520	6,000.00
\$500	1,806	8,372.09
\$1,000	336	45,000.00
\$100,000	6	2,520,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.28. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2241 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2241, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201904211  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: November 12, 2019

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**Texas Board of Pardons and Paroles**

#### Correction of Error

The Texas Board of Pardons and Paroles published an adopted rule review notice for Title 37, Chapter 147, Hearings, Subchapter A, General Rules for Hearings, in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6904). Due to an error by the *Texas Register*, incorrect information was published for the filing date of the notice. The notice was filed with the *Texas Register* on October 25, 2019.

TRD-201904171

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### Public Utility Commission of Texas

#### Notice of Application for True-Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2019, for true-up of 2017 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Blossom Telephone Company for True-Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 50187.

The Application: Blossom Telephone Company (BTC) filed a true-up report in accordance with Findings of Fact Nos. 16, 17, and 19 of the

final Order in Docket No. 47812. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that BTC received in Federal Universal Service Fund (FUSF) revenue by \$238,945 for calendar year 2017. The projected reduction in FUSF revenue was expected to be offset by \$80,106 in rate increases that BTC has implemented in 2017, and \$158,839 from the Texas Universal Service Fund (TUSF). The final Order required a true-up of the actual 2017 revenue reductions. As a result of that true-up, BTC now asserts it is due to refund the TUSF in the amount of \$67,000.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50187.

TRD-201904151  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 7, 2019



#### Notice of Application for True-Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 31, 2019, for true-up of 2017 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Border to Border Communications, Inc. for True Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 50188.

The Application: Border to Border Communications, Inc. (BTBC) filed a true-up report in accordance with Findings of Fact Nos. 12 and 13 of the final Order in Docket No. 47387. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that BTBC received in Federal Universal Service Fund (FUSF) revenue by \$1,075,358 for calendar year 2017. The final Order required a true-up of the actual 2017 revenue reductions. As a result of that true-up, BTBC now asserts it is due to recover an additional \$357,904 from the Texas Universal Service Fund.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50188.

TRD-201904152  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 7, 2019



#### Notice of Application to Adjust High-Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 6, 2019, to adjust the high-cost support received from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to current rates.

Docket Title and Number: Application of Peoples Telephone Cooperative, Inc. to Adjust High Cost Support under 16 Texas Administrative Code §26.407(h), Docket Number 50208.

Peoples Telephone Cooperative, Inc. requests a high-cost support adjustment increase to \$2,822,217. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the 12 months ending June 1, 2019, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50208.

TRD-201904156  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 7, 2019



#### Notice of Hearing on the Merits

APPLICATION: Proceeding to Set Final Rate for Blue Cereus Under TWC §13.4133, Docket No. 50030

On September 12, 2019, the Public Utility Commission held an open meeting at which the Commission affirmed the appointment of a temporary manager for Blue Cereus, LLC. The Commissioners discussed the issues of the reallocation of temporary rates for Blue Cereus and the need to establish final rates as soon as possible. This docket was opened on September 18, 2019, for that purpose.

HEARING ON THE MERITS: The Public Utility Commission of Texas will convene the hearing on the merits of the application at the Commission's offices on December 13, 2019, at the later of 1:00 p.m. or upon the conclusion of the Open Meeting held on that date. The hearing will take place at 1701 North Congress Avenue, Austin, Texas 78701, in the Commissioner's Hearing Room, 7th floor. If necessary, the hearing will continue on December 16, 2019, starting at 9:00 a.m. The Commissioners have agreed to hear the case rather than referring it to the State Office of Administrative Hearings.

The Commission will consider evidence on whether to affirm, modify, or set aside the application. The hearing will be conducted in accordance with Texas Water Code and Commission rules in 16 Texas Administrative Code chapters 22 and 24.

Persons planning to attend this hearing who have disabilities requiring auxiliary aids or services should notify the Commission as far in advance as possible so that appropriate arrangements can be made. Requests can be made by mail, telephone or in person to the Commission's Office of Customer Protection, 1701 North Congress Avenue, Austin, Texas 78701, phone number (512) 936-7150 or (512) 936-7136 for the teletypewriter for the deaf.

TRD-201904190



**IN THE SUPREME COURT OF TEXAS**

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Misc. Docket No. 19-9105  
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**ORDER ADOPTING TEXAS RULES OF APPELLATE PROCEDURE 73.8**  
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**ORDERED** that:

1. By order dated June 3, 2019, in Misc. Docket No. 19-005, the Court of Criminal Appeals proposed adopting Rule 73.9 of the Texas Rules of Appellate Procedure and invited public comments. This joint order contains the final version of the rule, which has been renumbered as Rule 73.8 and is effective December 1, 2019.
2. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

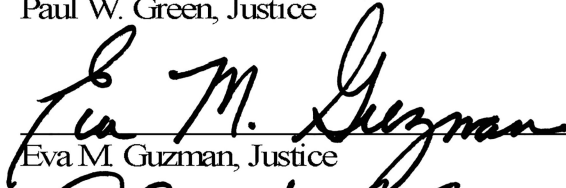
Dated: November 7, 2019.



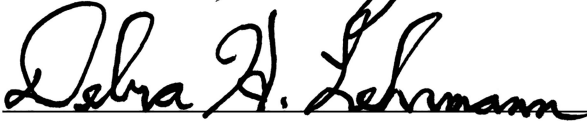
Nathan L. Hecht, Chief Justice



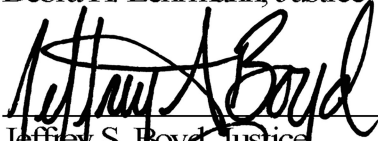
Paul W. Green, Justice



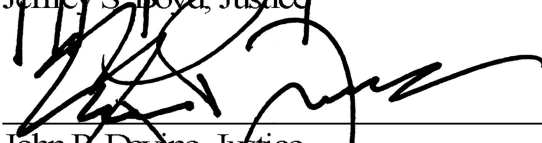
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

### **73.8. Rules of Evidence**

The Texas Rules of Evidence apply to a hearing held on a postconviction application for a writ of habeas corpus filed under Code of Criminal Procedure Article 11.07 or 11.071.

Comment to 2019 change: Rule 73.8 is added to clarify that the Rules of Evidence apply in hearings held in Article 11.07 and 11.071 habeas corpus cases. This rule does not limit the ability of an applicant to attach supporting documents to an application for a writ of habeas corpus.

TRD-201904157  
Jaclyn Daumerie  
Rules Attorney  
Supreme Court of Texas  
Filed: November 7, 2019

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In the Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 19-9106

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**ORDER ADOPTING TEXAS RULE OF APPELLATE PROCEDURE 80.1, DELETING  
RULE OF APPELLATE PROCEDURE 68.11, AND AMENDING RULES OF  
APPELLATE PROCEDURE 70.3 AND 79.7**

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**ORDERED** that:

1. By order dated June 3, 2019, in Misc. Docket No. 19-006, the Court of Criminal Appeals proposed the adoption of Rule 80.1, the deletion of Rule 68.11, and the amendment of Rules 70.3 and 79.7 of the Texas Rules of Appellate Procedure and invited public comments. This joint order contains the final version of the rules, which are effective December 1, 2019.
2. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

Dated: November 7, 2019

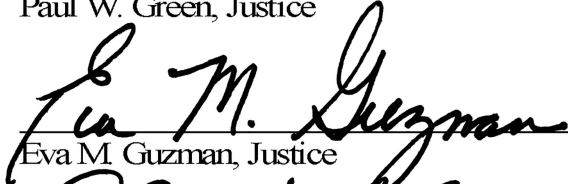




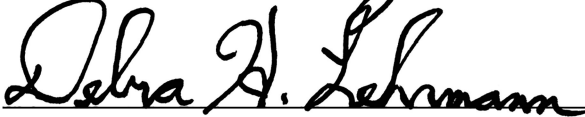
Nathan L. Hecht, Chief Justice



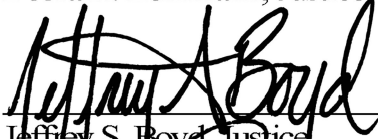
Paul W. Green, Justice



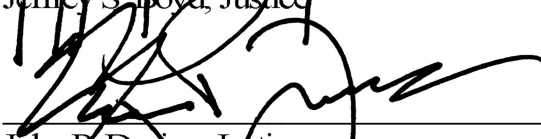
Eva M. Guzman, Justice



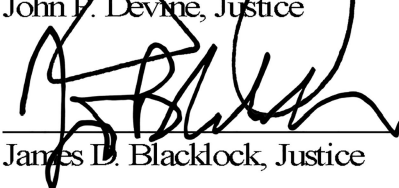
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John F. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

**Rule 68.11. Service on State Prosecuting Attorney**

~~In addition to the service required by Rule 9.5, service of the petition, the reply, and any amendment or supplementation of a petition or reply must be made on the State Prosecuting Attorney.~~

\* \* \*

**Rule 70.3. Brief Contents and Form**

Briefs must comply with the requirements of Rules 9 and 38, except that they need not contain the appendix (Rule 38.1(k)). ~~Copies must be served as required by Rule 68.11.~~

\* \* \*

**Rule 79.7. Service**

The requirements of Rule ~~68.11~~ 80.1 apply.

\* \* \*

**Rule 80. State Prosecuting Attorney**

**80.1. Service on State Prosecuting Attorney**

The State Prosecuting Attorney must be served on every petition for discretionary review or brief filed by any party or amicus curiae in the Court of Criminal Appeals, including replies, responses, amendments, and supplements.

Comment to 2019 change: This rule incorporates and expands former Rule 68.11 to require service on the State Prosecuting Attorney of all petitions for discretionary review and all substantive briefing in the Court of Criminal Appeals. In using the phrase “brief filed by any party or amicus curiae in the Court of Criminal Appeals,” the rule does not intend to require service on the State Prosecuting Attorney of petitions for a writ of mandamus (or responses) or applications for a writ of habeas corpus (or answers) and their accompanying memoranda. However, if the Court of Criminal Appeals has filed and set a mandamus petition or habeas corpus application, the rule does require service on the State Prosecuting Attorney of the briefs filed in the case.

TRD-201904159  
Jaclyn Daumerie  
Rules Attorney  
Supreme Court of Texas  
Filed: November 7, 2019

◆ ◆ ◆  
In the Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

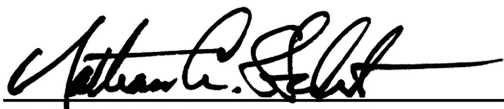
=====  
Misc. Docket No. 19-9108  
=====

=====  
FINAL APPROVAL OF AMENDMENTS TO  
TEXAS RULE OF CIVIL PROCEDURE 91a.7  
=====

**ORDERED** that:

1. On July 11, 2019, in Miscellaneous Docket No. 19-9052, the Court approved amendments to Texas Rule of Civil Procedure 91a.7, to be effective September 1, 2019, and invited public comment.
2. No comments were received, and no additional changes have been made to the rule. This order gives final approval to the amendments set forth in Miscellaneous Docket No. 19-9052.
3. The amendments apply only to civil actions commenced on or after September 1, 2019. A civil action commenced before September 1, 2019 is governed by the rule as adopted in Miscellaneous Docket No. 13-9022.
4. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

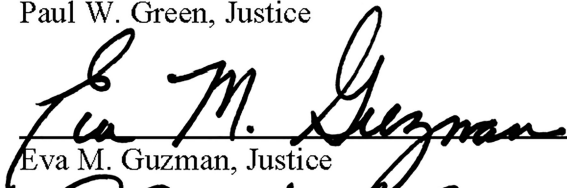
Dated: November 12, 2019.



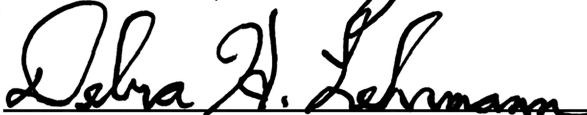
Nathan L. Hecht, Chief Justice



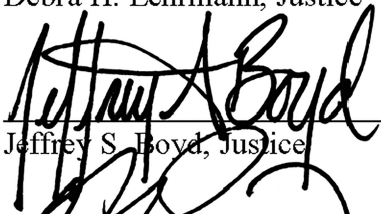
Paul W. Green, Justice



Eva M. Guzman, Justice



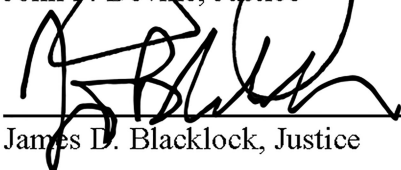
Debra H. Lehmann, Justice



Jeffrey S. Boyd, Justice




John F. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

TRD-201904224  
Jaclyn Daumerie  
Rules Attorney  
Supreme Court of Texas  
Filed: November 13, 2019

◆ ◆ ◆  
In the Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

=====  
Misc. Docket No. 19-9109  
=====

=====  
**FINAL APPROVAL OF RULE 23 OF THE RULES GOVERNING ADMISSION TO  
THE BAR OF TEXAS AND ARTICLE XIV OF THE STATE BAR RULES**  
=====

**ORDERED** that:

1. On August 23, 2019, in Miscellaneous Docket No. 19-9076, the Court adopted Rule 23 of the Rules Governing Admission to the Bar of Texas and Article XIV of the State Bar Rules and invited public comment.
2. No comments were received, and no additional changes have been made to the rules. This order gives final approval to the rules set forth in Miscellaneous Docket No. 19-9076, effective December 1, 2019.
3. As stated in in Miscellaneous Docket No. 19-9076, the Court waives the requirement in Rule 23, Section 1(g) of the Rules Governing Admission to the Bar of Texas for a Military Spouse who files an application for temporary licensure before the Texas Law Component is available for administration.
4. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

Dated: November 12, 2019.



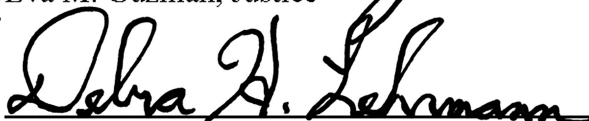
Nathan L. Hecht, Chief Justice



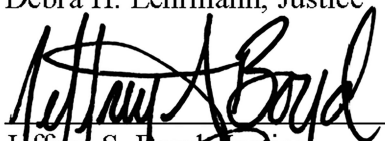
Paul W. Green, Justice



Eva M. Guzman, Justice



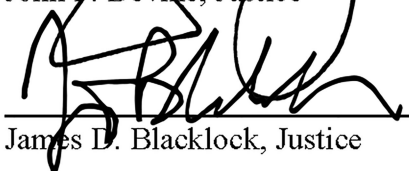
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



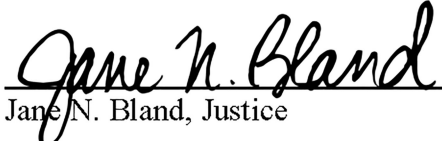
John F. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

TRD-201904225  
Jaclyn Daumerie  
Rules Attorney  
Supreme Court of Texas  
Filed: November 13, 2019

**Texas Water Development Board**

Applications for October 2019

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62867, a request from the City of Paducah, 804 10th Street, Paducah, Texas 79248-0759, received on October 1, 2019, for \$3,420,000 in financial assistance from the Drinking Water State Revolving Fund for replacement of the following: aging and inefficient distribution system; main transmission line; two sand traps; and rehabilitation of the three ground storage tanks.

Project ID #73860, a request from the City of Alton, 404 West San Antonio Street, Alton, Texas 75925-0447, received on October 3, 2019, for \$2,420,000 in financial assistance from the Clean Water State Revolving Fund for rehabilitating outdated and deteriorating components of the existing wastewater treatment plant and collection line replacements.

Project ID #62868, a request from the City of Rotan, 302 West Sammy Baugh Avenue, Rotan, Texas 79546-4411, received on October 3, 2019, for \$5,200,000 in financial assistance from the Drinking Water State Revolving Fund for the installing 14 miles of new 12-inch PVC water line to replace existing dilapidated cast iron water line.

Project ID #73864, a request from the City of Alton, 509 South Alton Boulevard, Alton, Texas 78573-6914, received on October 4, 2019, for \$8,500,000 in financial assistance from the Clean Water State Revolving Fund for the North Stewart Boulevard drainage improvement project.

Project ID #62835, a request from the City of Alice, 500 East Main, Alice, Texas 78333-3229, received on October 4, 2019, for \$12,715,000 in financial assistance from the Drinking Water State Revolving Fund for planning, engineering, environmental, permitting, and construction of a 3.0 million gallon per day brackish desalination plant, one 2 million gallon per day brackish well, building, yard piping, well construction lines, and concentrate discharge line.

Project ID #73861, a request from Lower Valley Water District, 1557 Farm-to-Market Road 1110, Clint, Texas 79836-0909, received on October 4, 2019, for \$6,000,000 in financial assistance from the Clean Water State Revolving Fund for technological upgrades to the metering system.

Project ID #73862, a request from the City of Huntington, 802 US Highway 69 South, Huntington, Texas 75949-0349, received on October 4, 2019, for \$8,000,000 in financial assistance from the Clean Water State Revolving Fund for rehabilitation of collection system and wastewater treatment plant.

Project ID #62870, a request from the City of Jourdanton, 1604 State Highway 97 East, Jourdanton, Texas 78026-0019, received on October 4, 2019, for \$6,843,114 in financial assistance from the Drinking Water State Revolving Fund for a new water production site to include well, ground storage, new elevated storage tank, and new transmission main from new well to Pecan Well.

Project ID #73863, a request from the City of Jourdanton, 1604 State Highway 97 East, Jourdanton, Texas 78026-0019, received on October 4, 2019, for \$2,494,793 in financial assistance from the Clean Water State Revolving Fund for new Tamarac Lift Station, wastewater treatment plant wet well rehabilitation, Olive Street Lift Station area improvements, and replace aged sanitary sewer collection infrastructure at various locations.

Project ID #73865, a request from Sandbranch Development & Water Supply Corporation, 128 Burns Drive, Seagoville, Texas 75159, received on October 4, 2019, for \$150,000 in financial assistance from the Clean Water State Revolving Fund for domestic wastewater services to an existing impoverished developed area in Dallas County.

Project ID #73866, a request from Westwood Shores Municipal Utility District, 75 Cottonwood Road, Trinity, Texas 75862-8843, received on October 4, 2019, for \$1,835,000 in financial assistance from the Clean Water State Revolving Fund for improvements to the wastewater treatment plant.

Project ID #62873, a request from Evadale Water Control Improvement District No. 1, 3182 Farm-to-Market Road 1131, Evadale, Texas 77615-0149, received on October 4, 2019, for \$3,220,593 in financial assistance from the Drinking Water State Revolving Fund for improvements to the water system, including construction of new well, elevated storage tank, new water lines, and line replacement.

Project ID #73867, a request from the City of Pharr, 118 South Cage Boulevard, Pharr, Texas, 78577-5623, received on October 4, 2019, for

\$20,285,000 in financial assistance from the Clean Water State Revolving Fund for wastewater treatment plant improvements.

Project ID #73870, a request from the City of Amarillo, 509 Southeast 7th Avenue, Amarillo, Texas 79105-2517, received on October 4, 2019, for \$29,506,375 in financial assistance from the Clean Water State Revolving Fund for an advanced metering infrastructure project.

Project ID #62869, a request from the City of Miles, 110 Robinson Street, Miles, Texas 76861-0398, received on October 4, 2019, for \$200,000 in financial assistance from the Drinking Water State Revolving Fund to pursue development of an alternative source of water supply to complement its current wholesale water supply.

Project ID #62874, a request from the City of Streetman, P.O. Box 7, Streetman, Texas 75859-0007, received on October 4, 2019, for \$1,900,000 in financial assistance from the Drinking Water State Revolving Fund to replace the wells with purchased treated water from Winkler WSC to replace the groundwater wells.

Project ID #62875, a request from the City of Pharr, 118 South Cage Boulevard, Pharr, Texas, 78577-5623, received on October 4, 2019, for \$18,485,000 in financial assistance from the Drinking Water State Revolving Fund for improvement to the water treatment plant to meet Texas Commission on Environmental Quality requirements.

Project ID #73871, a request from the Town of Pecos, 115 3rd Street, Pecos, Texas 79772-0929, received on October 4, 2019, for \$50,000 in financial assistance from the Clean Water State Revolving Fund for the decommission of a 1.6 million gallon per day evaporative pond wastewater treatment plant with a 3.5 million gallon per day wastewater treatment.

Project ID #62876, a request from the City of Newton, 101 West North Street, Newton, Texas 75966-3220, received on October 4, 2019, for \$500,000 in financial assistance from the Drinking Water State Revolving Fund to install waterline and upgrade the interim storage and booster system.

Project ID #62878, a request from the City of Newton, 101 West North Street, Newton, Texas 75966-3220, received on October 4, 2019, for \$2,000,000 in financial assistance from the Drinking Water State Revolving Fund to construct new water well and plant at a location that will provide service to the City of Newton system and the East Newton Water Supply Corporation.

Project ID #62880, a request from the City of Roma, 77 Convent Avenue, Roma, Texas 78258, received on October 4, 2019, for \$22,280,000 in financial assistance from the Drinking Water State Revolving Fund for Phase 1 of a new water treatment plant.

Project ID #62871, a request from the Sandbranch Development & Water Supply Corporation, 128 Burns Drive, Seagoville, Texas 75159, received on October 4, 2019, for \$300,000 in financial assistance from the Drinking Water State Revolving Fund for the installation of a new water system to an existing impoverished developed area.

Project ID #62881, a request from Presidio County Water District No. 1, P.O. Box 606, Marfa, Texas 78843-0606, received on October 4, 2019, for \$300,000 in financial assistance from the Drinking Water State Revolving Fund to evaluate alternatives and construct best option to resolve the arsenic maximum contaminant level violation.

Project ID #73875, a request from the City of Granger, 214 East Davilla Street, Granger, Texas 76530-0367, received on October 4, 2019, for \$1,200,000 in financial assistance from the Clean Water State Revolving Fund for rehabilitation of the wastewater treatment facility, lift stations, collection system components, and drainage system improvements.

Project ID #73876, a request from Horizon Regional Municipal Utility District, 14100 Horizon Boulevard, Horizon City, Texas 79928, received on October 4, 2019, for \$1,235,000 in financial assistance from the Clean Water State Revolving Fund, for installation of a wastewater collection system within the Horizon View Community for routing to the existing Horizon Regional MUD wastewater treatment plant.

Project ID #62627, a request from the City of Los Fresnos, 200 N. Brazil Street, Los Fresnos, Texas 78566-3643, received on October 4, 2019, for \$3,627,000 in financial assistance from the Drinking Water State Revolving Fund for water treatment plant improvement project.

Project ID #73874, a request from Rio Grande City, 5332 East Highway 83, Rio Grande City, Texas 78582, received on October 4, 2019, for \$7,500,000 in financial assistance from the Clean Water State Fund for wastewater treatment plant improvement project.

Project ID #76868, a request from the City of Marlin, 101 Fortune Street, Marlin, Texas 76661-2823, received on October 4, 2019, for \$2,880,000 in financial assistance from the Clean Water State Revolving Fund for the construction of drainage infrastructure project.

Project ID #73869, a request from the City of Troup, 106 East Duval Street, Troup, Texas 75789-2008, received on October 4, 2019, for \$1,145,000 in financial assistance from the Clean Water State Revolving Fund for replacement of deteriorated wastewater treatment facility components project.

Project ID #62858, a request from North Alamo Water Supply Corporation, 420 South Doolittle, Edinburg, Texas 78542, for \$17,270,293 in financial assistance from the Drinking Water State Revolving Fund for increasing brackish groundwater desalination production capacity by 1 MGD by means of an innovative energy-efficient desalination process reliant on nano-filtration membranes and existing reverse osmosis trains will be retrofitted to nano-filtration trains, which will also increase production while reducing desalination energy requirements by 50 percent for a total system energy reduction of 32 percent.

Project ID #62882, a request from Eagle Pass Water Works System, 2107 North Veterans Boulevard, Eagle Pass, Texas 78535-0808, received on October 5, 2019, for \$6,000,000 in financial assistance from the Drinking Water State Revolving Fund for replacing the current metering system.

Project ID #62883, a request from Riverbend Water Resources District, 228 Texas Avenue, Suite A, New Boston, Texas 75570, received on October 7, 2019, for \$200,000,000 in financial assistance from the Drinking Water State Revolving Fund for the construction of a new regional water system.

Project ID #73873, a request from Victoria County Water Conservation Improvement District No. 1, 93 Illinois Street, Bloomington, Texas 77951-0667, received on October 8, 2019, for \$2,020,000 in financial assistance from the Clean Water State Revolving Fund for wastewater treatment plant expansion project.

Project ID #62884, a request from the City of Annona, 101 East Main Street, Annona, Texas 75550, received on October 10, 2019, for \$400,000 in financial assistance from the Drinking Water State Revolving Fund for construction of a new regional water system.

Project ID #73877, a request from the City of Acton, 6420 Lusk Branch Court, Granbury, Texas 76049-2035, received on October 16, 2019, for \$1,015,000 in financial assistance from the Clean Water State Revolving Fund for expansion project of the Pecan Plantation wastewater treatment plant.

Project ID #73879, a request from the City of Aledo, 200 Old Annetta Road, Aledo, Texas 76008, received on October 24, 2019, for \$4,230,000 in financial assistance from the Clean Water State Revolving Fund for increasing the capacity of the Old Tunnel Lift Station and the downstream gravity wastewater line projects.

TRD-201904167  
Todd Chenoweth  
General Counsel  
Texas Water Development Board  
Filed: November 8, 2019

◆ ◆ ◆  
**Texas Workforce Commission**

**Maximum Affordable Payment Schedule**

Pursuant to Texas Labor Code §352.054, Rates for Medical Services, and Texas Workforce Commission (TWC) Chapter 856 Vocational Rehabilitation Services rule §856.57, Alternative Purchasing Methods - Rates for Medical Services, TWC is required to review and recommend adopting Maximum Affordable Payment Schedule (MAPS) rates for medical services based on cost-based and resource-based rates, including those paid under the Medicare and Medicaid programs.

Prior to adopting new rates for medical services, TWC is interested in receiving comments on the proposed rates. Copies of the schedule of proposed rates may be obtained by contacting Stuart McPhail at (512) 936-3460 or [Stuart.McPhail@twc.state.tx.us](mailto:Stuart.McPhail@twc.state.tx.us).

Written comments on the proposed rates may be submitted by COB on December 23, 2019, to Stuart McPhail, Texas Workforce Commission, 101 E. 15th St., Rm. 114T, Austin TX, 78778-0001 or emailed to [Stuart.McPhail@twc.state.tx.us](mailto:Stuart.McPhail@twc.state.tx.us).

TRD-201904158  
Jason Vaden  
Director, Workforce Program Policy  
Texas Workforce Commission  
Filed: November 7, 2019



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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