# TEXAS REGISTER

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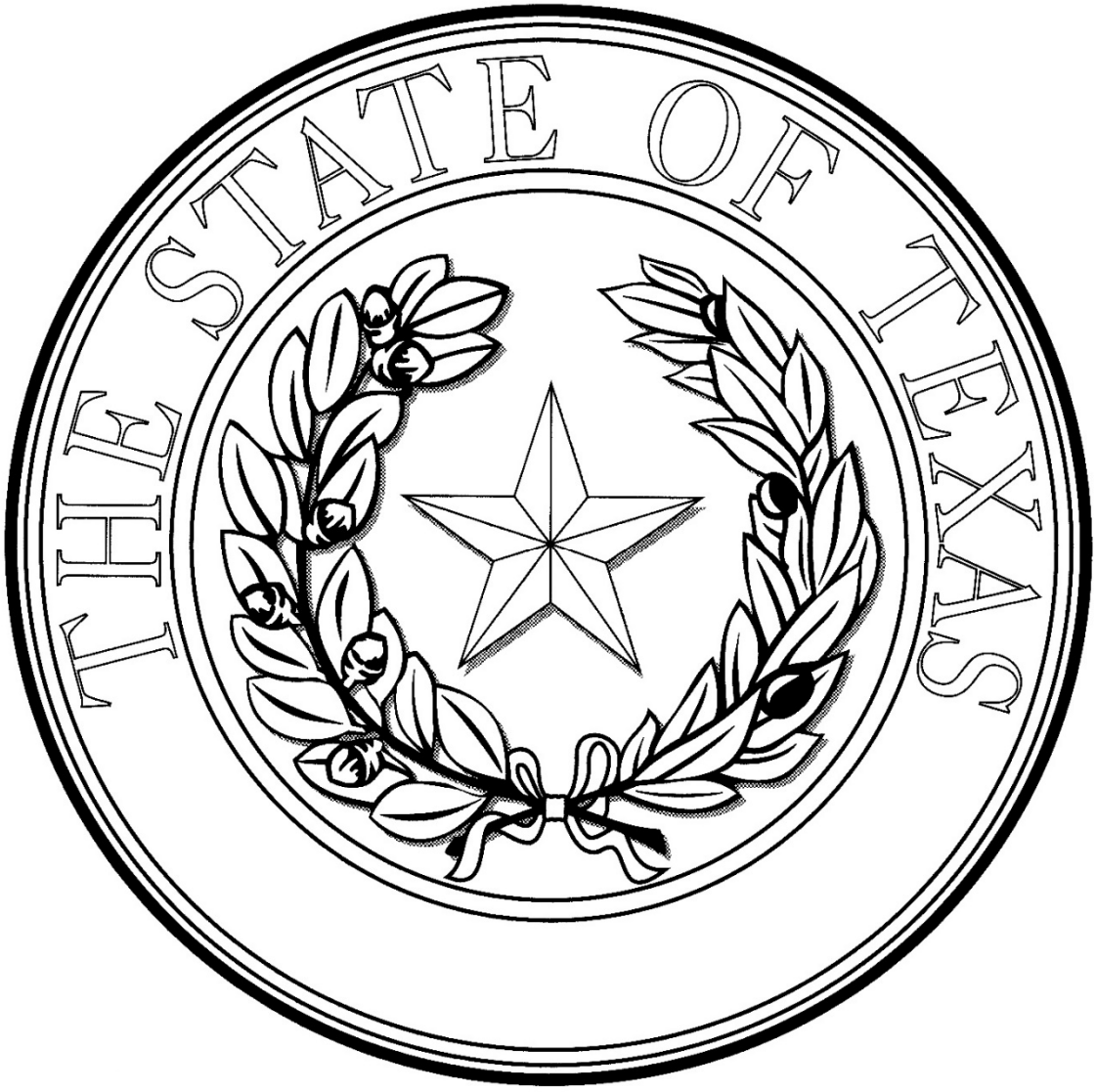

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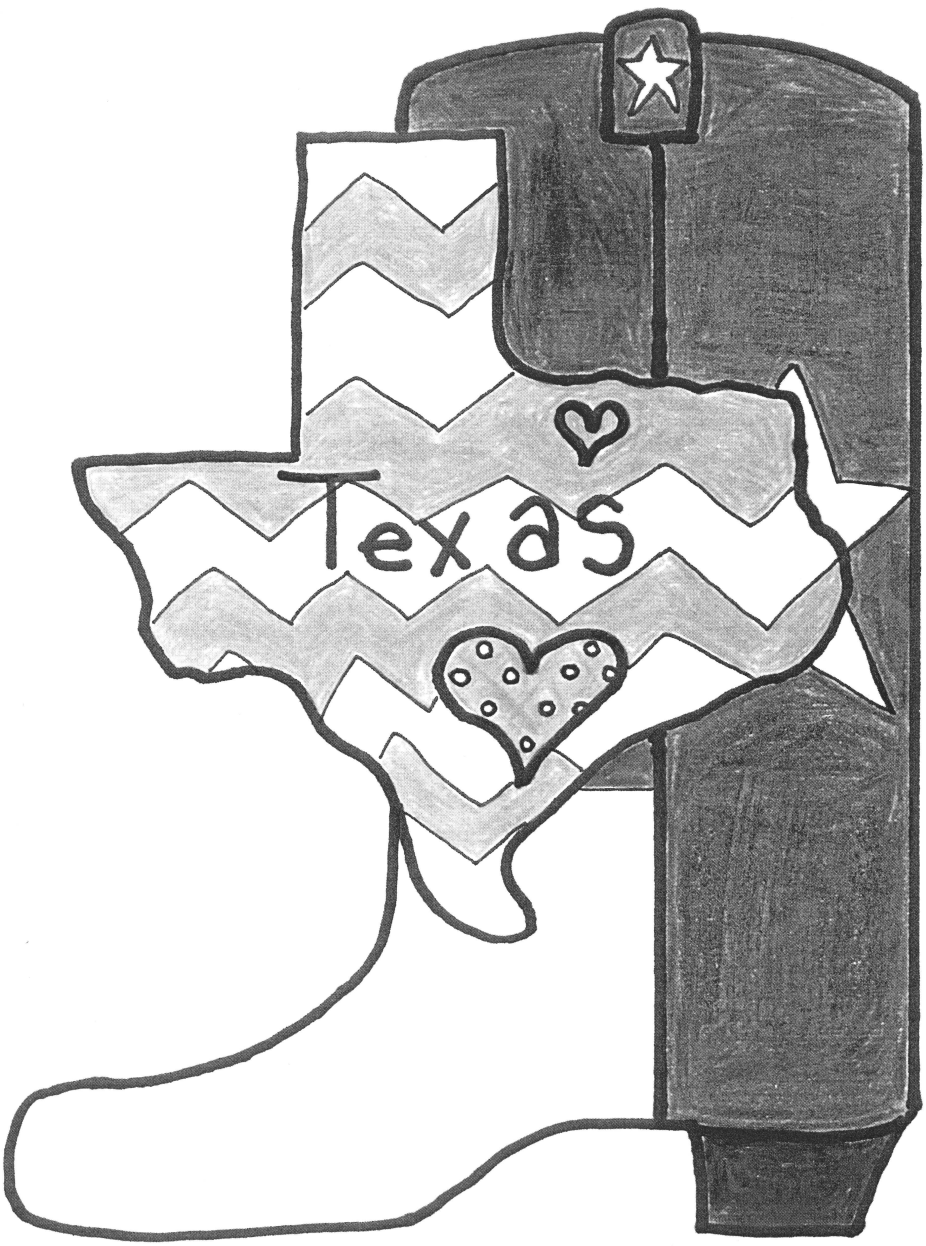
# In This Issue


Texas

# THE ATTORNEY GENERAL

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.)

## Requests for Opinions

**RQ-0334-KP**

**Requestor:**

The Honorable John Whitmire

Chair, Committee on Criminal Justice

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of the Teacher Retirement System with respect to investments in or ownership of real property (RQ-0334-KP)

**Briefs requested by March 30, 2020**

**RQ-0335-KP**

**Requestor:**

The Honorable Charlie Geren

Chair, Committee on House Administration

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an employee of an appraisal district may serve as a trustee of an independent school district that is a participating taxing unit of the appraisal district under section 6.054 of the Tax Code (RQ-0335-KP)

**Briefs requested by March 30, 2020**

**RQ-0336-KP**

**Requestor:**

The Honorable Wiley B. McAfee

33rd & 424th Judicial District Attorney

Post Office Box 725

Llano, Texas 78643

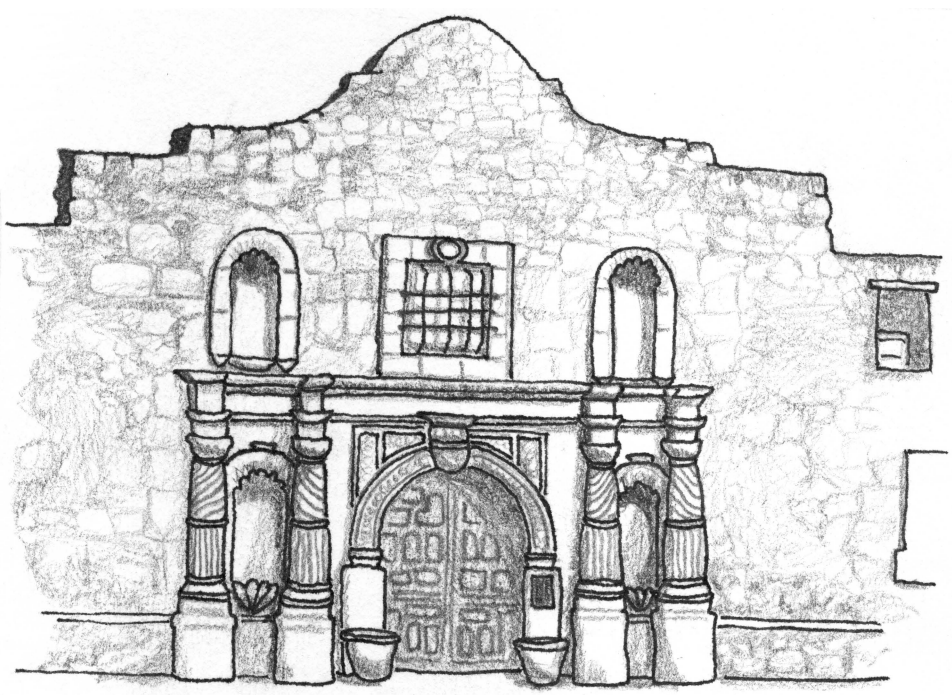
Re: Method for calculating the percent of judicial functions a county judge performs for purposes of determining entitlement to a salary supplement under section 26.006 of the Government Code (RQ-0336-KP)

**Briefs requested by March 30, 2020**

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

TRD-202000958
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: March 3, 2020

♦ ♦ ♦



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 353. MEDICAID MANAGED CARE

### SUBCHAPTER A. GENERAL PROVISIONS

**1 TAC §353.6**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §353.6, concerning Audit of Managed Care Organizations.

BACKGROUND AND PURPOSE

Texas Government Code §533.015(b), as amended by Senate Bill (S.B.) 200 and S.B. 207, 84th Legislature, Regular Session, 2015 directed the HHSC Executive Commissioner to issue rules defining the coordination between HHSC and the HHSC-Office of Inspector General (HHSC-OIG) in conducting audits of managed care organizations (MCOs) participating in Medicaid.

To comply with Texas Government Code §533.015(b), HHSC adopted Texas Administrative Code Sections §353.6 and §371.37, effective July 14, 2016. These rules assign authority to the HHSC Executive Commissioner for establishing policy outlining the roles and responsibilities of divisions, departments, and offices of HHSC in performing audits of MCOs. The HHSC Medicaid and CHIP Services Division (MCSD), the Health and Human Services (HHS) Internal Audit Division, and the HHSC-OIG are responsible for audits of MCOs and their subcontractors.

In 2017, the Sunset Advisory Commission reported to the 85th Legislature that HHSC and HHSC-OIG had defined their respective audit roles, jurisdiction, and frequency in the HHSC Circular C-054, but the details were not defined in rule, as required by S.B. 200 and S.B. 207. The Sunset Advisory Commission recommended that the policies be prescribed in rule.

The proposed amendment to §353.6 is necessary to implement the Sunset Advisory Commission's recommendation by codifying in rule a more detailed description of the coordination that is required between various divisions of HHSC and HHSC-OIG in planning and conducting audits of MCOs. An amendment to §371.37 is also proposed elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

Proposed amendment to §353.6(a) clarifies that HHSC, through MCSD, HHSC-OIG, and the HHS Internal Audit Division, is responsible for audits of MCOs and their subcontractors.

Proposed amendment to §353.6(b) defines MCO to include any entity with which an MCO contracts.

Proposed amendment to §353.6(c) adds audits of agreed upon procedures and clarifies that HHSC audits allow for effective oversight.

Proposed new §353.6(d) replaces existing language to list MCSD's roles and responsibilities for audits of MCOs, which include determining, through coordination with HHSC-OIG, which audits to assign to contracted audit firms to reduce or eliminate duplicative audits; coordinating with HHS Internal Audit to obtain authority to procure audit services; facilitating and determining the scope of work for contracted audit firms; providing final reports of contracted audit firms to HHSC-OIG; providing deliverables for contracted audit engagements to the State Auditor's Office (SAO); and ensuring implementation of audit action plans.

Proposed new §353.6(e) adds a reference to the rule regarding HHSC-OIG's roles and responsibilities.

Proposed new §353.6(f) outlines HHS Internal Audit Division's roles and responsibilities for audits of MCOs, which include auditing the MCSD and HHSC-OIG as part of established authority; notifying and conferring with MCSD and HHSC-OIG before initiating an audit; coordinating with MCSD when audit services need to be procured to ensure HHSC obtains proper authority for procurement; and coordinating with MCSD to ensure appropriate documents for contracted audit services are shared with the SAO.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner-Financial Services Division, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

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

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

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

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

Liz Prado has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities related to the rule as proposed. This rule does not apply to small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephanie Muth, Associate Commissioner for Medicaid and CHIP Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be greater transparency for stakeholders regarding the coordination of state agencies on audits of managed care organizations.

Liz Prado has also determined that for the first five years the rule is in effect, there is no anticipated economic costs to persons who are required to comply with the proposed rule. This rule relates to the coordination of state agencies and does not relate to the compliance of parties outside of HHSC and HHSC-OIG.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) 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 18R019" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; §533.015, which requires the executive commissioner, after consulting with the commission's office of inspector general, to adopt rules defining the coordination between HHSC and HHSC-OIG in the performance of audits of MCOs; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

The amendment affects Texas Government Code §533.015, Texas Government Code Chapters 531 and 533, and Texas Human Resources Code Chapter 32.

*§353.6. Audit of Managed Care Organizations.*

(a) The Health and Human Services Commission (HHSC), through the Medicaid and CHIP Services Division, the Office of Inspector General (OIG), and Health and Human Services (HHS) Internal Audit Division, is responsible for audits of [~~participating~~] MCOs and their subcontractors.

(b) For purposes of this rule, "MCO" includes any entity with which an MCO contracts [~~the term "participating MCO" includes MCO subcontractors~~].

(c) HHSC conducts audits of [~~participating~~] MCOs, including financial audits, performance audits, [~~and~~] compliance audits, and agreed upon procedures:

(1) with the scope and frequency necessary to provide information to allow for [~~ensure~~] the effective oversight [~~management~~] and control of the MCOs; and

(2) as necessary to comply with all federal and state laws.

(d) Medicaid and CHIP Services Division's roles and responsibilities for audits of MCOs include:

(1) determining, based on coordination with OIG about MCO audits, which audits to assign to contracted audit firms in order to eliminate duplication of audit effort and reduce the impact of potentially duplicative audits on the MCOs;

(2) coordinating with HHS Internal Audit Division to obtain delegated authority, from the State Auditor's Office (SAO), to procure audit services as required by Texas Government Code §321.020;

(3) facilitating and determining the extent of work to be performed in agreed upon procedures and audits of MCOs, through the use of contracted audit firms as part of the integrated business processes used to oversee and monitor MCOs;

(4) providing final reports of agreed upon procedures and audits to OIG, along with other information relevant to quantifying MCO performance under the contract with HHSC, including results of on-site monitoring visits, and other relevant MCO-related performance information;

(5) providing all deliverables, such as contracts, contract amendments, and audit reports, for contracted audit related engagements to HHS Internal Audit Division for delivery to the SAO; and

(6) ensuring actions planned to address audit recommendations are implemented, including actions planned by the Medicaid and CHIP Services Division or by an MCO.

[~~(d) The HHSC Executive Commissioner establishes policy outlining the roles and responsibilities of the divisions and offices of HHSC, including the Internal Audit Division, the Office of Inspector~~

~~General, and the Medicaid/CHIP Division, in performing audits of participating MCOs.~~]

(e) The OIG's roles and responsibilities, related to performing audits of MCOs, are as outlined in §371.37 of this title (relating to Audit of Managed Care Organizations).

(f) HHS Internal Audit Division's roles and responsibilities, related to audits of MCOs, are:

(1) auditing the Medicaid and CHIP Services Division and OIG, as part of its established audit authority and risk-based audit coverage, including auditing the effectiveness of coordination between the Medicaid and CHIP Services Division and OIG on the performance of MCO audits;

(2) notifying and conferring with the Medicaid and CHIP Services Division and OIG before initiating an audit of an MCO contained in the audit plan approved by the HHS Executive Commissioner;

(3) coordinating with Medicaid and CHIP Services Division when audit services need to be procured to ensure HHSC obtains the appropriate authority to procure audit services from the SAO; and

(4) coordinating with Medicaid and CHIP Services Division to ensure that all appropriate documents related to contracted audit services are obtained and provided to the SAO. These documents include executed contracts, contract amendments, and audit reports.

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 February 28, 2020.

TRD-202000928
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 491-4096

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# CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

## SUBCHAPTER B. OFFICE OF INSPECTOR GENERAL

### 1 TAC §371.37

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §371.37, concerning Audit of Managed Care Organizations.

BACKGROUND AND PURPOSE

Texas Government Code §533.015(b), as amended by Senate Bill (S.B.) 200 and S.B. 207, 84th Legislature, Regular Session, 2015, directed the HHSC Executive Commissioner to issue rules defining the coordination between HHSC and HHSC- Office of Inspector General (HHSC-OIG) in conducting audits of managed care organizations (MCOs) participating in Medicaid.

To comply with Texas Government Code §533.015(b), HHSC adopted §353.6 and §371.37, effective July 14, 2016. These rules assign authority to the HHSC Executive Commissioner for establishing policy outlining the roles and responsibilities of divisions, departments, and offices of HHSC in performing audits of MCOs. The HHSC Medicaid and CHIP Services Division (MCSD), the Health and Human Services (HHS) Internal Audit Division, and the HHSC-OIG are responsible for audits of MCOs and their subcontractors.

In 2017, the Sunset Advisory Commission reported to the 85th Legislature that HHSC and HHSC-OIG had defined their respective audit roles, jurisdiction, and frequency in the HHSC Circular C-054, but the details were not defined in rule, as required by S.B. 200 and S.B. 207. The Sunset Advisory Commission recommended that the policies be prescribed in rule.

The proposed amendment to §371.37 is necessary to implement the Sunset Advisory Commission's recommendation by codifying in rule a more detailed description of the coordination between HHSC and HHSC-OIG in planning and conducting audits of MCOs. An amendment to §353.6 is also proposed elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

Proposed amendment to §371.37(a) adopts language from Texas Government Code §§531.102(a-5) and (a-6) that require HHSC-OIG audits to be conducted independent of HHSC, but through coordination with HHSC.

Proposed amendment to §371.37(b) defines MCO to include any entity with which an MCO contracts.

Proposed new §371.37(c) replaces existing language to list HHSC-OIG's roles and responsibilities for audits of MCOs, which include coordinating with HHSC in the development of audit plans; considering input from HHSC on audit topics, knowledge about the managed care program, previous HHSC audit findings; considering HHSC comments regarding HHSC-OIG's draft annual audit plan and proposed audit report recommendations; and responding to comments from HHSC on the draft audit plan and preliminary audit results.

Proposed amendment to §371.37(d) clarifies that HHSC-OIG may conduct unplanned audits of MCOs based on allegations of fraud, waste or abuse. Such unplanned audits are outside of the usual audit planning process and HHSC-OIG may, after sharing findings with HHSC MCSD, issue audit reports directly to MCOs. Additionally, unplanned audits of persons or entities, other than MCOs, based on allegations of fraud, waste or abuse are also outside of the usual audit planning process.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner-Financial Services Division, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

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

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

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

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

Liz Prado has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities related to the rule as proposed. This rule does not apply to small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephanie Muth, Associate Commissioner for Medicaid and CHIP Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be greater transparency for stakeholders regarding the coordination of state agencies on audits of managed care organizations.

Liz Prado has also determined that for the first five years the rule is in effect, there is no anticipated economic costs to persons who are required to comply with the proposed rule. This rule relates to the coordination of state agencies and does not relate to the compliance of parties outside of HHSC and HHSC-OIG.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHS Office of Inspector General - Chief Counsel Division, P.O. Box 85200, Austin, Texas 78708, or street address 11501 Burnet Road, Building 902, Austin, Texas 78758; or by email to IG_Rules_Comments_Inbox@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) 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 18R019" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; §533.015, which requires the executive commissioner, after consulting with the commission's office of inspector general, to adopt rules defining the coordination between HHSC and HHSC-OIG in the performance of audits of MCOs; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

The amendment affects Texas Government Code §533.015, Texas Government Code Chapters 531 and 533, and Texas Human Resources Code Chapter 32.

*§371.37. Audit of Managed Care Organizations.*

(a) The Office of Inspector General (OIG) [~~OIG~~] plans and conducts regular audits of Managed Care Organizations (MCOs) [~~MCOs~~] participating in Medicaid [~~according to policy established pursuant to §353.6(d) of this title (relating to Audit of Managed Care Organizations)~~]. OIG audits of MCOs are conducted independent of the Health and Human Services Commission (HHSC), but rely on the coordination described in this section.

(b) For purposes of this rule, "MCO" includes any entity with which an MCO contracts. [~~The OIG coordinates with HHSC in the development of risk assessments, audit plans, and findings to:~~]

[~~(1) minimize the duplication of activities relating to the audits of MCOs; and~~]

[~~(2) ensure that the OIG has a thorough understanding of the health and human services system for purposes of knowledgeably and effectively performing audits of MCOs.~~]

(c) OIG's roles and responsibilities for audits of MCOs include:

(1) coordinating with the HHSC Medicaid and CHIP Services Division (MCSD) and Health and Human Services (HHS) Internal Audit Division in the development of audit plans to minimize duplication of activities relating to audits of MCOs;

(2) conferring with MCSD on potential OIG MCO audits;

(3) considering input from MCSD, including input into the development of risk assessment methodologies;

(4) considering audit requests by HHS System executive management;

(5) performing risk assessments to select MCOs or MCO activities for audit;

(6) considering previous audit and review findings of MCOs by MCSD, HHS Internal Audit Division, and HHSC audit contractors;

(7) submitting to the HHS Executive Commissioner, at least annually, a draft audit plan identifying the OIG's planned audits of MCOs;

(8) considering and responding to any comments, or alternative or additional audit topics, submitted to the OIG by the HHS Executive Commissioner, or the HHS Executive Commissioner's designee, on the OIG's draft audit plan before finalizing the annual audit plan;

(9) consulting with MCSD management, consulting with subject matter experts, and, when necessary, obtaining specialized training, to ensure the OIG has sufficient knowledge and understanding of managed care-related policies and contract requirements to effectively conduct audits of MCOs;

(10) communicating preliminary results of MCO audits to MCSD for review and comment;

(11) considering MCSD comments before finalizing MCO audit report recommendations; and

(12) sharing proposed audit findings with MCSD before issuing a final report to an MCO or to MCSD.

[(c) To facilitate coordination between the OIG and HHSC, the OIG annually develops and submits to HHSC's Executive Commissioner a draft audit plan identifying the OIG's planned audits of MCOs. The OIG considers input from HHSC, and previous audits and review findings of MCOs by HHSC, before finalizing the annual audit plan.]

(d) Notwithstanding subsections (a), (b), and (c) of this section, the OIG may conduct unplanned [investigate, including by means of regular] audits of [,] allegations of suspected fraud, waste, or abuse by MCOs. Such unplanned audits need not be part of any OIG audit plan or part of the usual processes described in this section and the OIG may, after sharing proposed audit findings with MCSD, issue audit reports directly to MCOs.

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 February 28, 2020.

TRD-202000929
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 491-4058

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# TITLE 10. COMMUNITY DEVELOPMENT

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

### CHAPTER 7. HOMELESSNESS PROGRAMS SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

**10 TAC §§7.1 - 7.11**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Homelessness Programs, Subchapter A, General Policies and Procedures. 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 proposed rulemaking and the analysis is described below for each category of analysis performed.

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

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

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the overarching policies and procedures of the Emergency Solutions Grants, Homeless Housing and Services Program, and Ending Homelessness Fund programs (homeless programs).

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.

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

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

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

The Department has evaluated this proposed repeal and determined that the proposed 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 proposed 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed 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 proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of homeless programs. 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 proposed 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 March 13, 2020, to April 13, 2020, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

*§7.1. Purpose and Goals.*

*§7.2. Definitions.*

*§7.3. Construction Activities.*

*§7.4. Subrecipient Contract.*

*§7.5. Subrecipient Reporting.*

*§7.6. Subrecipient Data Collection.*

*§7.7. Subrecipient Contact Information.*

*§7.8. Records Retention.*

*§7.9. Contract Termination and Deobligation.*

*§7.10. Inclusive Marketing.*

*§7.11. Compliance Monitoring.*

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 March 2, 2020.

TRD-202000946
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 475-3975

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**10 TAC §§7.1 - 7.12**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Homelessness Programs, Subchapter A, General Policies and Procedures, §§7.1 - 7.12. The purpose of the proposed new sections are to update the rules to remove outdated definitions, clarify existing definitions, and add new definitions; delineate the Contract amendment approval process; and clarify reporting requirements.

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

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rules would be in effect:

1. The proposed rules do not create or eliminate a government program, but relate to the readoption of these rules which makes changes to an existing activity, the overarching policies and procedures of the Emergency Solutions Grants, Homeless Housing and Services Program, and Ending Homelessness Fund programs (homeless programs).

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

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

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

5. The proposed rules are not creating new regulations, except that they are replacing rules being repealed simultaneously to provide for revisions.

6. The proposed rules will not expand, limit, or repeal existing regulations.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting these proposed rules, 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, Ch. 2306.

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

2. There are unlikely to be any small or micro-businesses subject to the proposed rules because these funds are limited to private nonprofit organizations and units of local governments per 24 CFR §576.202 for Emergency Solutions Grants funds; limited to counties and municipalities in Tex. Transp. Code §502.415 for the Ending Homeless Fund; and limited to municipalities or designated nonprofits per 10 TAC §7.22 for the Homeless Housing and Services Program.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules will channel funds, which may be limited, only to nonprofits, private nonprofits, local governments, and counties and municipalities; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rules 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 sections will be rules that have greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rules have already been in place through the rules found at these sections being repealed.

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 because the costs for administering the program in included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 13, 2020, to April 13, 2020, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

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.

*§7.1. Purpose and Goals.*

(a) The rules established herein for Chapter 7, concerning Homeless Programs, Subchapter A, concerning General Provisions applies to all of the Homeless Programs, unless otherwise noted. Additional program specific requirements are contained within each program subchapter.

(b) The Homeless Programs administered by the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission to address the problem of homelessness among Texans.

(c) The Department accomplishes this mission by acting as a conduit for state and federal funds for homelessness programs. Ensuring program compliance with the state and federal laws that govern these programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

(d) Unless otherwise noted herein or required by federal law or regulation, or state statute, all provisions of this chapter apply to any Application received for federal funds and any Contract of state funds on or after September 1, 2018.

*§7.2. Definitions.*

(a) To ensure a clear understanding of the terminology used in the context of the Department's Homeless Programs, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Other definitions may be found in Chapters 1, concerning Administration, or Chapter 2, concerning Enforcement, of this title, or in federal or state law including, but not limited to, 24 CFR Parts 91, 200, 576, 582, and 583, and UGMS.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Allocation Formula--Mathematical relationship among factors, authorized by the Board, that determines how much funding is available in an area or region in Subchapters B, C, and D of this chapter, relating to Homelessness Programs.

(3) Applicant--A unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department or to an ESG Coordinator an Application for Department funds or other assistance.

(4) Application--A request for a Contract award submitted by an Applicant to the Department or to an ESG Coordinator, in a form prescribed by the Department, including any exhibits or other supporting material.

(5) At-risk of Homelessness--Defined by 24 CFR §576.2, except as otherwise defined by Contract, the income limits for Program Participants are determined by the Subrecipient but, at a minimum, do not exceed the moderate income level pursuant to Tex. Gov't Code §2306.152.

(6) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(7) Continuum of Care (CoC)--The group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach,

engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area. HUD funds a CoC Program designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability.

(8) CoC Lead Agency--CoC collaborative applicant in the HUD CoC Program per 24 CFR §578.3.

(9) Contract--The executed written agreement between the Department and a Subrecipient performing a program activity that describes performance requirements and responsibilities assigned by the document.

(10) Contract System--The Housing Contract System established by the Department, as required by the program.

(11) Contract Term--Period of time identified in the Contract during which program activities may be conducted.

(12) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient occurs only after the Department has reviewed all relevant documentation provided by the Subrecipient to support Expenditures. Reimbursement will only be approved by the Department where the documentation clearly supports the eligible use of funds.

(13) Declaration of Income Statement (DIS)--A Department-approved form used only when it is not possible for a Subrecipient to obtain third-party or firsthand verification of income, per 24 CFR §576.500(e)(4).

(14) Dwelling Unit--A residence that meets Habitability Standards that is not an emergency shelter, hotel, jail, institution, or similar temporary lodging. Transitional Housing is included in this definition unless the context clearly states otherwise. Common areas supporting the Dwelling Unit are also included in this definition.

(15) Elderly Person--

(A) For state funds, a person who is 60 years of age or older; and

(B) For ESG, a person who is 62 years of age or older.

(16) Ending Homelessness ("EH") Fund--The voluntary-contribution state program established in Texas Transportation Code §502.415.

(17) Emergency Solutions Grants (ESG)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(18) ESG Coordinator--An organization procured by the Department that administers a competition for funds in its CoC region and recommends ESG awards to the Department based on its competition.

(19) ESG Interim Rule--The regulations with amendments promulgated at 24 CFR Part 576 as published by HUD for the ESG Program.

(20) Expenditure--An amount of money accounted for by a Subrecipient as spent.

(21) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(22) Head of Household--As defined in the most recent Homeless Management Information System (HMIS) Data Dictionary issued by HUD.

(23) HMIS-Comparable Database--Database established and operated by a victim service provider or legal service provider that is comparable to HMIS and collects Program Participant-level data over time.

(24) HMIS Data Dictionary--The Dictionary published by HUD which defines terms for the use of HMIS and comparable databases.

(25) HMIS Data Standards Manual--Manual published by HUD which documents the requirements for the programming and use of all HMIS and comparable databases.

(26) HMIS Lead Agency--The entity designated by the CoC to operate the CoC's HMIS on its behalf.

(27) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2. For state-funded programs, a homeless individual may have right of occupancy because of a signed lease, but still qualify as homeless if his or her primary nighttime residence is an emergency shelter or place not meant for human habitation.

(28) Homeless Housing and Services Program (HHSP)--The state-funded program established under Tex. Gov't Code §2306.2585.

(29) Homeless Management Information System (HMIS)--Information system designated by the CoC to comply with the HUD's data collection, management, and reporting standards and used to collect Program Participant-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

(30) Homeless Programs--Reference to programs that have the specific purpose of addressing homelessness administered by the Department, including ESG Program, HHSP, and EH Fund.

(31) Homeless Subpopulations--Persons experiencing Homelessness who are part of the following population categories, or as defined in the most recent Point In Time Data Collection guidance issued by HUD:

(A) Children of Parenting Youth;

(B) Parenting Youth;

(C) Persons Experiencing Chronic Homelessness;

(D) Persons Experiencing Severe Mental Illness;

(E) Persons with Chronic Substance Use Disorder;

(F) Persons with HIV/AIDS;

(G) Unaccompanied Youth;

(H) Veterans; and

(I) Victims of Domestic Violence.

(32) Household--A Household is a single individual or a group of persons who apply together for assistance and who live together in one (1) Dwelling Unit, or, for persons who are not housed or

in a shelter, who would live together in one (1) Dwelling Unit if they were housed, or as defined in the most recent HMIS Data Dictionary issued by HUD.

(33) Households Served--A single individual or a group of persons who apply for Homeless Program assistance, meets a Homeless Program's eligibility requirements, receives a Homeless Program's services, and whose data is entered into an HMIS or comparable database.

(34) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and a property owner, including an emergency shelter, which is a binding covenant upon the property owner and successors in interest, that, when recorded, encumbers the property with respect to the requirements of the programs for which it receives funds.

(35) Local Competition-- A competition for ESG funding administered by an ESG Coordinator on behalf of the Department for a CoC region.

(36) Match--A contribution to the ESG Program from a non-ESG source governed by 24 CFR §576.201.

(37) Monthly Expenditure Report--Information on Expenditures from Subrecipients to the Department.

(38) Monthly Performance Report--Information on Program Participants and program activities from Subrecipients to the Department.

(39) Notice of Funding Availability (NOFA)--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a Program with certain requirements.

(40) Outcome--A benefit or change achieved by a Program Participant served by the Department's homeless programs.

(41) Performance Target--Number of persons/Households served, outcomes reached, or construction/rehabilitation/conversion that the Subrecipient commits to accomplish during the Contract Term.

(42) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. This does not include a governmental organization such as a public housing authority or a housing finance agency.

(43) Project--A group of eligible activities identified in an Application or Contract to the Department, and designated in HMIS or HMIS-comparable database.

(44) Program Participant--An individual or Household that is assisted by a Homeless Program.

(45) Program Year--Contracts with funds from a specific federal allocation (ESG) or year of a state biennium (HHSP).

(46) Recertification--Required review of a Program Participant's eligibility determination for continuation of assistance.

(47) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application (as applicable), and Contract that the Subrecipient will serve.

(48) State--The State of Texas or the Department, as indicated by context.

(49) Subcontract--A contract made between the Subrecipient and a purveyor of goods or services through a procurement relationship.

(50) Subcontractor--A person or an organization with whom the Subrecipient contracts to provide services.

(51) Subgrant--An award of financial assistance in the form of money made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(52) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(53) Subrecipient--An organization that receives federal or states funds passed through the Department to operate ESG and/or state funded homeless programs.

(54) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

(55) United States Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(56) Unit of General Purpose Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(57) United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(58) Youth Headed Household--Household that includes unaccompanied youth 24 years of age and younger, parenting youth 24 years of age and younger and children of parenting youth 24 years of age and younger.

*§7.3. Construction Activities.*

(a) A Subrecipient of Homeless Program funds that constructs or rehabilitates a building or Dwelling Unit, or converts a building(s) for use as a shelter may be required to enter into a LURA. No new construction of a shelter, or construction or rehabilitation of a Dwelling Unit is allowed with ESG funds.

(b) For construction under the ESG Program, the term of the LURA will be 10 years from the date of execution of the LURA when the cost of major rehabilitation or conversion exceeds seventy-five percent of the value of the building prior to rehabilitation or conversion, regardless of the amount of the ESG investment. The value of the building prior to conversion or rehabilitation must be evidenced by the submission of the most recent tax records showing the value of the property, an appraisal reflecting the value of the property prior to improvements, or other valuation method approved by the Department.

(c) The term of the LURA in other circumstances where construction was funded under the ESG Program shall be three years from the date of execution of the LURA.

(d) For state funds only, Tex. Gov't Code §2306.185 requires certain multifamily rental developments to have, among other provisions, a 30-year LURA.

(e) A Subrecipient that intends to expend funds for new construction, rehabilitation, or conversion must submit a copy of the activity budget inclusive of all sources and uses of funding, documents for a construction plan review, and identification of the entity and signature authorization of the individual (name and title) that will execute the LURA. These documents must be submitted no less than 90 calendar

days prior to the end of the Contract Term under which funds for the activity are provided. The Department may elect to reconsider award amounts if financial resources other than those presented in the Application are subsequently committed to an activity.

(f) A Subrecipient must request a final construction inspection within 30 calendar days of construction completion. The inspection will cover the Shelter and Housing Standards, Uniform Physical Construction Standards, 2000 International Residential Code (or municipality adopted later version), Minimum Energy Efficiency Requirements for Single Family Construction Activities, and the Accessibility Standards in Chapter 1, Subchapter B, as applicable for the Homeless Program and activity.

*§7.4. Subrecipient Contract.*

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the Contract, as allowed by state and federal laws and rules.

(b) Subrecipients of state funds may Subcontract for the delivery of Program Participant assistance without obtaining Department's prior approval, but must obtain the Department's written permission before entering into a Subgrant. Department ESG funds and ESG Match may not be Subgranted.

(c) The Subrecipient is responsible for ensuring that the performance rendered under all Subcontracts, Subgrants, and other agreements are rendered so as to comply with Homeless Program requirements, as if such performance rendered were rendered by the Subrecipient. Department maintains the right to monitor and require the Subrecipient's full compliance with the terms of the Subrecipient Contract.

(d) A performance statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Contract System.

(e) Amendments and Extensions to Contracts.

(1) Except for amendments that only move funds within budget categories, program staff will recommend denial of amendment requests if any of the following conditions exist:

(A) if the award for the Contract was competitively awarded and the amendment would materially change the scope of the Contract performance or affected the score;

(B) if the Subrecipient is delinquent in the submission of their Single Audit or their Single Audit Certification form required by §1.403 of this title (relating to Single Audit Requirements);

(C) for an amendments adding funds to the Contract, if the Subrecipient owes the Department disallowed amounts in excess of $1,000 and a Department-approved repayment plan is not in place or has been violated;

(D) for an amendment adding funds (not applicable to amendments for extending time), if the Department has cited the Subrecipient for violations within §7.11 of this subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue;

(E) the Contract has expired; or

(F) a member of the Subrecipient's board has been debarred and has not been removed.

(2) Except for amendments that only move funds within budget categories, program staff may recommend denial of amendment requests if any of the following conditions exist:

(A) the request for an amendment was received in writing less than 30 calendar days from the end of the Contract Term; or

(B) if the funds associated with the Contract will reach their federal or state expiration date within 45 calendar days of the request.

(3) Denial of an amendment may be subject to §1.7 of this title (relating to Appeals Process).

(4) The Executive Director may on appeal approve an amendment where the Single Audit Certification Form has not been submitted as reflected in paragraph (1)(B) of this section. In addition, the Executive Director may on appeal approve an amendment where the conditions in paragraph (2)(A) and paragraph (2)(B) of this section exist. The Subrecipient must demonstrate good cause for the amendment, and such an amendment must not cause the Department to miss a federal obligation or expenditure deadline, or a state expenditure deadline.

(5) Additional program specific requirements for amendments and extensions to Contracts are found in the program rules of this chapter, relating to Homelessness Programs.

(f) The Department reserves the right to request supporting Expenditure documentation at any time in reviewing an Expenditure report for approval. The Department will use full Cost Reimbursement method of payment whenever any of the following conditions exists:

(1) The Department determines that the Subrecipient has maintained cash balances in excess of need;

(2) The Department identifies significant deficiency in the cash controls or financial management system used by the Subrecipient; or

(3) The Subrecipient fails to comply with the reporting requirements in §7.5 (relating to Subrecipient Reporting) and §7.6 (relating to Subrecipient Data Collection) of this subchapter.

(g) Voluntary deobligation. The Subrecipient may fully relinquish funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Subrecipient may partially relinquish funds under a Contract in the form of a written request from the signatory if the partial relinquishment in performance measures and budget would not have impacted the award of the Contract. Voluntary relinquishment of a Contract does not limit a Subrecipient's ability to participate in future funding.

(h) Funds provided under a Contract may not be used for sectarian or explicitly religious activities such as worship, religious instruction or proselytization, and must be for the benefit of persons regardless of religious affiliation.

*§7.5. Subrecipient Reporting.*

(a) Subrecipient will be reimbursed for the amount of actual cash disbursements as reflected in the approved Monthly Expenditure Reports.

(b) Subrecipient must submit a Monthly Performance Report and a Monthly Expenditure Report through the Contract System not later than the last day of each month which reflects performance and expenditures conducted in the prior month.

(c) For performance reports, Program Participants that are assisted continuously as a Contract ends and a new Contract begins in the same program will count as new Program Participants for the new

Contract. However, the start of a new Contract does not require new eligibility determination or documentation for Program Participants, except as required for Recertification.

(d) Subrecipient shall reconcile their Expenditures with their performance at least monthly before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to ensure that it has documented the compliant use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds.

(e) Failure of a Subrecipient to provide reports as required under Department rules or the Contract may be sufficient reason for the Department to deobligate funds for which a Monthly Expenditure Report has not been submitted.

(f) If the Subrecipient fails to submit within 45 calendar days of its due date, any report or response required by this section and responses to monitoring reports, Department may, in its sole discretion, suspend payments, place the Subrecipient on Cost Reimbursement method of payment, and initiate proceedings to terminate any active Contract.

(g) Subrecipient must report on all measures in the Monthly Performance Report for demographics and Program Participant Services for which they are awarded.

(h) Subrecipient must submit information requested by the Department for annual or biannual reporting. The annual reporting may extend over multiple Contracts.

(1) ESG Subrecipients will submit information yearly as required for the Consolidated Annual Performance and Evaluation Report, including, but not limited to:

(A) HMIS exports as required per HUD; and

(B) Section 3 provision of the HUD Act of 1968, as required per HUD.

(2) Subrecipients of state funds will submit information for biennial reporting to the Texas Legislature, including, but not limited to:

(A) The successes and challenges of the program, including using state funding in ways that cannot be used by other funding sources; and

(B) How funds were used to leverage other funding sources to persons experiencing homelessness.

*§7.6. Subrecipient Data Collection.*

(a) Subrecipient must ensure that data on all persons served and all activities assisted under Homeless Programs is entered into the applicable HMIS or HMIS-comparable database for domestic violence or legal service providers in order to integrate data from all homeless assistance and homelessness prevention projects in a CoC.

(b) The Performance Targets shall be indicated in the Contract.

*§7.7. Subrecipient Contact Information.*

(a) In accordance with §1.22 of this title (relating to Providing Contact Information to the Department), Subrecipients will notify the Department and provide contact information for staff that approve the Contract or submit/approve reports in the Contract System. The notification will be sent to the Department by updating its Contract System access request information.

(b) Subrecipients will notify the Department and provide contact information for Subcontractors and Subgrantees within 30 calendar days of the effective date of the Subcontract or Subgrant. Contact information for the entities with which the Subrecipients' Subcontract or Subgrant must be provided to the Department, including the organization name, name and title of authorized person who entered into the Subgrant or Subcontract, phone number, e-mail address, and type of services provided.

(c) At the start of the Contract and within 30 calendar days of contact information changes, including entering into Subcontracts or Subgrants, Subrecipient will notify the Department of contact information used for the public to receive assistance through Homeless Programs. The contact information for the public should include, but is not limited to, organization name, phone number to receive assistance, email to receive assistance, type of assistance offered, and Service Area in which the assistance is offered.

(d) The Department will rely solely on the contact information supplied by the Subrecipient as indicated in the Department's web-based Contract System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in the Contract System will be deemed delivered to the Subrecipient. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

*§7.8. Records Retention.*

(a) Records must be kept in accordance with §1.409 of this Title (relating to Records Retention).

(b) Record retention for construction/rehabilitation/conversion of emergency shelters or Dwelling Units must be retained until the expiration of the LURA.

(c) For ESG, retention for records relevant to the ESG Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with 24 CFR §576.500 and UGMS, as defined at §1.401 of this title (relating to Definitions), as applicable except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later. The record retention period does not begin until one year after the expiration of the Contract.

(d) For state funds, retention for records relevant to the Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with UGMS, and retained by the Subrecipient for a period of three years from the expiration of the Contract except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

*§7.9. Contract Termination and Deobligation.*

(a) When a Contract is terminated or voluntarily relinquished, the procedures described in this subsection will be implemented.

(b) The terminology of a "terminated" Subrecipient is intended to include the Subrecipient that is voluntarily or involuntarily terminating their Contract, but does not include Contracts that expire without being sent a termination letter.

(1) The Department will issue a termination letter to the Subrecipient no less than 30 calendar days prior to terminating the Contract. The Department may determine to take any of the following actions: suspend funds immediately or allow a temporary transfer

to another Subrecipient; or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the Contract. The plan must identify the name and current titles of staff that will perform the closeout and an estimated dollar amount to be incurred. The plan must identify the CPA or firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.

(2) No later than 30 calendar days after the Contract is terminated, the Subrecipient will take a physical inventory of Program Participant files, including case management files.

(3) The terminated Subrecipient will have 30 calendar days from the date of the physical inventory to make available to the Department all Program Participant files. Current and active case management files also must be inventoried.

(4) The terminated Subrecipient will prepare and submit no later than 30 calendar days from the date the Department retrieves the files, a final report containing a full accounting of all funds expended under the Contract.

(5) A Monthly Expenditure Report and a Monthly Performance Report for all remaining expenditures incurred during the closeout period must be received by the Department no later than 45 calendar days from the date the Department determines that the closeout of the program and the period of transition are complete.

(6) The Subrecipient will submit to the Department no later than 45 calendar days after the termination of the Contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the Contract.

(7) The Department may require transfer of Equipment title to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove Equipment covered by this paragraph within 90 calendar days following termination of the Contract.

(8) A current year Single Audit must be performed for all entities that have exceeded the federal expenditure threshold under 2 CFR Part 200, Subpart F or the State expenditure threshold under UGMS, as applicable. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the Contract. To be reimbursed for a Single Audit, the terminated Subrecipient must have a binding contract with a CPA firm on or before the termination date of the Contract. The actual costs of the Single Audit and accrued audit costs including support documentation must be submitted to the Department no later than 45 calendar days from the date the Department determines the closeout is complete. See §1.403 of this title (relating to Single Audit Requirements) for more information.

(9) Subrecipient shall submit within 45 calendar days after the date of the closeout process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the 45 calendar day requirement of submitting all referenced reports and documentation to the Department.

*§7.10. Inclusive Marketing.*

(a) The purpose of this section is to highlight certain policies and/or procedures that are required to have written documentation. Other items that are required for written standards are included in the federal or state rules.

(b) Participant selection criteria:

(1) Selection criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules.

(2) If the local CoC has adopted priority for certain Homeless subpopulations or a specific funding source has a statutory or regulatory preference, then those subpopulations may be given priority by the Subrecipient. Such priority must be listed in the participant selection criteria.

(3) Notifications on denial, non-renewal, or termination of Assistance must:

(A) State that a Person with a Disability may request a reasonable accommodation in relation to such notice.

(B) Include any appeal rights the participant may have in regards to such notice.

(C) Inform Program Participants in any denial, non-renewal or termination notice, information on rights they may have under VAWA (for ESG only, in accordance with the Violence Against Women Reauthorization Act of 2013 (VAWA) protections). Subrecipient may not deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Other policies and procedures:

(1) Affirmative Fair Housing Marketing Plan. Subrecipients providing project-based rental assistance must have an Affirmative Fair Housing Marketing Plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants who are considered "least likely" to know about or apply for housing based on an evaluation of market area data. Subrecipient must comply with HUD's Affirmative Fair Housing Marketing and the Age Discrimination Act of 1975.

(2) Language Access Plan. A Subrecipient that interacts with Program Participants must create a Language Access Plan for Limited English Proficiency (LEP) Requirements. Consistent with Title VI and Executive Order 13166, Subrecipient is also required to take reasonable steps to ensure meaningful access to programs and activities for LEP persons.

(3) Affirmative Outreach. If it is unlikely that outreach will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the Subrecipient must establish policies and procedures that target outreach to those persons. Subrecipient must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Subrecipient must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis.

(4) Reasonable Accommodation. Subrecipient must comply with state and federal fair housing and antidiscrimination laws. Subrecipient's policies and procedures must address Reasonable Accommodation, including, but not limited to, consideration of Reasonable Accommodations requested to apply for assistance. See Chapter 1, Subchapter B of this title, relating to Accessibility and Reasonable Accommodations, for more information.

*§7.11. Compliance Monitoring.*

(a) Purpose and Overview

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in this chapter.

(2) Any entity administering any or all of the programs detailed in this chapter is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has Contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of those programs under this Chapter.

(3) Any entity administering any or all of the programs provided for in subsection (a)(2) of this section as part of a Memorandum of Understanding (MOU), contract, or other legal agreement with a Subrecipient is a Subgrantee.

(b) Frequency of Reviews, Notification and Information Collection.

(1) In general, the Subrecipient or Subgrantee will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient or Subgrantee, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a Single Audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

(2) The Department will provide the Subrecipient or Subgrantee with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's and Subgrantee's Contract contact at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a 30 calendar day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipients to provide to the Department the current contact information for the organization and the Board in accordance with §7.7 of this subchapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, Subrecipient and Subgrantee (if applicable) must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable Program Participant files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Program Participant files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, HUD requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, HUD LEP requirements, and requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Subrecipient's Board Chair and Executive Director. All Department monitoring reports and Subrecipient responses to monitoring reports must be provided to the governing body of the Subrecipient within the next two regularly scheduled meetings. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any Findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days from the date of the email to respond, which may be extended for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Director of Compliance within the corrective action period, stating the basis for good cause that justifies the extension. The Department will approve or deny the extension request within five calendar days.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient's response satisfies issues raised in the monitoring letter, the issue of noncompliance will be noted as resolved. If the Subrecipient's response does not correct all Findings, the follow-up letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient or Subgrantee in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipient may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7 ( regarding Appeals Process) of this title.

(C) The Subrecipient may request Alternative Dispute Resolution (ADR). Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to Chapter 1, Subchapter A of this title, relating to General Policies and Procedures.

(5) If the Subrecipient does not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this Title, relating to Enforcement.

*§7.12. Waiver of Rule.*

(a) The Department's Governing Board (the "Board") may waive rules in this chapter for good cause to meet the purpose of the Homeless Programs described further in §7.1 (relating to Purpose and Goals) of this title. However, any waiver cannot conflict with the federal statutes or regulations or state statutes governing any of the Homeless Programs.

(b) A provision of a closed NOFA or a Local Competition may not be waived except in the case of a federal disaster as described in §1.5 (relating to Waiver Applicability in the Case of Federally Declared Disasters) of this title or a change in federal law that makes adherence to the requirements of the NOFA or Local Competition impossible or impracticable 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 March 2, 2020.

TRD-202000948
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 475-3975

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## SUBCHAPTER B. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

### 10 TAC §§7.21 - 7.29

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Homelessness Programs, Subchapter B, Homeless Housing and Services Program, §§7.21 - 7.29. The purpose of the proposed repeal is to eliminate outdated rules while adopting new updated rules 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.

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

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity: the administration of the Homeless Housing and Services Program.

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity: the administration of homeless programs.

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

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

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

The Department has evaluated this proposed repeal and determined that the proposed 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 proposed 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed 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 proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Homeless Housing and Services Program. 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 proposed 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 March 13, 2020, to April 13, 2020, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Com-

munity Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

*§7.21. Purpose and Use of Funds.*

*§7.22. HHSP Subrecipient Application and Selection.*

*§7.23. Allocation of Funds and Formula.*

*§7.24. General HHSP Requirements.*

*§7.25. Program Income.*

*§7.26. Conflict of Interest.*

*§7.27. Eligible Costs.*

*§7.28. Program Participant Eligibility and Program Participant Files.*

*§7.29. Shelter and Housing Standards.*

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 March 2, 2020.

TRD-202000949
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 475-3975

**10 TAC §§7.21 - 7.29**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program, §§7.21 - 7.29. The purpose of the proposed new rules is to clarify eligible activities and funding allocation to be consistent with Rider 16, Funding to Address Youth Homelessness of the Appropriations Act (86th Legislative Session); create a mechanism to redistribute funding that is expected to be unspent by Homeless Housing and Services Program Subrecipients; clarify the program income process; and update the Program Participant eligibility and file requirements.

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

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rules would be in effect:

1. The proposed rules do not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity: administration of the Homeless Housing and Services Program.

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

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

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

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

6. The proposed rules will not expand, limit, or repeal an existing regulation.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting these proposed rules, 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, Ch. 2306.

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

2. There are unlikely to be any small or micro-businesses subject to the proposed rules because these funds are limited to municipalities or designated nonprofits per 10 TAC §7.22 for the Homeless Housing and Services Program.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because the rules will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rules 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 rules are in effect, the public benefit anticipated as a result of the new section will be rules that have greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new rules because the processes described by the rules have already been in place through the rules found at this section being repealed.

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 rules are in effect, enforcing or administering the new rules does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program in included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 13, 2020, to April 13, 2020, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

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.

*§7.21. Purpose and Use of Funds.*

(a) In accordance with Tex. Gov't Code §2306.2585, HHSP provides funding to municipalities with populations of 285,500 or greater (which the Department will determine with the most recent available 1 Year American Community Survey (ACS) data) to develop programs to prevent and eliminate Homelessness.

(b) HHSP eligible activities are:

(1) administrative costs associated with HHSP, including Program Participant tracking using HMIS or a HMIS-comparable database;

(2) case management for households experiencing or At-risk of Homelessness to assess, arrange, coordinate and monitor the delivery of services;

(3) construction/rehabilitation/conversion of buildings or Dwelling Unit (including administrative facilities) to serve persons experiencing Homelessness or At-risk of Homelessness;

(4) essential services for Homeless Households or Households At-risk of Homelessness to find or maintain housing stability;

(5) homelessness prevention to provide financial assistance to Homeless Households or Households At-risk of Homelessness;

(6) homelessness assistance to provide financial assistance provided to Homeless Households or Households At-risk of Homelessness;

(7) operation of emergency shelters or administrative facilities to serve Homeless Households or Households At-risk of Homelessness;

(8) transitional living activities for Youth Headed Households designed to provide safe short-term housing (typically less than 24 months) in conjunction with appropriate supportive services designed to foster self-sufficiency; and

(9) other local programs to assist Homeless Households or Households At-risk of Homelessness, if approved by the Department in writing in advance of the Expenditure.

*§7.22. HHSP Subrecipient Application and Selection.*

(a) Any written information provided to the Department in order to execute a Contract is part of the Application, including but not limited to the information in this subsection.

(b) The municipality may apply to administer the funding directly or designate a Private Nonprofit Organization or other governmental entity to apply to administer the funds in the municipality in accordance with Tex. Gov't Code §2306.2585(a).

(1) Designation of administering entity. The municipality that is designating an entity to administer the funds within their jurisdiction shall provide notification to the Department within 60 calendar days of notification of the allocated amount. The notification must be in the form of a resolution or other city council action from the municipality's governing body, and should indicate whether that the municipality is designating another entity to administer the funds on behalf of the municipality.

(2) The municipality may designate the other entity for one or two years, as desired by the municipality. If designated for two years, the requirement that the resolution or council action be submitted within 60 calendar days of notification of allocated amount will be considered met for the second year since the council action was approved.

(c) Application for funds. Application for funds will be submitted within 60 calendar days of notification of the allocated amount. After 60 calendar days of notification, if no application for funding is received, the funding may be reallocated through the formula outlined in this section to the other areas receiving HHSP funding. The Application for funding will include, but not be limited to:

(1) information sufficient to conduct a Previous Participation review for the municipality or entity designated to administer HHSP funds;

(2) proposed budget;

(3) proposed performance targets; and

(4) activity descriptions.

(d) Prior to Contract execution, entities expected to administer an award of HHSP funds must submit a resolution, governing body action, or other approved documentation approved by entity's direct governing body which includes authorization to enter into a Contract for HHSP funds and title of the person authorized to represent the entity and who also has signature authority to execute a Contract. The documentation submitted must be dated no more than 12 months from the date of Contract execution.

(e) An entity recommended for HHSP funds is subject to the Department's Previous Participation Rule, found in §1.302 of this title. In addition to the considerations of the Previous Participation Rule, an entity receiving HHSP funds may not be in breach or violation, after notice and a reasonable opportunity to cure, of any contract with the Department or LURA.

(f) Subrecipient must enter into a Contract with the Department governing the use of such funds. If the source of funds for HHSP is funding under another specific Department program, such as the Housing Trust Fund, as authorized by Tex. Gov't Code, §2306.2585(c), the Contract will incorporate any requirements applicable to such funding source.

*§7.23. Allocation of Funds and Formula.*

(a) Contract Award Funding Limits. The funding will be established by Allocation Formula as described in this section.

(b) HHSP funds will be awarded upon appropriation from the legislature, and will be made available to any of those municipalities subject to the requirements of this rule and be distributed in accordance with the formula set forth in subsection (c) of this section relating to Formula.

(c) General Population Formula. Funds made available under HHSP for the general population shall be distributed in accordance with an Allocation Formula that is calculated each year that takes into account the proportion of the following factors:

(1) population of the municipality, as determined by the most recent available 1 Year American Community Survey (ACS) data;

(2) poverty, defined as persons in the municipality's population with incomes at or below the poverty threshold, as determined by the most recent available 1 Year ACS data;

(3) population of Homeless persons, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

(4) population of Homeless veterans, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

(5) population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

(6) population of persons with disabilities, defined as that percentage of the municipality's population composed of persons with disabilities, as determined by the most recent available 1 Year ACS data; and

(7) incidents of family violence, as determined by reports from local police departments.

(d) The factors enumerated shall be used to calculate distribution percentages for each municipal area based on the following formula:

(1) thirty percent weight for population;

(2) thirty percent weight for poverty populations;

(3) twenty percent weight for the Homeless population;

(4) five percent weight for population of Homeless Veterans;

(5) five percent weight for population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth;

(6) five percent weight for population of persons with disabilities; and

(7) five percent weight for instances of family violence.

(e) Youth Population Formula. Funds made available to HHSP for youth shall be distributed in accordance with an Allocation Formula that is calculated each year that takes into account the proportion of the following factors:

(1) population of the municipality, as determined by the most recent available 1 Year American Community Survey (ACS) data;

(2) poverty, defined as persons in the municipality's population with incomes at or below the poverty threshold, as determined by the most recent available 1 Year ACS data;

(3) population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas;

(4) population of persons with disabilities, defined as that percentage of the municipality's population composed of persons with disabilities, as determined by the most recent available 1 Year ACS data; and

(5) incidents of family violence, as determined by reports from local police departments.

(f) The factors enumerated shall be used to calculate distribution percentages for each municipal area based on the following formula:

(1) thirty percent weight for population;

(2) thirty percent weight for poverty populations;

(3) thirty percent weight for population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth;

(4) five percent weight for population of persons with disabilities; and

(5) five percent weight for instances of family violence.

(g) Prior to month nine of the Contract, the HHSP Subrecipient may choose to voluntarily deobligate up to 15% of the total amount of funds in the Contract if the HHSP Subrecipient anticipates that it will not expend all the funds. The Department reserves the right to refuse any returned funds prior to the end of the Contract Term. The Department may reallocate the voluntary deobligated funds to existing HHSP Subrecipients with the highest expenditure rates based on percent of funds expended. The increase of reallocated funds may not exceed 25% of the initial Contract award, unless approved by the Board.

*§7.24. General HHSP Requirements.*

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that HHSP requirements are met.

(b) Subrecipient must have written standards for providing HHSP assistance to Program Participants. The written standards must be applied consistently for all Program Participants. The written standards must include, but not be limited to, Inclusive Marketing outlined in §7.10 of this chapter.

(c) Rent restriction. Rental assistance cannot be provided unless the gross rent complies with the standard of rent reasonableness established in the Subrecipient's written policies and procedures. Gross rent includes the contract rent and an estimate of utilities established by the Public Housing Authority for the area in which the Dwelling Unit is located.

(d) The occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(e) Subrecipient must document compliance with the Shelter and Housing Standards in this Chapter, relating to Homelessness Programs, including but not limited to construction and shelter inspection

reports, and the Accessibility Standards in Chapter 1, Subchapter B of this title.

(f) If the Subrecipient is providing funds for single family ownership, the requirements of Chapters 20, relating to Single Family Programs Umbrella Rule, and 21 Minimum Energy Efficiency Requirements for Single Family Construction Activities of this Part, will apply.

(g) If the Subrecipient is providing funds to an entity for rental ownership, operations, or providing project-based vouchers/rental assistance, the rental development must comply with the greater of regulatory regulations governing the development or program to which HHSP funds are comingled, or, if none, must comply with local health and safety codes.

*§7.25. Program Income.*

(a) Program income is income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds, where authorized. Program income does not include interest on federal grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them. Interest earned in excess of $250 on grants or loans from purely state sources is considered program income.

(b) Security and utility deposits must be reimbursed to the Program Participant and are not considered program income. The deposit must remain with the Program Participant and be returned only to the Program Participant.

(c) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of program funds and Subrecipient funds.

(d) Program income that is received during the Contract Term may be expended for HHSP eligible costs during the Contract Term, and reported in the Monthly Expenditure Report.

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, must be returned to the Department within 10 calendar days of receipt.

*§7.26. Conflict of Interest.*

(a) Subrecipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of Contracts. Failure to maintain written standards of conduct and to follow and enforce the written standards is a condition of default and may result in termination of the Contract or deobligation of funds.

(b) No employee, officer, or agent of Subrecipient shall participate in the selection, award, or administration of a contract supported by funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the listed parties, has a financial or other interest in the firm selected for an award.

(c) The officers, employees, and agents, including consultants, officers, or elected or appointed officials of the Subrecipient or its Subgrantees shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. Subrecipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subrecipient.

(d) The provision of any type or amount of direct HHSP assistance may not be conditioned on a Program Participant's acceptance or occupancy of emergency shelter or housing owned by the Subrecipient or Subgrantee, or a parent or subsidiary of the Subrecipient or Subgrantee.

(e) No Subrecipient may, with respect to Household occupying a Dwelling Unit owned by the Subrecipient or Subgrantee, or any parent or subsidiary of the Subrecipient or Subgrantee, carry out the initial intake required for Program Participant files.

(f) For transactions and activities other than the procurement of goods and services, no officers, employees, and agents, including consultants, officers, or elected or appointed officials of the Subrecipient, Subgrantee, or Subcontractor who exercises or has exercised any functions or responsibilities with respect to activities assisted under HHSP, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one-year period following his or her tenure.

*§7.27. Eligible Costs.*

(a) Administrative costs include employee compensation and related costs for staff performance of management, reporting, and accounting of HHSP activities, including office space. Costs associated with the purchase or licensing of HMIS or an HMIS-comparable databases are eligible administrative costs.

(b) Case management costs include staff salaries related to assessing, arranging, coordinating and monitoring the delivery of services related to finding or maintaining housing. Costs include, but are not limited to, Household eligibility determination, counseling, coordinating services and obtaining mainstream benefits for Program Participants, monitoring Program Participant progress, providing safety planning for persons under VAWA, developing a housing and service plan, and entry into HMIS or an HMIS-comparable database.

(c) Construction rehabilitation, and conversion costs include, but are not limited to, costs for:

(1) Pre-Development, such as environmental review, site-control, survey, appraisal, architectural fees, and legal fees.

(2) Development, such as:

(A) land acquisition;

(B) site work (including infrastructure for service utilities, walkways, curbs, gutters);

(C) lot clearance and site preparation;

(D) construction to meet uniform building codes, international energy conservation code, or local rehabilitation standards;

(E) accessibility features to site and building;

(F) essential improvements and energy-related improvements;

(G) abatement of lead-based paint hazards;

(H) barrier removal/construction for accessibility features for persons with disabilities; and

(I) non-luxury general property improvements.

(d) Essential services costs are associated with finding and maintaining stable housing, and include, but are not limited to, costs for:

(1) out-patient medical services;

(2) child care;

(3) education services;

(4) legal services;

(5) mental health services;

(6) local transportation assistance;

(7) drug and alcohol rehabilitation; and

(8) job training.

(e) Homelessness prevention and homelessness assistance costs are associated with housing relocation, stabilization and assistance costs. Staff time entering information into HMIS or HMIS-comparable database related to homelessness prevention and homeless assistance is also an eligible cost. Homeless prevention and homelessness assistance costs include, but are not limited to, hotel or motel costs; transitional housing; rental and utility assistance; rental arrears; utility reconnection fees; reasonable and customary security and utility deposits; and moving costs.

(f) Operation costs include rent, utilities, supplies and equipment purchases, food pantry supplies, and other related costs necessary to operate an emergency shelter or Transitional Living Activities, serving individuals experiencing or at-risk of homelessness.

*§7.28. Program Participant Eligibility and Program Participant Files.*

(a) A Program Participant must satisfy the eligibility requirements by meeting the appropriate definition of Homeless or At-risk of Homelessness in this Chapter, relating to Homelessness Programs, including but not limited to applicable income requirements.

(b) A Program Participant who is Homeless qualifies for emergency shelter, Transitional Living Activities, case management, essential services, and homeless assistance.

(c) A Program Participant who is At-risk of Homelessness qualifies for case management, essential services, and homeless prevention.

(d) The Subrecipient shall establish income limits that do not exceed the moderate income level pursuant to Tex. Gov't Code §2306.152 in its written policies and procedures, and may adopt the income limit calculation method and procedures in HUD Handbook 4350 to satisfy this requirement.

(e) Recertification. Recertification is required for Program Participants receiving homelessness prevention and homelessness assistance within 12 months of the assistance start date. Subrecipient's written policies may require more frequent recertification. At a minimum, recertification includes that Program Participants receiving homelessness prevention or homelessness assistance:

(1) meet the income eligibility requirements as established by the Subrecipient, if such limits are implemented in the Subrecipient's policies and procedures and required to be reviewed at Recertification; and

(2) lack sufficient resources and support networks necessary to retain housing without assistance.

(f) Break in service. The Subrecipient must document eligibility before providing services after a break in service. A break in service occurs when a previously assisted household has exited the program and is no longer receiving services through Homeless Programs. Upon reentry into HHSP, the Household is required to complete a new intake application and provide updated source documentation, if applicable. The Subrecipient would not need to document further eligibility for HHSP if the Program Participant is currently receiving assistance through ESG.

(g) Program participant files. Subrecipient or their Subgrantees shall maintain Program Participant files, for non-emergency activities providing direct subsidy to or on behalf of a Program Participant that contain the following:

(1) an Intake Application, including the signature or legally identifying mark of all adult Household members certifying the validity of information provided, an area to identify the staff person completing the intake application, and the language as required by Tex. Gov't Code §434.212;

(2) certification from the Applicant that they meet the definition of Homeless or At-risk of Homelessness. The certification must include the Program Participant's signature or legally identifying mark;

(3) documentation of income eligibility, if applicable, which may include a DIS if documentation is unobtainable;

(4) documentation of annual recertification, as applicable, including income eligibility determination and verification that the Program Participant lacks sufficient resources and supports networks necessary to retain housing without assistance;

(5) documentation of determination of ineligibility for assistance when assistance is denied. Documentation must include the reason for the determination of ineligibility;

(6) copies of all leases and rental assistance agreements for the provision of rental assistance, documentation of payments made to owners for the provision of rental assistance, and supporting documentation for these payments, including dates of occupancy by Program Participants;

(7) documentation of the monthly allowance for utilities used to determine compliance with the rent restriction; and

(8) documentation that the Dwelling Unit for Program Participants receiving rental assistance complies with the Housing Standards in this Chapter, relating to Homelessness Programs.

*§7.29. Shelter and Housing Standards.*

(a) Minimum standards for emergency shelters. Any building for which HHSP funds are used for construction, rehabilitation, conversion, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety and sanitation standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety and sanitation standards.

(1) Structure and materials. The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with HHSP assistance must use Energy Star and WaterSense or equivalent products and appliances.

(2) Access. The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3601 et seq.) as outlined in 10 TAC Chapter 1, Subchapter B, and implementing regulations at 24 CFR Part 100; and Title II of the Ameri-

cans with Disabilities Act (42 U.S.C. 12131 et seq.) and 28 CFR Part 35; where applicable.

(3) Space and security. Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.

(4) Interior air quality. Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(5) Water supply. The shelter's water supply must be free of contamination.

(6) Sanitary facilities. Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition and are adequate for personal cleanliness and the disposal of human waste.

(7) Thermal environment. The shelter must have any necessary heating/cooling facilities in proper operating condition.

(8) Illumination and electricity. The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) Food preparation. Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) Sanitary conditions. The shelter must be maintained in a sanitary condition.

(11) Fire safety. There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(b) Minimum standards for housing for occupancy. Housing assisted under HHSP must meet the minimum habitability standards within 30 calendar days after the term of assistance begins. HHSP funds may assist a Program Participant in returning the Dwelling Unit to the minimum habitability standard in cases where the Program Participant is the responsible party for ensuring such conditions.

(1) Structure and materials. The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) Space and security. Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(3) Interior air quality. Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(4) Water supply. The water supply must be free from contamination.

(5) Sanitary facilities. Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(6) Thermal environment. The Dwelling Unit must have any necessary heating/cooling facilities in proper operating condition.

(7) Illumination and electricity. The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

(8) Food preparation. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(9) Sanitary conditions. The housing must be maintained in a sanitary condition.

(10) Fire safety.

(A) There must be a second means of exiting the building in the event of fire or other emergency.

(B) Each Dwelling Unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(C) The public areas of all Dwelling Units must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(c) Lead-based paint remediation and disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR Part 35, subparts A, B, H, J, K, M, and R apply to all shelters and all Dwelling Units occupied by Program Participants.

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 March 2, 2020.

TRD-202000951
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 475-3975

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## SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

### 10 TAC §§7.31, 7.34, 7.36, 7.41 - 7.44

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36, General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmarks, and Return of Funds; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant Files. The purpose of the pro-

posed repeals is to eliminate outdated rules while adopting new updated rules 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.

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

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity: the administration of the Homeless Housing and Services Program.

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity: the administration of homeless programs.

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

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

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

The Department has evaluated this proposed repeal and determined that the proposed 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 proposed 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed 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 proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Homeless Housing and Services Program. 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 proposed 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 March 13, 2020, to April 13, 2020, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

*§7.31. Purpose.*

*§7.34. Local Competition for Funds.*

*§7.36. General Threshold Criteria under a Department NOFA.*

*§7.41. Contract Term, Expenditure Benchmarks, and Return of Funds.*

*§7.42. General Administrative Requirements.*

*§7.43. Program Income.*

*§7.44. Program Participant Eligibility and Program Participant Files.*

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 March 2, 2020.

TRD-202000952
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 475-3975

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**10 TAC §§7.31, 7.34, 7.36, 7.41 - 7.44**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36, General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant

Files. The purpose of the proposed new sections is to update the rules to use the most updated sources of data when calculating the Allocation Formula; ensuring an appeal process is available for Applicants in a Local Competition; update threshold requirements for Applications; clarify the Contract extension process; clarify the voluntary return of funds; clarify the redistribution of returned funds; clarify that deposits should be returned to the Program Participant; rearrange and update reporting and administration requirements; and provide more detail for Program Participant eligibility and files.

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

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

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

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

1. The proposed rules do not create or eliminate a government program, but relates to the readoption of these rules which make changes to an existing activity: administration of the Emergency Solutions Grants Program.

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

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

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

5. The proposed rules are not creating a new regulation, except that they are replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rules will not expand, limit, or repeal an existing regulation.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed 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, Ch. 2306.

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. There are unlikely to be any small or micro-businesses subject to the proposed rule because these funds are limited to private nonprofits and local governments per 24 CFR §576.202.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, 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 section is in effect, the public benefit anticipated as a result of the new sections will be rules that have greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rules have already been in place through the rule found at this section being repealed.

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 because the costs for administering the program in included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 13, 2020, to April 13, 2020, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

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.

*§7.31. Purpose.*

(a) The purpose of this rule is to provide guidance and procedures for the Emergency Solutions Grant (ESG) Program as authorized by Tex. Gov't Code §2306.053. ESG funds are federal funds awarded to the State of Texas by HUD and administered by the Department.

(b) The regulations in this subchapter, relating to Emergency Solutions Grants, govern the administration of ESG funds and establish policies and procedures for use of ESG funds to meet the purposes contained in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) (the Act), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act).

(c) In addition to this subchapter, an ESG Subrecipient shall comply with the regulations applicable to the ESG Program as set forth in Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively), Subchapter A of Chapter 7 of this title (relating to General Policies and Procedures) and as set forth in 24 CFR Parts 5, 91, and 576 (the Federal Regulations). An ESG Subrecipient must also follow all other applicable federal and state statutes and the regulations established in this chapter, relating to Homelessness Programs, as amended or supplemented.

(d) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements, special conditions, or waivers, concerning the use or administration of these funds, an ESG Subrecipient shall comply with such requirements at the time they become effective.

*§7.34. Local Competition for Funds.*

(a) TDHCA may procure contractors for the purpose of administering a local competition within a CoC. The contractor selected will be the designated ESG Coordinator for the CoC region or CoC regions in which a contract is awarded.

(b) Application materials, other than those created by the Department that will be utilized by an ESG Coordinator during a CoC Local Competition are subject to Department review prior to the Application acceptance period, and must not conflict with §7.33(d) of this subchapter, relating to Apportionment of ESG Funds. Applicants recommended to the Department by the ESG Coordinator after a CoC Local Competition must satisfy the general threshold criteria established in §7.36 of this subchapter, relating to General Threshold Criteria under a Department NOFA, and establish performance targets as required by §7.40 of this subchapter, relating to Program Participant Services Selection Criteria.

(c) The ESG Coordinator must submit Applications recommended for funding under the CoC Local Competition to the Department prior to award recommendations being made by the Department to its Board. The recommendations must utilize all funding available in the region, unless all eligible Applications received are funded, and there is a remaining balance in the region. An Applicant that applies in a Local Competition for funding is not eligible to be awarded funding in the TDHCA funding competition.

(d) Applications not recommended by the ESG Coordinator for funding must be retained by the ESG Coordinator for a minimum of five years in accordance with 24 CFR §576.500 and must be made available to the Department upon request.

(e) The ESG Coordinator must establish an appeals process wherein Applicants may appeal scoring procedures, and such appeals must be reviewed by the governing body of the ESG Coordinator. Results of the Local Competition submitted to the Department are final, and Applicants in a Local Competition may not appeal the final determination of the ESG Coordinator to the Executive Director or to the Board.

*§7.36. General Threshold Criteria Under a Department NOFA.*

(a) Applications submitted to the Department in response to a NOFA are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, and must include items in paragraphs (1) - (13) of this subsection:

(1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

(2) An ESG budget that does not exceed the total amount available within the CoC region or other geographic limitation, as applicable.

(3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

(5) For a NOFA under the Allocation Formula, a Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

(6) Commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of $57,500 are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed $100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess Match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match will be ineligible for an ESG award.

(7) For a NOFA under the Allocation Formula, evidence from the CoC Lead Agency in the region that the Applicant consulted with the CoC in the preparation of their ESG application and that the CoC Lead Agency agrees that the Application meets CoC priorities for serving persons experiencing homelessness and/or persons At-risk of Homelessness.

(8) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(9) Evidence of Data Universal Numbering System (DUNS) number for Applicant.

(10) Documentation of existing Section 501(c) tax-exempt status, as applicable.

(11) Completed previous participation review materials, as outlined in 10 TAC Chapter 1, Subchapter C of this title (relating to Previous Participation) for Applicant.

(12) Local government approval per 24 CFR §576.202(a)(2) for an Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted not later than 30 calendar days after the Application

submission deadline as specified in the NOFA. Receipt of the local government approval is a condition prior to the Department obligating ESG funding.

(13) A resolution or other governing body action from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Title of the person authorized to represent the entity and who also has signature authority to execute a Contract; and

(C) Date that the resolution was passed by the governing body, which must be not older than 12 months preceding the date the Application is submitted.

(b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title, relating to the Appeals Process.

*§7.41. Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets.*

(a) The Contract Term for allocated funds may not exceed 12 months under a one-year funding cycle. All funds awarded under the Contract must be expended by the Subrecipient on or before the expiration of the Contract, unless an extension has been granted in accordance with this section. A request to extend the Contract Term must show evidence that the extension is necessary to provide services required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of Contract Terms are considered on a case-by-case basis, but are subject to Section 7.4(e) of this Title, concerning Amendments and Extensions of Contracts.

(1) The Executive Director or his or her designee may approve an extension to the Contract Term of up to six months from the original Contract Term.

(2) Board approval is required if the Subrecipient requests to extend the Contract Term for more than six months from the original Contract Term.

(3) Amendments of Expenditure requirements will not be granted by the Executive Director or the Board when such action would cause the Department to miss a federal expenditure deadline.

(b) Subrecipient is required to have reported Expenditures in its Monthly Expenditure Reports reflecting at least 50% of the Contracted funds by month nine of the original Contract Term. A Subrecipient that has not met this Expenditure benchmark must submit a plan to the Department evidencing the ability of the Subrecipient to expend the remaining funds by month 12 of the original Contract Term. This Expenditure benchmark may not be extended though amendment.

(c) Not later than 60 days prior to the end of the Contract Term, a Subrecipient may submit a written request to voluntarily return some or all of its funds to the Department. Voluntary return of funds prior to the Expenditure benchmark constitutes a reduction in the awarded amount, and returned funds at or prior to the Expenditure benchmark will not be considered deobligated funds for the purpose of future funding recommendations.

(d) Funds remaining at the end of Contract which are not reflected in the last Monthly Expenditure Report will be automatically deobligated. Deobligation of funds may affect future funding recommendations.

(e) The Department may request information regarding the performance or status of a Contract prior to the Expenditure benchmark, at various times during the Contract, or during the record retention period. Subrecipient must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds, termination of the Contract by the Department, and could impact future funding recommendations.

(f) If additional funds become available through returned or deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds may be offered to ESG Subrecipients with active Contracts that have not been amended to extend the Contract Term. Funds that become available subsequent to an allocation under a NOFA will be offered with priority given to ESG Subrecipients with the highest Expenditure rate as of the most recent Monthly Expenditure Report. Funds will be offered first to eligible ESG Subrecipients within the CoC region from which the additional funds became available, and then available statewide; however, funds may not be offered to any Subrecipient that returned funds, or from whom funds were deobligated. The Executive Director or designee may increase the Contract of an ESG Subrecipient or authorize a new Contract with a Subrecipient by up to 25% of the original Contract amount from funds that become available after the initial allocation under a NOFA.

(g) Funds that have been returned more than once or returned less than three months before the federal expenditure deadline may be retained by the Department.

(h) The Contract will reflect the Performance Targets that were utilized as selection criteria for the award of funds. Requests to amend Performance Targets may not be submitted less than 60 days prior to the end of the Contract Term. Requests to amend Performance Targets will not be granted if such an amendment would have precluded the award to the Subrecipient.

*§7.42. General Administrative Requirements.*

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that ESG requirements are met. The written standards must be applied consistently for all Program Participants. Written policies must include, but not be limited to Inclusive Marketing outlined in §7.10 of this chapter.

(b) Subrecipient must obtain the correct level of environmental clearance prior to expenditure of ESG funds. Activities for which the Subrecipient does not properly complete the Department's environmental review process are ineligible, and funds will not be reimbursed or will be required to be repaid.

(c) Subrecipient is prohibited from charging occupancy fees for emergency shelter activities supported by funds covered by this subchapter.

(d) If a Private Nonprofit Organization ESG Subrecipient wishes to expand the geographic scope of its emergency shelter activities after Contract execution, an updated certification of approval from the Unit of General Purpose Local Government with jurisdiction over the updated Service Area must be submitted to the Department before funds are spent on emergency shelter in those areas.

(e) Subrecipient must document compliance with the shelter and housing standards per 24 CFR §576.500(j) and (k), including but

not limited to, maintaining sufficient construction and shelter inspection reports.

(f) Rental developments must comply with all construction or operational requirements governing the development or program to which ESG funds are comingled, and must comply with local health and safety codes.

(g) Subrecipient may be required to complete Contract orientation training prior to submission of the first Monthly Expenditure Report. Subrecipient must also complete training as requested by the Department in response to Findings or other issues identified while managing the Contract.

(h) Subrecipient must develop and establish written procurement procedures that comply with federal, State, and local procurement requirements. A conflict of interest related to procurement is prohibited by 2 CFR §200.317-318 or Chapter 171 of the Local Government Code, as applicable.

(i) In instances where a potential conflict of interest exists related to a beneficiary of ESG assistance, Subrecipient must submit a request to the Department to grant an exception to any conflicts prohibited using the procedures at 24 CFR §576.404. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate State or local law. No ESG funds will be committed to assist a Household until HUD has granted an exception.

(j) Subrecipient will comply with the requirements under 24 CFR §576.409, "Protection for victims of domestic violence, dating violence, sexual assault, or stalking."

(1) Compliance with 24 CFR §576.409 includes, but is not limited to, providing two Departmental forms called "Notice of Occupancy Rights under the Violence Against Women Act" based on HUD form 5380 and "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking," HUD form 5382, to each of the following:

(A) All applicants for short- and medium-term rental assistance at the time of admittance or denial;

(B) Program Participants of short- and medium-term rental assistance prior to execution of a Rental Assistance Agreement;

(C) Program Participants of short- and medium-term rental assistance with any notification of eviction or notification of termination of assistance; and

(D) Program Participants of short- and medium-term rental assistance either during an annual Recertification or lease renewal process, whichever is applicable.

(2) Subrecipient will adopt and follow an Emergency Transfer Plan based on HUD's model Emergency Transfer Plan by no later than June 14, 2017, pursuant to 24 CFR §5.2005(e). Within three calendar days after Program Participants request transfers, Subrecipient will inform Program Participants of their eligibility under their Emergency Transfer Plan and keep records of all outcomes.

*§7.43. Program Income.*

(a) Program income is gross income received by the Subrecipient or its Affiliates directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period.

(b) Program income received and expended during the Contract Term will count toward meeting the Subrecipient's Matching requirements, per 24 CFR §576.201(f), provided the costs are eligible ESG costs that supplement the ESG program.

(c) Security and utility deposits paid on behalf of a Program Participant should be treated as a grant to the Program Participant. The deposit must remain with the Program Participant, and if returned, is to be returned only to the Program Participant. If the landlord or the utility service provider requires that the deposit be returned to the Subrecipient, Affiliate, Subcontractor, or Subgrantee, the deposit is program income, and must be treated as described in this subsection.

(d) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of federal funds and Subrecipient funds.

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, along with program income received two years following the end of the Contract Term must be returned to the Department within 10 calendar days of receipt. Income directly generated by a grant-supported activity after the two year period is no longer program income and may be retained by the Subrecipient.

*§7.44. Program Participant Eligibility and Program Participant Files.*

(a) Program participants must meet the applicable definitions of Homeless or At-risk of Homelessness. Proof of the eligibility or ineligibility for Program Participants must be maintained in accordance with 24 CFR §576.500, Recordkeeping and reporting requirements. The Applicant must retain income documentation for Program Participants receiving homelessness prevention and Program Participants receiving rapid re-housing that require annual Recertification. Program Participant income eligibility must be calculated and documented in accordance with the Requirements of HUD Handbook 4350, except that the Department's DIS form may be utilized if income cannot be documented in accordance with 24 CFR §576.500(e)(4). A DIS must be completed and signed by Program Participants whom are subject to income eligibility determination.

(b) The Subrecipient must document eligibility before providing services after a break-in-service. A break-in-service occurs when a previously assisted Household has exited the program and is no longer receiving services through Homeless Programs. Upon reentry into ESG, the Household is required to complete a new intake application and provide updated source documentation, if applicable.

(c) The ESG Subrecipient must utilize the rental assistance agreement promulgated by the Department if providing rental assistance. The rental assistance agreement does not take the place of the lease agreement between the landlord/property manager and the tenant.

(d) The Subrecipient must retain a copy of the signed Disclosure Information on Lead Based Paint and/or Lead-Based Hazards for housing built before 1978 in the Program Participant's file in accordance with 24 CFR §576.403(a).

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 March 2, 2020.

TRD-202000953
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 475-3975

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## SUBCHAPTER D. ENDING HOMELESSNESS FUND

### 10 TAC §7.62, §7.65

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of two sections in 10 TAC Chapter 7, Homelessness Programs, Subchapter D, Ending Homelessness Fund: 10 TAC §7.62, EH Fund Subrecipient Application and Selection, and §7.65, Contract Term of Limitations. The purpose of the proposed repeal is to eliminate outdated rules while adopting updated rules 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.

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

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity: the administration of the Ending Homelessness Fund.

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.

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

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

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

The Department has evaluated this proposed repeal and determined that the proposed 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 proposed 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed 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 proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Ending Homelessness Fund. 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 proposed 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 March 13, 2020, to April 13, 2020, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

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

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

*§7.62. EH Fund Subrecipient Application and Selection.*

*§7.65. Contract Term and Limitations.*

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 March 2, 2020.

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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3975

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### 10 TAC §7.62, §7.65

The Texas Department of Housing and Community Affairs (the Department) proposes two new sections in 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund: 10 TAC §7.62, EH Fund Subrecipient Application and Selection; and §7.65, Contract Term and Limitations. The purpose of the proposed new sections is to update the rule to reflect new definitions, and to clarify the Contract term and limitations.

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

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

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

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

1. The proposed rules do not create or eliminate a government program, but relate to the readoption of these rules which makes changes to an existing activity, administration of the Ending Homelessness Fund.

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

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

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

5. The proposed rules are not creating a new regulation, except that they are replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rules will not expand, limit, or repeal an existing regulation.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting these proposed rules, 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, Ch. 2306.

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

2. There are unlikely to be any small or micro-businesses subject to the proposed rules because these funds are limited to counties and municipalities in Tex. Transportation Code §502.415 for the Ending Homeless Fund.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules will channel funds, which may be limited, only to counties and municipalities; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, 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 sections will be rules that have greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rules have already been in place through the rules found at this section being repealed.

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 because the costs for administering the program in included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 13, 2020, to April 13, 2020, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, APRIL 13, 2020.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Tex. Transp. Code §502.415(g), which authorized the Department to adopt rules regarding the Ending Homelessness Fund.

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

*§7.62. EH Fund Subrecipient Application and Selection.*

(a) The Department will produce an Application which, if properly completed by an eligible Applicant and approved by the Department, may satisfy the Department's requirements to receive an award of funds under the EH Fund. Applicants that have an existing ESG or HHSP Contract or who have been awarded ESG or HHSP funds may be eligible to submit an abbreviated EH Fund Application if such Application is made available by the Department.

(b) Funds will be available to Applicants determined to be eligible for the EH Fund under §7.63(b)(1) of this subchapter, or as specified in a NOFA as defined in and under §7.63(b)(2) of this subchapter (relating to Availability of Funds), as applicable.

(c) Application for funds. Applicants for an award from the EH Fund must submit the following items:

(1) A complete Application including an Applicant certification of compliance with state rules, federal laws, rules and guidance governing the EH Fund as provided in the Application;

(2) All information required under Subchapter C of this chapter (related to Emergency Solutions Grants (ESG)) to conduct a Previous Participation and Executive Award Review and Advisory Committee review;

(3) A proposed budget in the format required by the Department;

(4) Proposed performance targets in the format required by the Department; and

(5) Activity descriptions, including selection of administration under Subchapter B of this chapter (related to Homeless Housing and Services Program (HHSP)) or Subchapter C of this chapter.

(d) Applications submitted by existing ESG or HHSP Subrecipients or awarded Applicants for ESG or HHSP, eligible activities are limited to those activities in ESG or HHSP, except that the EH Fund is not subject to limitations on the amount of funds that may be spent for any given activity type.

(e) The Department must receive all Applications within 30 calendar days of notification of eligibility to Applicants per §7.63(b)(1) of this subchapter, or as specified in the NOFA, as applicable.

*§7.65. Contract Term and Limitations.*

(a) For EH Fund Applicants that do not have a current ESG or HHSP Contract, and have not been awarded ESG or HHSP funds, the Department requires evidence in the form of a certification or resolution adopted by the governing body of the Applicant specifying who is authorized to enter into a Contract on behalf of the Applicant. This certification or resolution is due to the Department no later than 90 calendar days after the award has been approved by the Board, must be received prior to execution of any Contract for EH funds, and must include:

(1) Authorization to enter into a Contract for EH Fund;

(2) Title of the person authorized to represent the organization and who also has signature authority to execute a Contract; and

(3) Date that the certification or resolution was adopted by the governing body, which must be within 12 months of Application submission.

(b) EH Fund Contracts will generally have an initial period of 12 months for fund Expenditure. A request to extend the Contract Term must evidence that the extension is necessary to provide activities required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of a Contract Term are considered on a case-by-case basis and are subject to §7.4(e) of this title (relating to Amendments and Extensions of Contracts).

(1) The Executive Director or his or her designee may approve an extension to the Contract Term that for up to six months from the original Contract Term.

(2) Board approval is required if the Subrecipient requests to extend the Contract Term for more than six months from the original Contract Term. Extensions for greater than 12 months may not be granted.

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

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# TITLE 13. CULTURAL RESOURCES

## PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

### CHAPTER 2. GENERAL POLICIES AND PROCEDURES

### SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

**13 TAC §§2.3, 2.5, 2.7 - 2.9, 2.46, 2.48**

The Texas State Library and Archives Commission (commission) proposes amendments to 13 TAC §§2.3, Procedures of the Commission; 2.7, Library Systems Act Advisory Board; 2.8, Texas Historical Records Advisory Board; 2.46, Negotiated Rulemaking; 2.48, Petition for Adoption of Rule Changes; and new §2.5, Advisory Committees; General Requirements and new §2.9, TexShare Library Consortium Advisory Board (TexShare Advisory Board). In a separate proposal, the commission is also proposing the repeals of §2.6, Sunset Dates for Advisory Committees; and §2.57, Petition for Adoption of Rule Changes.

In its 2018-2019 review of the commission, the Sunset Advisory Commission (Sunset) noted that while the commission has statutory advisory committees, the legislature had not enacted a statutory provision for any of those advisory committees for more than four years, meaning those committees were effectively abolished by law. As a result, Sunset adopted Recommendation 4.3, recommending the commission be given the authority to establish advisory committees in rule as needed. Sunset further recommended the commission adopt rules regarding the commission's committees in compliance with Government Code, Chapter 2110, including rules regarding the purpose, role, responsibility, and goals of the committees; the size and quorum requirements of committees; qualifications of members; appointment procedures; terms of service; training requirements; a process to regularly evaluate the need for each committee; and the requirement that the committees comply with the Open Meetings Act.

In House Bill 1962, 86th Legislature (Regular Session), the legislature created Government Code, §441.0065, giving the commission the authority to establish advisory committees by rule. Proposed §2.5 implements the Sunset's Recommendation 4.3 and Government Code, §441.0065 by establishing the requirements for all advisory committees of the commission. Amendments to §2.7 and §2.8 and new §2.9 effectively re-establish three advisory committees consistent with proposed §2.5.

Other amendments are necessary to update and clarify existing rules and to conform rule language to current practices.

The commission proposes the repeal of §2.6 because each advisory committee's expiration date is specified in the rule estab-

lishing the committee. The commission proposes the repeal of §2.57 because it is duplicative of, but not identical to, §2.48.

SUMMARY. The proposed amendment to §2.3 amends subsection (e) to change the minimum number of commission meetings per year from six to five. Government Code, §441.001(l) requires the commission to meet at least once per year. Five commission meetings per year is in line with best practices and is appropriate for the commission to accomplish its goals and objectives. The rule still authorizes the chair to call additional meetings as may be necessary, consistent with statute.

Proposed new §2.5, concerning Advisory Committees; General Requirements, establishes the general requirements for the commission's advisory committees. Unless otherwise provided, the general requirements would apply to all commission advisory committees established by rule. In addition, the proposed rule provides specific requirements for each commission advisory committee, including membership, qualifications, appointment procedures, terms, and other requirements. The proposed rule also addresses meeting requirements, records that must be maintained by an advisory committee, a review process for advisory committees by the commission, and a requirement that advisory committees comply with the Open Meetings Act, among other requirements.

Proposed amendments to §2.7 establish the Library Systems Act Advisory Board (LSA Board), the advisory committee responsible for reviewing and making recommendations regarding the minimum standards for accreditation of libraries in the state library system, reviewing and making recommendations regarding the application of the standards to local libraries, reviewing and making recommendations regarding the future development of the Library Systems Act, reviewing and making recommendations regarding grant programs for local libraries, and reviewing and making recommendations regarding agency programs that affect local libraries. The amendment establishes an expiration date for the LSA Board of February 20, 2024.

Proposed amendments to §2.8 establish the Texas Historical Records Advisory Board (THRAB), the advisory committee responsible for serving as the central advisory body for historical records planning and projects funded by the National Historical Publications and Records Commission that are developed and implemented in this state and advise the Texas State Library and Archives Commission on matters related to historical records in the state. The amendment establishes an expiration date for the THRAB of February 20, 2024.

New §2.9 establishes the TexShare Library Consortium Advisory Board (TexShare Advisory Board), the advisory committee responsible for advising the commission on matters relating to the consortium. The amendment establishes an expiration date for the TexShare Advisory Board of February 20, 2024.

Proposed amendments to §2.46, Negotiated Rulemaking, update the language for clarity and consistency with the statutory language for negotiated rulemaking in Government Code, Chapter 2008.

Proposed amendments to §2.48, Petition for Adoption of Rules, update the rule title and language for clarity and consistency with the statutory language for petitions for the adoption of rules in Government Code, §2001.021.

FISCAL IMPACT. Mark Smith, State Librarian and Director for the commission, has determined that for each of the first five years the proposed amendments and new rules are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering these amended and new rules, as proposed.

PUBLIC BENEFIT AND COSTS. Mr. Smith has also determined that for the first five-year period the amended rules are in effect, the public benefit will be clarity and consistency in the creation of and operation of the commission's advisory committees, as well as in the processes for negotiated rulemaking and petitions for the adoption of rules. There are no anticipated economic costs to persons required to comply with the proposed amendments and new rules.

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

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

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

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

1. The proposed rules will not create or eliminate a government program;

2. Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed rules will not require an increase or decrease in fees paid to the commission;

5. The proposed rules will create a new regulation as authorized by Government Code, §441.0065. The commission previously did not have authority to create advisory committees by rule; however, following the 2018-2019 Sunset Review, the legislature gave the commission this authority;

6. The proposed rules will not expand, limit, or repeal an existing regulation;

7. The proposed rules will increase the number of individuals subject to the proposed rules' applicability as the commission previously did not have authority to establish advisory committees by rule; and

8. The proposed rules will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore,

the proposed rules do not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, Box 12927, Austin, Texas, 78711-2927, or by email to rules@tsl.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

STATUTORY AUTHORITY. The amendments and new rules are proposed under Government Code, §441.0065, which authorizes the commission to establish advisory committees by rule; Government Code, §441.226, which requires the commission to adopt rules regarding the organization and structure of the TexShare Advisory Board; Government Code, §2110.005, which requires a state agency that establishes an advisory committee to state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency by rule; Government Code, §2110.008, which authorizes a state agency to designate the date on which an advisory committee will automatically be abolished by rule; Government Code, §2001.021, which requires a state agency to prescribe the form for a petition for the adoption of rules and the procedure for its submission, consideration, and disposition; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. Government Code, Chapters 441, 2001, 2008, 2110.

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

*§2.3. Procedures of Commission.*

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

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

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

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

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

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

(g) Transaction of Business. As defined in the Open Meetings Act, a majority of the members of the commission, or four members, shall constitute a quorum. Meetings of the commission are conducted in a manner that welcomes public participation and complies with the spirit of the Open Meetings Act. At each meeting of the commission the agenda shall include a period for public comment of up to five minutes per individual. Actions of the commission are approved by a majority of the members present and voting. Proxies are not allowed.

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

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

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

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

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

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

(n) Code of Conduct. Members, officers and employees of the commission will not solicit or accept any gift, favor, service or thing of value that might reasonably tend to influence the member, officer or employee in the discharge of official duties, or that the member, officer or employee knows or should know is being offered with the intent of influencing the member's, officer's or employee's official conduct.

Members, officers and employees of the commission will not accept employment, engage in a business or professional activity, or accept compensation that would:

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

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

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

*§2.5. Advisory Committees; General Requirements.*

(a) Purpose and scope. This section governs procedures for the creation and operation of advisory committees created to advise the commission. The purpose of an advisory committee is to make recommendations to the commission on programs, rules, and policies affecting the delivery of information services in the state. An advisory committee's sole role is to advise the commission. An advisory committee has no executive or administrative powers or duties with respect to the operation of the commission, and all such powers and duties rest solely with the commission.

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

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

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

(e) Membership terms. Except as otherwise provided by law:

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

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

(f) Conditions of membership.

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

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

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

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

(h) Meetings.

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

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

(3) Attendance. A record of attendance at each meeting of an advisory committee will be made. Unless otherwise provided by law, if a member of an advisory committee misses three consecutive advisory committee meetings, the member automatically vacates the position and the commission will appoint a new member to fill the remainder of the unexpired term created by the vacancy.

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

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

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

(l) Review of advisory committees. The commission shall monitor the composition and activities of advisory committees. To enable the commission to evaluate the continuing need for an advisory committee, an advisory committee shall report in writing to the commission a minimum of once per year. The report provided by the advisory committee shall be sufficient to allow the commission to properly evaluate the committee's work and usefulness.

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

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

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

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

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

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

(d) The LSA Board shall comply with the requirements of §2.5 of this title (relating to Advisory Committees; General Requirements), except for §2.5(e), pertaining to membership terms.

(e) The LSA Board shall expire on February 20, 2024.

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

(a) The THRAB is created [Texas Historical Records Advisory Board's purpose is] to serve as the central advisory body for historical records planning and projects funded by the National Historical Publications and Records Commission that are developed and implemented in this state and advise the Texas State Library and Archives Commission on matters related to historical records in the state. The advisory board's tasks include those enumerated in Government Code §441.242.

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

(c) The THRAB is composed of:

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

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

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

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

(1) The historical records coordinator serves a four year term;

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

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

(e) The THRAB shall comply with the requirements of §2.5 of this title (relating to Advisory Committees; General Requirements), except for §2.5(c), pertaining to appointment procedures, and §2.5(e), pertaining to membership terms.

(f) The THRAB shall expire on February 20, 2024.

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

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

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

(c) The TexShare Advisory Board shall comply with the requirements of §2.5 of this title (relating to Advisory Committees; General Requirements), except for §2.5(e), pertaining to membership terms, and with §8.4 of this title (relating to Advisory Board).

(d) The TexShare Advisory Board shall expire on February 20, 2024.

*§2.46. Negotiated Rulemaking.*

(a) It is the commission's [agency's] policy to engage in [enable the use of] negotiated rulemaking procedures under Texas Government Code, Chapter 2008, when appropriate. When the commission finds that [In situations where] proposed rules are likely to [could] be complex or [,] controversial, or to affect disparate groups, negotiated rulemaking may be proposed [considered by the agency].

(b) When negotiated rulemaking is proposed [considered], the [deputy] director and librarian will appoint a convenor[, or designee, shall be the agency's negotiated rulemaking coordinator] to assist [it] in determining whether it is advisable to proceed. The convenor [coordinator] shall perform [have] the duties and responsibilities contained [described] in Government Code, Chapter 2008.[, and shall make a recommendation to the commission to proceed or to defer negotiated rulemaking. The recommendation shall be made after the coordinator, at a minimum, has considered all of the items enumerated in Government Code, §2008.052(c). The coordinator shall perform the following functions, as required:

[(1) coordinate the implementation of the policy set out in subsection (a) of this section, and in accordance with the Negotiated Rulemaking Act, Chapter 2008, Government Code; ]

[(2) serve as a resource for any staff training or education needed to implement negotiated rulemaking procedures; and,]

[(3) collect data to evaluate the effectiveness of negotiated rulemaking procedures implemented by the agency.]

(c) If the convenor recommends proceeding with negotiated rulemaking and the commission adopts the recommendation, the commission shall [Upon the coordinator's recommendation to proceed, the agency may] initiate negotiated rulemaking according to the provisions of Texas Government Code, Chapter 2008.

*§2.48. Petition for Adoption of Rules [Rule Changes].*

(a) Any interested person may petition the commission requesting the adoption of a rule. [In accordance with Government Code, §2001.021, an interested person may petition for the adoption, amendment, or repeal of a rule of the commissioner.]

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

(1) A clear and concise statement of the substance of the proposed rule, together with a brief explanation of the purpose to be accomplished through such adoption; [It must specify or otherwise make clear that the petition is made pursuant to the provisions of the Administrative Procedure Act.]

(2) [It must clearly state the body or substance of the rule requested for adoption, and, if appropriate, relate the requested rule to an adopted rule or rules of the commission.]

[(3)] The [It must contain the] petitioner's full name, Texas address, telephone number, and signature; and[.]

[(4) It must be signed by the petitioner with the date the petition is submitted.]

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

[(6) It must include a statement of statutory or other authority under which the rule is to be promulgated; and a brief explanation of why the rule action is necessary or desirable.]

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

[(c) The commission staff shall evaluate the merits of the proposal.]

[(d) In accordance with the Government Code, §2001.021, the commission staff shall respond to the petitioner within 60 days of receipt of the petition. The response shall:]

[(1) advise that rulemaking proceedings will be initiated; or,]

[(2) deny the petition, stating the reasons for its denial.]

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

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 February 27, 2020.

TRD-202000885
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 463-5591

## 13 TAC §2.6, §2.57

The Texas State Library and Archives Commission (commission) proposes the repeals of §2.6, Sunset Dates for Advisory Committees, and §2.57, Petition for Adoption of Rule Changes. The repeals are being proposed simultaneously with proposed amendments to 13 TAC §§2.3, Procedures of the Commission; 2.7, Library Systems Act Advisory Board; 2.8, Texas Historical Records Advisory Board; 2.46, Negotiated Rulemaking; 2.48, Petition for Adoption of Rule Changes; and new §2.5, Advisory Committees; General Requirements and new §2.9, TexShare Library Consortium Advisory Board (TexShare Advisory Board).

The commission proposes the repeal of §2.6 because each advisory committee's expiration date is specified in the rule establishing the committee. The commission proposes the repeal of §2.57 because it is duplicative of, but not identical to, §2.48.

The repeals are necessary to ensure the commission's rules are clear and consistent.

FISCAL IMPACT. Mark Smith, State Librarian and Director for the commission, has determined that for each of the first five years the proposed repeal is in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the repeal of these rules.

PUBLIC BENEFIT AND COSTS. Mr. Smith has also determined that for the first five-year period the proposed repeals are in effect, the public benefit will be greater clarity and consistency in the commission's rules. There are no anticipated economic costs to persons required to comply with the proposed repeals.

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

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

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

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

1. The proposed repeals will not create or eliminate a government program;

2. Implementation of the proposed repeals will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed repeals will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed repeals will not require an increase or decrease in fees paid to the commission;

5. The proposed repeals will not create a new regulation as authorized by Government Code, §441.0065;

6. The proposed repeals will not expand, limit, or repeal an existing regulation;

7. The proposed repeals will not increase the number of individuals subject to the rules' applicability; and

8. The proposed repeals will not positively or adversely affect this state's economy.

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

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed repeals may be directed to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, Box 12927, Austin, Texas, 78711-2927, or by email to

rules@tsl.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

STATUTORY AUTHORITY. The repeals are proposed under Government Code, §441.0065, which authorizes the commission to establish advisory committees by rule; Government Code, §441.226, which requires the commission to adopt rules regarding the organization and structure of the TexShare Advisory Board; Government Code, §2110.005, which requires a state agency that establishes an advisory committee to state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency by rule; Government Code, §2110.008, which authorizes a state agency to designate the date on which an advisory committee will automatically be abolished by rule; Government Code, §2001.021, which requires a state agency to prescribe the form for a petition for the adoption of rules and the procedure for its submission, consideration, and disposition; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. Government Code, Chapters 441, 2001, 2008, 2110.

*§2.6. Sunset Dates for Advisory Committees.*
*§2.57. Petition for the Adoption of a Rule.*

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 February 27, 2020.

TRD-202000886
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 463-5591

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# TITLE 16. ECONOMIC REGULATION

## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

## SUBCHAPTER E. RECORDS AND REPORTS

### 16 TAC §24.134

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §24.134, relating to financial, managerial and technical reports required for water and sewer utilities. The proposed new rule will implement section 1 of House Bill 3542 (86th Regular Legislative Session, 2019), which enacted Texas Water Code (TWC) §13.150 establishing reporting requirements for water and sewer utilities that are in violation of certain orders issued by the Texas Commission on Environmental Quality (TCEQ).

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will create a new regulation;

(6) the proposed rule will not expand an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Tammy Benter, Director of Utility Outreach, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the rule.

Public Benefits

Ms. Benter has also determined that for each year of the first five years the proposed rule is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be implementation of TWC §13.150. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking, because the commission is expressly excluded from that provision under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on May 11, 2020 at 9:00 a.m. Requests for a public hearing must be received by April 27, 2020. If no hearing is requested, a filing will be made in Project No. 50089 to inform interested persons that no hearing will be held.

Public Comments

Comments on the proposed rule may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326. Sixteen copies of comments on the proposed rule are required to be filed by 16 TAC §22.71(c). Initial comments must be filed by April 13, 2020, and reply comments must be filed by April 27, 2020. Comments should be organized in a manner consistent with the organization of the proposed rule. All comments should refer to Project No. 50089.

Statutory Authority

This new rule is proposed under TWC §13.041, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and TWC §13.150 which establishes reporting requirements for water and sewer utilities.

Cross reference to statutes: Texas Water Code §§13.041 and 13.150.

*§24.134. Financial, Managerial, and Technical Reports Required for Water and Sewer Utilities.*

(a) Applicability. This section applies to Class B, C, and D utilities.

(b) Notification of violation. The Texas Commission on Environmental Quality (TCEQ) will notify the commission when a utility has violated a TCEQ final order by failing to:

(1) provide system capacity greater than the state and federal required raw water or groundwater production rate or the anticipated daily demand of the system;

(2) provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; or

(3) maintain accurate or properly calibrated testing equipment or other means of monitoring the effectiveness of a chemical treatment or pathogen inactivation or removal process.

(c) Notification to utility. Upon receiving notification from TCEQ under subsection (b) of this section, the commission will provide written notice to the utility of the requirement to file the report required under subsection (d) of this section.

(d) Report required. Except as provided by subsection (e) of this section, a utility must file a report with the commission about the utility's financial, managerial, and technical ability to provide continuous and adequate service not later than three years after the date that the utility violated a final order of the TCEQ by failing to meet the requirements described in subsection (b)(1) - (3) of this section.

(1) The report must include the following information:

(A) a detailed description of the managerial and technical experience and qualifications of the utility in providing continuous and adequate service, including improvements to the experience and qualifications of its personnel since the date of the violation; and

(B) financial assurance information required under §24.11 of this title (relating to Financial Assurance) demonstrating that the utility has the financial resources to operate and manage the utility and to provide continuous and adequate service.

(2) For violations that occurred after September 1, 2019, the report must be filed not later than the third anniversary of the date of the violation, as reported by TCEQ, under subsection (b) of this section. For violations that occurred between September 1, 2016, and August 31, 2019, the report must be filed not later than the fifth anniversary of the date of the violation reported by TCEQ under subsection (b) of this section.

(3) The report must be filed with the commission's central records under the commission-designated project number.

(4) The commission will deliver a copy of a report received under this subsection to:

(A) each state senator representing a legislative district that contains a portion of the service area of the utility that filed the report; and

(B) each state representative representing a legislative district that contains a portion of the service area of the utility that filed the report.

(e) No additional report required. A utility that has an existing obligation to file a report required by this section is not required to file a second report as a result of the occurrence of an additional violation for which notice to the commission was provided under subsection (b) of this section if the additional violation occurs before the date that the utility files the report required by subsection (d) of this section.

(f) Failure to report. If a utility fails to file a report in accordance with this section, the commission will report such failure to:

(1) the TCEQ;

(2) each state senator representing a legislative district that contains a portion of the utility 's service area; and

(3) each state representative representing a legislative district that contains a portion of the utility's service area.

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 February 27, 2020.

TRD-202000891
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 936-7244

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## SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

The Public Utility Commission of Texas (commission) proposes to repeal existing 16 TAC §24.245, relating to revocation of a certificate of convenience and necessity, and to adopt new 16 TAC

§24.245, relating to revocation of a certificate of convenience and necessity or amendment of a certificate of convenience and necessity by decertification, expedited release, or streamlined expedited release. The commission proposes to repeal the existing rule and replace it with a new rule instead of amending the existing rule because of the extent of the changes proposed. The new rule will implement Senate Bill 2272 enacted by the 86th Texas Legislature and clarify processes for revocation or amendment of certificates of convenience and necessity by decertification, expedited release, and streamlined expedited release.

***Growth Impact Statement***

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed repeal and new rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed repeal and new rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

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

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

(5) the proposed repeal and new rule will not create a new regulation;

(6) the proposed repeal and new rule will not expand, limit, or repeal an existing regulation;

(7) the proposed repeal and new rule will not change the number of individuals subject to the rule's applicability; and

(8) the proposed repeal and new rule will not affect this state's economy.

***Fiscal Impact on Small and Micro-Businesses and Rural Communities***

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

***Takings Impact Analysis***

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

***Fiscal Impact on State and Local Government***

Paula Mueller, Rules Director, has determined that for the first five-year period the proposed repeal and new rule are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the rule.

***Public Benefits***

Paula Mueller, Rules Director, has also determined that for each year of the first five years the proposed repeal and new rule are in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be implementation of legislation and clarification of certain processes related to revocations and amendments of certificates of convenience and necessity. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

***Local Employment Impact Statement***

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

***Costs to Regulated Persons***

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

***Public Hearing***

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on May 11, 2020, at 10:00 a.m. The request for a public hearing must be received by April 27, 2020. If no hearing is requested, a filing will be made in Project 50028 to inform interested persons that no hearing will be held.

***Public Comments***

Comments on the proposed amendments may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, Texas 78711-3326, by April 13, 2020. Reply comments may be submitted by April 27, 2020. Sixteen copies of comments to the proposed amendment are required to be filed by §22.71(c) of 16 Texas Administrative Code. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project No. 50028.

**16 TAC §24.245**

Statutory Authority

The repeal is proposed under Texas Water Code §13.041, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and Texas Water Code §13.2551, which authorizes the commission to place conditions on decertification.

Cross reference to statutes: Texas Water Code §§13.041 and 13.2551.

*§24.245. Revocation or Amendment of a Certificate of Convenience and Necessity.*

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 February 27, 2020.

TRD-202000892
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 936-7244

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**16 TAC §24.245**

Statutory Authority

The new rule is proposed under Texas Water Code §13.041, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and Texas Water Code §13.2551, which authorizes the commission to place conditions on decertification.

Cross reference to statutes: Texas Water Code §§13.041 and 13.2551.

*§24.245. Revocation of a Certificate of Convenience and Necessity or Amendment of a Certificate of Convenience and Necessity by Decertification, Expedited Release, or Streamlined Expedited Release.*

(a) Applicability. This section applies to proceedings for revocation or amendment by decertification, expedited release, or streamlined expedited release of a certificate of convenience and necessity (CCN).

(b) Definitions. The following terms, when used in this section, have the following meanings unless the context indicates otherwise:

(1) Alternate retail public utility -- The retail public utility from which a landowner plans to receive service after the landowner obtains expedited release under subsection (f) of this section.

(2) Amendment -- The change of a CCN to remove a portion of a service area by decertification amendment, expedited release, or streamlined expedited release.

(3) Current CCN holder -- An entity that currently holds a CCN to provide service to an area for which revocation or amendment is sought.

(4) Decertification amendment -- A process by which a portion of a certificated service area is removed from a CCN, other than expedited release or streamlined expedited release.

(5) Expedited Release -- Removal of a tract of land from a CCN area under Texas Water Code (TWC) §13.254(a-1).

(6) Former CCN holder -- An entity that formerly held a CCN to provide service to an area that was removed from the entity's service area by revocation or amendment.

(7) Landowner -- The owner of a tract of land who files a petition for expedited release or streamlined expedited release.

(8) Prospective retail public utility -- A retail public utility seeking to provide service to a removed area.

(9) Removed area -- Area that will be or has been removed under this section from a CCN.

(10) Streamlined Expedited Release -- Removal of a tract of land from a CCN area under TWC §13.2541.

(c) Provisions applicable to all proceedings for revocation, decertification amendment, expedited release, or streamlined expedited release.

(1) An order of the commission in any proceeding under this section does not create a vested property right.

(2) An order of the commission issued under this section does not transfer any property, except as provided under subsection (l) of this section.

(3) A former CCN holder is not required to provide service within a removed area.

(4) If the CCN of any retail public utility is revoked or amended by decertification, expedited release, or streamlined expedited release, the commission may by order require one or more other retail public utilities to provide service to the removed area, but only with the consent of each retail public utility that is to provide service.

(5) A retail public utility, including an alternate retail public utility, may not in any way render retail water or sewer service directly or indirectly to the public in a removed area unless any compensation due has been paid to the former CCN holder and a CCN to serve the area has been obtained, if one is required.

(d) Revocation or amendment by decertification.

(1) At any time after notice and opportunity for hearing, the commission may revoke any CCN or amend any CCN by decertifying a portion of the service area if the commission finds that any of the circumstances identified in this paragraph exist.

(A) The current CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area. If the current CCN holder opposes revocation or decertification amendment on one of these bases, it has the burden of proving that it is, or is capable of, providing continuous and adequate service.

(B) The current CCN holder is in an affected county as defined in TWC §16.341, and the cost of providing service by the current CCN holder is so prohibitively expensive as to constitute denial of service. Absent other relevant factors, for commercial developments or residential developments started after September 1, 1997, the fact that the cost of obtaining service from the current CCN holder makes the development economically unfeasible does not render such cost prohibitively expensive.

(C) The current CCN holder has agreed in writing to allow another retail public utility to provide service within its certificated service area or a portion of its service area, except for an interim period, without amending its CCN.

(D) The current CCN holder failed to apply for a cease-and-desist order under TWC §13.252 and §24.255 of this title (relating to Contents of Request for Cease and Desist Order by the Commission Under TWC §13.252) within 180 days of the date that the current CCN holder became aware that another retail public utility was providing service within the current CCN holder's certificated service area, unless the current CCN holder proves that good cause exists for its failure to timely apply for a cease-and-desist order.

(E) The current CCN holder has consented in writing to the revocation or amendment.

(2) A retail public utility may file a written request with the commission to revoke its CCN or to amend its CCN by decertifying a portion of the service area.

(A) The retail public utility must provide, at the time its request is filed, notice of its request to each customer and landowner within the affected service area of the utility.

(B) The request must specify the area that is requested to be revoked or removed from the CCN area.

(C) The request must address the effect of the revocation or decertification amendment on the current CCN holder, any existing customers, and landowners in the affected service area.

(D) The request must include the mapping information required by §24.257 of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications).

(E) The commission may deny the request to revoke or amend a CCN if existing customers or landowners will be adversely affected.

(F) If a retail public utility's request for decertification amendment or revocation by consent is granted, the retail public utility is not entitled to compensation from a prospective retail public utility.

(3) The commission may initiate a proceeding to revoke a CCN or decertify a portion of a service area on its own motion or upon request of commission staff.

(4) The current CCN holder has the burden to establish that it is, or is capable of, providing continuous and adequate service and, if applicable, that there is good cause for failing to file a cease and desist action under TWC §13.252 and §24.255 of this title.

(e) Decertification amendment for a municipality's service area. After notice to a municipality and an opportunity for a hearing, the commission may decertify an area that is located outside the municipality's extraterritorial jurisdictional boundary if the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN was granted for the area. This subsection does not apply to an area that was transferred to a municipality's certificated service area by the commission and for which the municipality has spent public funds.

(1) A proceeding to remove an area from a municipality's service area may be initiated by the commission with or without a petition.

(2) A petition may be filed by commission staff, a landowner within the certificated service area, or by a retail public utility with a service area that is adjacent to the service area of the municipality. The petition must be verified by a notarized affidavit.

(3) The petition must allege that a CCN was granted for the area more than five years before the petition was filed and the municipality has not provided service in the area.

(4) The petition must include the mapping information required by §24.257 of this title.

(5) Notice of the proceeding to remove an area must be given to the municipality, landowners within the area to be removed, and all other retail public utilities with service areas that are adjacent to the municipality's service area.

(6) If the municipality asserts that it is providing service to the area, the municipality has the burden to prove that assertion.

(f) Expedited release.

(1) An owner of a tract of land may petition the commission for expedited release of all or a portion of the tract of land from a current CCN holder's certificated service area so that the area may receive service from an alternate retail public utility if all the following circumstances exist:

(A) The tract of land is at least 50 acres in size;

(B) The tract of land is not located in a platted subdivision actually receiving service;

(C) The landowner has submitted a request for service to the current CCN holder at least 90 calendar days before filing the petition;

(D) The alternate retail public utility possesses the financial, managerial, and technical capability to provide service as identified in the request for service provided under paragraph (5) of this subsection on a continuous and adequate basis; and

(E) The current CCN holder:

*(i)* has refused to provide service;

*(ii)* cannot provide service as identified in the request for service provided under paragraph (5) of this subsection on a continuous and adequate basis; or

*(iii)* conditions the provision of service on the payment of costs not properly allocable directly to the landowner's service request, as determined by the commission.

(2) An owner of a tract of land may not file a petition under paragraph (1) of this subsection if the landowner's property is located in the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the current CCN holder.

(3) The landowner's desired alternate retail public utility must be:

(A) An existing retail public utility; or

(B) A district proposed to be created under article 16, §59 or article 3, §52 of the Texas Constitution.

(4) The fact that a current CCN holder is a borrower under a federal loan program does not prohibit the filing of a petition under this subsection or authorizing an alternate retail public utility to provide service to the removed area.

(5) The landowner must submit to the current CCN holder a written request for service. The request must be sent by certified mail, return receipt requested, or by hand delivery with written acknowledgement of receipt. For a request other than for standard residential or commercial service, the written request must identify the following:

(A) the tract of land or portion of the tract of land for which service is sought;

(B) the time frame within which service is needed for current and projected service demands in the tract of land;

(C) the reasonable level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternate retail public utility to provide service at the same level, and in the same manner, that is requested from the current CCN holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested, if any; and

(F) any additional information requested by the current CCN holder that is reasonably related to determining the capacity or cost of providing service at the level, in the manner, and in the time frame requested.

(6) The landowner's petition for expedited release under this subsection must be verified by a notarized affidavit and demon-

strate that the circumstances identified in paragraph (1) of this subsection exist. The petition must include the following:

(A) the name of the alternate retail public utility;

(B) a copy of the request for service submitted as required by paragraph (5) of this subsection;

(C) a copy of the current CCN holder's response to the request for service, if any;

(D) copies of deeds demonstrating ownership of the tract of land by the landowner; and

(E) the mapping information described in subsection (k) of this section.

(7) The landowner must mail a copy of the petition to the current CCN holder and the alternate retail public utility via certified mail on the day that the landowner files the petition with the commission.

(8) The presiding officer will determine whether the petition is administratively complete. If the petition is determined not to be administratively complete, the presiding officer will issue an order describing the deficiencies in the petition and setting a deadline for the petitioner to address the deficiencies. When the petition is determined to be administratively complete, the presiding officer will establish a procedural schedule that is consistent with paragraphs (9) and (10) of this subsection. The presiding officer may recommend dismissal of the petition under §22.181(d) of this title (relating to Dismissal of a Procedure) if the petitioner fails to supplement or amend the petition within the required timeframe after the presiding officer has determined that the petition is not administratively complete.

(9) The current CCN holder may file a response to the petition within a timeframe specified by the presiding officer, not to exceed 20 days from the date the petition is determined to be administratively complete. The response must be verified by a notarized affidavit.

(10) The commission will grant the petition within 60 calendar days from the date the petition was found to be administratively complete unless the commission makes an express finding that the landowner failed to satisfy all of the requirements of this subsection and makes separate findings of fact and conclusions of law for each requirement based solely on the information provided by the landowner and the current CCN holder. The commission may condition the granting or denial of a petition on terms and conditions specifically related to the landowner's service request and all relevant information submitted by the landowner, the current CCN holder, and commission staff.

(11) The commission will base its decision on the filings submitted by the current CCN holder, the landowner, and commission staff. Chapter 2001 of the Texas Government Code does not apply to any petition filed under this subsection. The current CCN holder or landowner may file a motion for rehearing of the commission's decision on the same timeline that applies to other final orders of the commission. The commission's order ruling on the petition may not be appealed.

(12) If the current CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations to provide service to the tract of land, the commission is not required to find that the alternate retail public utility can provide better service than the current CCN holder, but only that the alternate retail public utility can provide the requested service. This paragraph does not apply to Cameron, Willacy, and Hidalgo Counties or to a county that meets any of the following criteria:

(A) the county has a population of more than 30,000 and less than 35,000 and borders the Red River;

(B) the county has a population of more than 100,000 and less than 200,000 and borders a county described by subparagraph (A) of this paragraph;

(C) the county has a population of 130,000 or more and is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(D) the county has a population of more than 40,000 and less than 50,000 and contains a portion of the San Antonio River.

(13) If the alternate retail public utility is a proposed district, then the commission will condition the release of the tract of land and required CCN amendment or revocation on the final and unappealable creation of the district. The district must file a written notice with the commission when the creation is complete and provide a copy of the final order, judgment, or other document creating the district.

(14) The commission may require an award of compensation to the former CCN holder under subsection (g) of this section. The determination of the amount of compensation, if any, will be made according to the procedures in subsection (g) of this section. If the current CCN holder did not timely file a response to the landowner's petition, there is a rebuttable presumption that the amount of compensation to be paid is zero.

(g) Determination of compensation to former CCN holder after revocation, decertification amendment or expedited release. The determination of the monetary amount of compensation to be paid to the former CCN holder, if any, will be determined at the time another retail public utility seeks to provide service in the removed area and before service is actually provided. This subsection does not apply to revocations or decertification amendments under subsection (d)(2) of this section or to streamlined expedited release under subsection (h) of this section.

(1) After the commission has issued its order granting revocation, decertification, or expedited release, the prospective retail public utility must file a notice of intent to provide service. A notice of intent filed before the commission issues its order under subsection (d) or (f) of this section is deemed to be filed on the date the commission's order is signed.

(2) The notice of intent must include the following information:

(A) A statement that the filing is a notice of intent to provide service to an area that has been removed from a CCN under subsection (d) or (f) of this section;

(B) The name and CCN number of the former CCN holder; and

(C) Whether the prospective retail public utility and former CCN holder have agreed on the amount of compensation to be paid to the former CCN holder.

(3) If the former CCN holder and prospective retail public utility have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission stating the amount of the compensation to be paid.

(4) If the former CCN holder and prospective retail public utility have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of compensation must be determined by a qualified individual or firm serving as an independent appraiser as follows:

(A) If the former CCN holder and prospective retail public utility have agreed on an independent appraiser, they must make a joint filing with the commission identifying the individual or firm who will be the independent appraiser within ten days of the filing of the notice of intent under paragraph (1) of this subsection. The costs of the independent appraiser must be borne by the prospective retail public utility.

(B) If the former CCN holder and prospective retail public utility cannot agree on an independent appraiser within ten days of the filing of the notice of intent, the former CCN holder and prospective retail public utility must each engage its own appraiser at its own expense. Each appraiser must file its appraisal with the commission within 60 calendar days of the filing of the notice of intent. After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within 30 days. The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal of the appraisers engaged by the former CCN holder and prospective retail public utility. The former CCN holder and prospective retail public utility must each pay half the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.

(C) The appraisers must determine the amount of compensation in accordance with subsection (j) of this section.

(5) The determination of compensation by the agreed-upon appraiser under paragraph (4)(A) of this subsection or the commission-appointed appraiser under paragraph (4)(B) of this subsection is binding on the commission, the landowner, the former CCN holder, and the prospective retail public utility.

(6) If the former CCN holder fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or file an appraisal within the timeframes required by this subsection, the amount of compensation to be paid will be deemed to be zero. If the prospective retail public utility fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or file an appraisal within the timeframes required by this subsection, the presiding officer may recommend dismissal of the notice of intent to provide service to the removed area.

(7) The commission will issue an order establishing the amount of compensation to be paid to the former CCN holder not later than 90 days after the date on which a retail public utility files its notice of intent to provide service to the decertified area.

(h) Streamlined expedited release.

(1) The owner of a tract of land may petition the commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if all the following conditions are met:

(A) the tract of land is at least 25 acres in size;

(B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and

(C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county.

(2) A qualifying county under paragraph (1)(C) of this subsection:

(A) has a population of at least one million;

(B) is adjacent to a county with a population of at least one million, and does not have a population of more than 45,000 and less than 47,500; or

(C) has a population of more than 200,000 and less than 220,000 and does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more.

(3) A landowner seeking streamlined expedited release under this subsection must file with the commission a petition and supporting documentation containing the following information and verified by a notarized affidavit:

(A) a statement that the petition is being submitted under TWC §13.2541 and this subsection;

(B) proof that the tract of land is at least 25 acres in size;

(C) proof that at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county;

(D) a statement of facts that demonstrates that the tract of land is not currently receiving service;

(E) copies of deeds demonstrating ownership of the tract of land by the landowner;

(F) proof that a copy of the petition was mailed to the current CCN holder via certified mail on the day that the landowner filed the petition with the commission; and

(G) the mapping information described in subsection (k) of this section.

(4) The presiding officer will determine whether the petition is administratively complete. If the petition is determined not to be administratively complete, the presiding officer will issue an order describing the deficiencies in the petition and setting a deadline for the petitioner to address the deficiencies. When the petition is determined to be administratively complete, the presiding officer will establish a procedural schedule that is consistent with paragraphs (5) and (6) of this subsection. The presiding officer may recommend dismissal of the petition if the petitioner fails to supplement or amend the petition within the required timeframe after the presiding officer has determined that the petition is not administratively complete.

(5) The current CCN holder may file a response to the petition within a timeframe specified by the presiding officer, not to exceed 20 days from the date the petition is determined to be administratively complete. The response must be verified by a notarized affidavit.

(6) The commission will issue a decision on a petition filed under this subsection no later than 60 calendar days after the presiding officer by order determines that the petition is administratively complete. The commission will base its decision on the information filed by the landowner, the current CCN holder, and commission staff. No hearing will be held.

(7) The fact that a current CCN holder is a borrower under a federal loan program is not a bar to the release of a tract of land under this subsection. The CCN holder must not initiate an application to borrow money under a federal loan program after the date the petition is filed until the commission issues a final decision on the petition.

(8) The commission may require an award of compensation by the landowner to the former CCN holder as specified in subsection (i) of this section.

(i) Determination of Compensation to Former CCN Holder After Streamlined Expedited Release. The amount of compensation, if any, will be determined after the commission has granted a petition

for streamlined expedited release filed under subsection (h) of this section.

(1) If the former CCN holder and landowner have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission stating the amount of the compensation to be paid.

(2) If the former CCN holder and landowner have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of compensation must be determined by a qualified individual or firm serving as an independent appraiser under the following procedure.

(A) If the former CCN holder and landowner have agreed on an independent appraiser, the former CCN holder and landowner must make a joint filing with the commission identifying the individual or firm who will be the independent appraiser within ten days after the commission grants streamlined expedited release under subsection (h) of this section. The costs of the independent appraiser must be borne by the landowner. The appraiser must file its appraisal with the commission within 70 days after the commission grants streamlined expedited release.

(B) If the former CCN holder and landowner have not agreed on an independent appraiser within ten days after the commission grants streamlined expedited release under subsection (h) of this section, the former CCN holder and landowner must each engage its own appraiser at its own expense. Each appraiser must file its appraisal with the commission within 70 calendar days after the commission grants streamlined expedited release. After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within 100 days after the date the commission grants streamlined expedited release. The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal made by the appraisers engaged by the former CCN holder and landowner. The former CCN holder and landowner must each pay half the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.

(C) The appraisers must determine the amount of compensation in accordance with subsection (j) of this section.

(3) The determination of compensation by the agreed-upon appraiser under paragraph (2)(A) or the commission-appointed appraiser under paragraph (2)(B) of this subsection is binding on the commission, former CCN holder, and landowner.

(4) If the former CCN holder fails to make a filing with the commission about the amount of agreed compensation or engage an appraiser or file an appraisal within the timeframes required by this subsection, the amount of compensation to be paid will be deemed to be zero. If the landowner fails to make a filing with the commission about the amount of agreed compensation, or engage an appraiser, or file an appraisal within the timeframes required by this subsection, the commission will base the amount of compensation to be paid on the appraisal provided by the CCN holder.

(5) The commission will issue an order establishing the amount of compensation to be paid and directing the landowner to pay the compensation to the former CNN holder not later than 60 days after the commission receives the final appraisal.

(6) The landowner must pay the compensation to the former CCN holder not later than 90 days after the date the compensation amount is determined by the commission. The commission will not authorize a prospective retail public utility to serve the removed area until the landowner has paid to the former CCN holder any compensation that is required.

(j) Valuation of Real and Personal Property of the Former CCN holder.

(1) The value of real property must be determined according to the standards set forth in chapter 21 of the Texas Property Code governing actions in eminent domain.

(2) The value of personal property must be determined according to this paragraph. The following factors must be used in valuing personal property:

(A) the amount of the former CCN holder's debt allocable to service to the removed area;

(B) the value of the service facilities belonging to the former CCN holder that are located within the removed area;

(C) the amount of any expenditures for planning, design, or construction of the service facilities of the former CCN holder that are allocable to service to the removed area;

(D) the amount of the former CCN holder's contractual obligations allocable to the removed area;

(E) any demonstrated impairment of service or any increase of cost to consumers of the former CCN holder remaining after a CCN revocation or amendment under this section;

(F) the impact on future revenues lost from existing customers;

(G) necessary and reasonable legal expenses and professional fees; and

(H) any other relevant factors as determined by the commission.

(k) Mapping information.

(1) For proceedings under subsection (f) or (h) of this section, the following mapping information must be filed with the petition:

(A) a general-location map identifying the tract of land in reference to the nearest county boundary, city, or town;

(B) a detailed map identifying the tract of land in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads. If ownership of the tract of land is conveyed by multiple deeds, this map must also identify the location and acreage of land conveyed by each deed; and

(C) one of the following for the tract of land:

*(i)* a metes-and-bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;

*(ii)* a recorded plat; or

*(iii)* digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US feet) or in NAD 83 Texas Statewide Mapping System (meters). The digital mapping data must include a single, continuous polygon record.

(2) Commission staff may request additional mapping information.

(3) All maps must be filed in accordance with §22.71 of this title (relating to Filings of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).

(l) Additional conditions for decertification under subsection (d) of this section.

(1) If the current CCN holder did not agree in writing to a revocation or amendment by decertification under subsection (d) of this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:

(A) ordering the prospective retail public utility to provide service to the entire service area of the current CCN holder; and

(B) transferring the entire CCN of the current CCN holder to the prospective retail public utility.

(2) If the commission finds that, as a result of revocation or amendment by decertification under subsection (d) of this section, the current CCN holder will be unable to provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers, then

(A) The commission will order the prospective retail public utility to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the prospective retail public utility's other customers and will establish the terms under which service must be provided; and

(B) The commission may order any of the following terms:

*(i)* transfer of debt and other contract obligations;

*(ii)* transfer of real and personal property;

*(iii)* establishment of interim rates for affected customers during specified times; and

*(iv)* other provisions necessary for the just and reasonable allocation of assets and liabilities.

(3) The prospective retail public utility must not charge the affected customers any transfer fee or other fee to obtain service, except for the following:

(A) the prospective retail public utility's usual and customary rates for monthly service, or

(B) interim rates set by the commission, if applicable.

(4) If the commission orders the prospective retail public utility to provide service to the entire service area of the current CCN holder, the commission will not order compensation to the current CCN holder, the commission will not make a determination of the amount of compensation to be paid to the current CCN holder, and the prospective retail public utility must not file a notice of intent under subsection (g) of this section.

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

Filed with the Office of the Secretary of State on February 27, 2020.

TRD-202000893
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 936-7244

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# TITLE 22. EXAMINING BOARDS

## PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

### CHAPTER 72. FEES, LICENSE APPLICATIONS, AND RENEWALS

**22 TAC §72.2**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.2 (License Application). The Board will propose a new §72.2 in a separate rulemaking. The purpose is to remove superfluous rules and make the Board's license application procedures easier to read and navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the Board's license application procedures easier to read and navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.2. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.2. License Application.*

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

Filed with the Office of the Secretary of State on February 24, 2020.

TRD-202000835
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.2**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.2 (License Application). The purpose is to clarify the general requirements for individuals applying for a license with the Board.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.2. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.2. License Application.*

(a) An individual wishing to practice chiropractic, and who is not otherwise licensed under law, must successfully pass an examination.

(b) An individual seeking a license shall submit an application to the Board.

(c) An individual shall verify by affidavit the information contained in the application.

(d) An individual shall submit the required fee with the application.

(e) An individual shall submit an application in the format currently prescribed by the Board on the Board's website.

(f) Within 30 days of receiving an individual's complete application, supporting materials, and fee, the Board shall notify the individual of the individual's qualification to take the jurisprudence examination.

(g) Submitting an application and fee to the Board does not obligate the Board to license an individual until the Board approves the individual as meeting all requirements for a license.

(h) The Board may deny any individual who provides false information on a license application.

(i) The Board may revoke or suspend the license of any individual who provides false information on a license application if the false information is discovered after the individual was granted a Texas license.

(j) The Board may deny an individual's application for any violation of Texas Occupations Code §201.502.

(k) If allowed by law, the Board shall waive the license application and examination fees for an individual who is a military member or veteran whose military service, training, or education substantially meets the requirements for a license.

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

Filed with the Office of the Secretary of State on February 24, 2020.

TRD-202000836

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.3**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.3 (Qualifications). The Board will propose a new §72.3 in a separate rulemaking. The purpose is to clarify the general qualifications for an individual applying for a license from the Board.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to clarify the general qualifications for an individual applying for a license from the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.3. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.3. Qualifications.*

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 February 24, 2020.

TRD-202000838
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.3**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.3 (Qualifications). The purpose is to clarify the general qualifications requirements for individuals applying for a license with the Board.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the general qualifications for an individual applying for a license from the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.3. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.3. Qualifications.*

(a) An individual applying for a chiropractic license shall comply with all application and license requirements in Texas Occupations Code Chapter 201.

(b) An individual, who was admitted to study chiropractic with academic credit from United States institutions, shall submit proof of earning at least 90 credit hours from a nationally accredited institution whose hours are transferrable to the University of Texas at Austin, not including courses in a doctor of chiropractic degree program.

(c) An individual applying for a licenses must present proof of graduation from a chiropractic college accredited by an educational accrediting body that is a member of the Councils on Chiropractic Education International.

(d) A chiropractic college shall inform each student when admitted the possible limitations of practice location and licensing.

(e) A chiropractic college shall document in each student's file how the student was judged qualified for admission.

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 February 24, 2020.

TRD-202000839
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.5**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.5 (Approved Schools and Colleges). The Board will propose a new §72.5 in a separate rulemaking. The purpose is to generally update the rule's language and make the Board's rules easier to navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to generally update the rule's language and make the Board's rules easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.5. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.5. Approved Schools and Colleges.*

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 February 24, 2020.

TRD-202000840
Christopher Burnett
General Counsel
Texas Board of Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.5**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.5 (Approved Schools and Colleges). The Board will propose a new §72.5 in a separate rulemaking. The purpose is to generally update the rule's language and make the Board's rules easier to navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to generally update the rule's language and make the Board's rules easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.5. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.5. Approved Schools and Colleges.*

(a) A "chiropractic school" means a school accredited by an educational accrediting body that is a member of the Councils on Chiropractic Education International.

(b) The Board may annually review and approve chiropractic schools whose graduates are eligible for examination.

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 February 24, 2020.

TRD-202000841
Christopher Burnett
General Counsel
Texas Board of Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.6**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.6 (Exam Information). The Board will propose a new §72.6 in a separate rulemaking. The purpose is to remove superfluous rules and make the Board's license application procedures easier to read and navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the Board's license application procedures easier to read and navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.6. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.6. Exam Information.*

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 March 2, 2020.

TRD-202000937
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.6**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.6 (National Board Exam Requirements). The purpose is to clarify the national board exam requirements for individuals applying for a license with the Board.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the national board exam requirements for individuals applying for a license with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.6. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.6. National Board Exam Requirements.*

(a) An individual applying for a license shall take Parts I, II, III, IV and Physiotherapy of the National Board Examination with a passing score of 375 for each part.

(b) An individual shall request the National Board send directly to the Board a true copy of the results of each part of the National Board examination.

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 February 24, 2020.

TRD-202000832
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.7**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.7 (Jurisprudence Exam). The Board will propose a new §72.7 in a separate rulemaking. The purpose is to remove superfluous rules and make the Board's license application procedures easier to read and navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the Board's license application procedures easier to read and navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.7. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.7. Jurisprudence Exam.*

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 February 24, 2020.

TRD-202000830
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.7**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.7 (Jurisprudence Exam). The purpose is to clarify the jursiprudence exam requirements for individuals applying for a license with the Board.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the jurisprudence exam requirements for individuals applying for a license with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.7. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.7. Jurisprudence Exam.*

(a) An individual applying for a license shall take the Board's jurisprudence examination with a passing score of 75%.

(b) An individual may not take the jurisprudence examination unless the individual complies with the licensing requirements in Texas Occupations Code Chapter 201 and Board rules.

(c) The jurisprudence examination shall test an individual on the law and Board rules governing the practice of chiropractic.

(d) All jurisprudence examinations shall be conducted in English.

(e) An individual may not take the jurisprudence examination unless the individual has first completed all required parts of the National Board Examination.

(f) Jurisprudence examination results are Board property.

(g) The Board or its agent shall retain all jurisprudence examination results for one year after final grading.

(h) An individual may request in writing an analysis of the individual's results.

(i) The Board's determination of examination matters, including grades, is final.

(j) The Board shall permit an individual who fails the jurisprudence examination to take subsequent examinations if the individual applies for reexamination and pays the required fee.

(k) An individual may take the jurisprudence examination as many times as required.

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 February 24, 2020.

TRD-202000831
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.9**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.9, concerning Reexaminations. Portions of this rule will be incorporated into a new §72.7 in a separate rulemaking. The purpose of this action is to remove superfluous rules and make the Board's rules easier to read and navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the Board's rules easier to read and navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.7. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.9. Reexaminations.*

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 February 24, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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**22 TAC §72.11**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.11 (Temporary Faculty License). The Board will propose a new §72.11 in a separate rulemaking. The purpose is to remove superfluous rules and make the Board's temporary license application procedures easier to read and navigate.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the Board's temporary license application procedures easier to read and navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.11. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.11. Temporary Faculty License.*
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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**22 TAC §72.11**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.11, concerning Temporary Faculty License. The purpose is to clarify the Board's temporary license requirements for faculty at Texas chiropractic colleges.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the Board's temporary license requirements for faculty at Texas chiropractic colleges.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.11. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.11. Temporary Faculty License.*

(a) An individual seeking a temporary faculty license shall submit an application and fee to the Board before beginning work at the sponsoring chiropractic school.

(b) The dean or president of the individual's sponsoring school shall submit the application for a temporary faculty license on behalf of the individual.

(c) An individual applying for a temporary faculty license shall comply with the requirements of Texas Occupations Code §201.308.

(d) An individual holding a temporary faculty license may either apply for a renewal of the license or apply for a permanent license.

(e) An individual applying for renewal of a temporary license or for a permanent license may continue to practice under an expired temporary faculty license while the Board evaluates the application and while waiting for examination results.

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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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**22 TAC §72.16**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.16 (Inactive Status). The Board will propose a new §72.16 in a separate rulemaking. The purpose is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.16. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.16. Inactive Status.*

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 February 28, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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**22 TAC §72.16**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.16 (Inactive Status). The purpose is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.16. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.16. Inactive Status.*

(a) On or before a licensee's renewal date, a licensee not currently practicing chiropractic may renew the license and request it be placed on inactive status.

(b) To continue on inactive status and maintain a valid license, an inactive licensee shall renew the license and make a new request for inactive status each renewal period.

(c) An inactive licensee is not required to complete continuing education.

(d) To place a license on inactive status at a time other than license renewal, a licensee shall:

(1) return the current renewal certificate to the Board; and

(2) submit a sworn statement stating the licensee may not practice chiropractic in Texas while the license is inactive, and the date the license is to be inactive.

(e) To reactivate a license which has been inactive for less than 6 years, a licensee shall:

(1) apply to the Board for active status;

(2) submit verification of completing continuing education courses for the hours that would have been required for renewal of a license; and

(3) pay the fee.

(f) Continuing education earned in the calendar year before a licensee applies for reactivation may be applied to the continuing education requirement.

(g) A licensee who has been inactive 6 years or more may be reactivated only after passing the National Board of Examination's Part IV and the Board's jurisprudence examination.

(h) The Board may exempt a licensee who has been inactive more than 6 years from subsection (g) of this section if the licensee held an active unrestricted license in good standing in another state or foreign jurisdiction.

(i) A licensee may not maintain an inactive license for more than twenty years.

(j) A licensee practicing chiropractic in Texas while inactive is practicing without a license and is subject to disciplinary action.

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 February 28, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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**22 TAC §72.17**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.17 (Fee Exemption for Charity Care). The Board will propose a new §72.17, to be titled "Retired Chiropractor," in a separate rulemaking. The purpose is to make clear the limitations of practicing on a chiropractor who has chosen to retire.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.17. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.17. Fee Exemption for Charity Care.*

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 February 28, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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**22 TAC §72.17**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.17 (Retired Chiropractor). The purpose is to make clear the limitations on practice for licensees who choose to retire.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.17. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.17. Retired Chiropractor.*

(a) A licensee in good standing may apply for retired status.

(b) A retired chiropractor may continue to practice by providing chiropractic services only to indigents, medically underserved areas, or disaster relief organizations for no compensation.

(c) A licensee applying for retired status shall submit to the Board a sworn statement that the licensee's practice:

(1) does not include services for any compensation;

(2) does not provide services to the licensee's family; and

(3) complies with Texas Occupations Code Chapter 201 and Board rules.

(d) A retired licensee shall be exempt from the active license fee.

(e) A retired licensee section shall comply with all continuing education requirements of a licensee with an active license.

(f) A retired licensee shall comply with the requirements for an active license before returning to active status.

(g) A retired licensee shall use the term "DC - retired" or similar language to make clear to the public that the retired licensee does not hold an active license.

(h) A retired licensee who violates this section is subject to disciplinary action.

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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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**22 TAC §72.20**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.20 (Requirements for Out-Of-State Applicants). The Board will propose a new §72.20 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.20. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.20. Requirements for Out-Of-State Applicants.*

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 February 28, 2020.

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Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §72.20**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.20 (Requirements for Applicants Licensed in Another Jurisdiction). The purpose is to clarify the existing requirements for individuals licensed in another jurisdiction wishing to obtain a license in Texas.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.20. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.20. Requirements for Applicants Licensed in Another Jurisdiction.*

(a) An individual licensed in another jurisdiction may apply for a Texas license if:

(1) the individual's license is currently in good standing in the other jurisdiction;

(2) the other jurisdiction's licensing requirements are substantially similar to Texas Occupations Code Chapter 201;

(3) the individual passed the National Board of Chiropractic Examiners examination parts I, II, III, IV, and physiotherapy or the National Board of Chiropractic Examiners SPEC examination with a grade of 375 or better; and

(4) the individual practiced as a chiropractor or as an educator at a Council on Chiropractic Education accredited school for three years before applying for a Texas license.

(b) An individual currently licensed in another jurisdiction may not apply for a Texas license if the individual is under investigation in any jurisdiction where licensed.

(c) An individual currently licensed in another jurisdiction seeking a Texas license shall submit an application containing the required information in subsection (a) of this section and the required fee.

(d) An individual must pass the Texas jurisprudence examination with a grade of 75% or better.

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 February 28, 2020.

TRD-202000901
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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**22 TAC §72.21**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.21 (Requirements for Military Spouses). The Board will propose a new §72.21 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the rule's requirements easier to read and understand.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.21. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.21. Requirements for Military Spouses.*

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

Filed with the Office of the Secretary of State on February 28, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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**22 TAC §72.21**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.21 (Requirements for Military Spouses). The purpose is to clarify the existing requirements for military spouses licensed in another jurisdiction wishing to obtain a license in Texas.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the existing requirements for military spouses licensed in another jurisdiction wishing to obtain a license in Texas.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.21. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: 512-305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please in-

clude the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.21. Requirements for Military Spouses.*

(a) This section applies to an individual who is the spouse of an active duty member of the United States armed forces.

(b) The Board shall issue a license to a military spouse who:

(1) holds a current license issued by another jurisdiction with requirements substantially equivalent to Texas Occupations Code Chapter 201; or

(2) held a license in Texas that expired while the individual lived in another jurisdiction for at least six months within the five years preceding the application date.

(c) The Board shall allow a military spouse to show eligibility by other means to meet the licensing requirements, including:

(1) graduation from an accredited chiropractic school;

(2) continuing education courses;

(3) examination results (including the National Board of Chiropractic Examiners parts I - IV and physiotherapy, or the National Board of Chiropractic Examiners SPEC examination);

(4) letters of professional recommendation; or

(5) documented work experience.

(d) A military spouse seeking a license shall submit to the Board the following:

(1) an application for a license;

(2) proof of residency in Texas; and

(3) a copy of the active duty member's military identification card.

(e) A military spouse under subsection (b)(1) of this section shall be exempt from application and exam fees.

(f) A military spouse under subsection (b)(2) of this section shall pay application and exam fees.

(g) A military spouse seeking a license under this section shall undergo a criminal history background check.

(h) The Board shall determine whether the military's spouse's license in another jurisdiction is active and in good standing.

(i) The Board shall determine whether the licensing requirements in the other jurisdiction are substantially equivalent.

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 February 28, 2020.

TRD-202000903

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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## 22 TAC §72.22

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.22 (Requirements for Military Members and Veterans). The Board will propose a new §72.22 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.22. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please

include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§72.22. Requirements for Military Members and Veterans.*

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 February 28, 2020.

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General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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**22 TAC §72.22**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.22 (Requirements for Military Members and Veterans). The purpose is to clarify the existing requirements for military members and veterans licensed in another jurisdiction or having an expired Texas license who wish to obtain a current license in Texas.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.22. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§72.22. Requirements for Military Members and Veterans.*

(a) This section applies to an individual who is an active duty member of the United States armed forces or a veteran.

(b) The Board shall exempt an individual from any fee or penalty for failing to timely renew a license if the failure was due to the individual's service on active military duty.

(c) The Board may issue a license to a military member or veteran who:

(1) holds a current license issued by another state with requirements substantially similar to Texas Occupations Code Chapter 201; or

(2) held a license in Texas that expired while the individual lived in another state for at least six months within the five years preceding the application date.

(d) The Board may allow a military member or veteran to show competency by other means to meet the licensing requirements, including:

(1) education;

(2) continuing education courses;

(3) examination results (including the National Board of Chiropractic Examiners parts I - IV and physiotherapy, or the National Board of Chiropractic Examiners SPEC examination);

(4) letters of good standing or recommendation;

(5) work experience; or

(6) other methods approved by the executive director.

(e) A military member or veteran seeking a license shall submit an application with proof of the requirements under this section.

(f) A military member or veteran under subsection (c)(1) of this section shall be exempt from application and exam fees.

(g) A military member or veteran under subsection (c)(2) of this section shall pay application and exam fees.

(h) A military member or veteran seeking a license under this section shall undergo a criminal history background check.

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 February 28, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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## CHAPTER 73. CONTINUING EDUCATION

### 22 TAC §73.1

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §73.1 (Continuing Education). The Board will propose a new §73.1 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §73.1. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§73.1. Continuing Education.*

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

Filed with the Office of the Secretary of State on February 28, 2020.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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### 22 TAC §73.1

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §73.1 (Continuing Education Requirements for Licensees). The purpose is to clarify the continuing education requirements for licensees. The Board is specifying the requirements for other individuals involved in providing continuing education to licensees in separate rulemakings for §§73.3 - 73.5.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.16. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§73.1. Continuing Education Requirements for Licensees.*

(a) "Live format" means any education course that is not pre-recorded and is presented in real time through an interactive medium such as a live webinar, an in-person training event, or telephone conference.

(b) "Online course" means any pre-recorded or live format education course that is delivered through the internet.

(c) A licensee may only take up to 10 hours of online courses that are not live format each year.

(d) A licensee shall complete 16 hours of continuing education each year unless a licensee is exempt under subsection (q) of this section.

(e) A licensee's reporting year shall begin on the first day of the month in which the licensee's birthday occurs.

(f) A licensee shall complete the 16 hours of continuing education through any Board-approved course or seminar elected by the licensee.

(g) A licensee shall attend any course designated as a "Board Required Course" in a live format.

(h) As part of the 16 annual required hours of continuing education, a licensee shall complete a minimum of 4 hours of Board-required courses, which include 3 hours relating to the Board's rules, code of ethics, and documenting.

(i) A licensee shall complete a minimum of 1 hour of the 16 annual required hours on chiropractic practice risk management.

(j) A licensee who was first licensed on or after September 1, 2012, shall complete at least 8 hours of continuing education in coding and documentation for Medicare claims no later than the licensee's second renewal period.

(k) A licensee may count the 8 hours in coding and documentation for Medicare claims as part of the 16 continuing education hours required during the year in which the 8 hours were completed.

(l) If a licensee is unable to take an online course, the licensee shall submit a request to the Board for special accommodations.

(m) At the Board's request, a licensee shall submit written verification from each continuing education course sponsor of the licensee's completion of each course used to fulfill the required hours for all years requested.

(n) The Board shall consider the failure to submit verification under subsection (m) of this section as failing to meet continuing education requirements.

(o) The following are exempt from the requirements of this section:

(1) a licensee who holds an inactive license;

(2) a licensee who is a military member, veteran, or military spouse during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits satisfactory proof that the licensee suffered an illness or disability which prevented the licensee from complying with this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee who is in their first renewal period.

(p) A licensee who is a member of the military is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to license renewal.

(q) A licensee who also holds a Board-issued permit to perform specialized techniques or procedures shall complete any continuing education required by the Board to obtain and maintain the permit.

(r) The Board shall make available a list of approved courses on the Board's 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 February 28, 2020.

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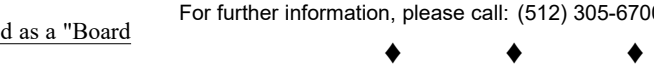

**22 TAC §73.2**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §73.2 (Failure to Meet Continuing Education Requirements). The Board will propose a new §73.2 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the rule's requirements easier to read and understand.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §73.2. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§73.2. Failure to Meet Continuing Education Requirements.*

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 February 28, 2020.

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Christopher Burnett
General Counsel
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For further information, please call: (512) 305-6700

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## 22 TAC §73.2

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §73.2 (Failure to Meet Continuing Education Requirements). The purpose is to clarify the consequences and penalties for a licensee who fails to meet continuing education requirements.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §73.2. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please in-

clude the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§73.2. Failure to Meet Continuing Education Requirements.*

(a) A licensee failing to meet minimum continuing education requirements shall have the licensee's license placed in a Continuing Education Conditional (CEC) status for 12 months.

(b) A licensee under CEC status may continue to practice if the licensee completes the required continuing education within the 12 month CEC period.

(c) The Board shall reinstate a license in CEC status when the licensee submits written verification of completing the required continuing education.

(d) If a licensee fails to reinstate a license during any CEC status period, the Board shall deem the license expired from the beginning date of the CEC status year.

(e) A licensee whose license expires under subsection (d) of this section shall obtain a new license in order to practice.

(f) A licensee may not use continuing education courses taken to satisfy a deficiency in a prior reporting year for a subsequent reporting year.

(g) A licensee may not have a license on CEC status for two consecutive years.

(h) If a licensee on CEC status for the prior reporting year is non-compliant with the current year, the Board shall deem the license expired.

(i) A licensee under subsection (g) of this section may not practice chiropractic until the license is renewed or a new license is issued.

(j) A licensee under subsection (g) of this section may renew the license after completing all required courses.

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 February 28, 2020.

TRD-202000910
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §73.3**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §73.3 (Approval for Continuing Education Courses). The Board will propose a new §73.3 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the rule's requirements easier to read and understand.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §73.3. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701; via email: rules@tbce.state.tx.us; or fax: 512-305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§73.3. Approval for Continuing Education Courses.*

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 February 28, 2020.

TRD-202000911
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §73.3**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §73.3 (Requirements for Sponsors of Continuing Education Courses). The purpose is to clarify the requirements for Board-approved providers of continuing education courses. The Board is specifying the requirements for other individuals involved in providing continuing education to licensees in separate rulemakings for §73.4 and §73.5.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §73.3. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§73.3. Requirements for Sponsors of Continuing Education Courses.*

(a) The Board may only approve continuing education courses sponsored by a chiropractic college accredited by the Council on Chiropractic Education or a statewide, national, or international professional association.

(b) A continuing education course sponsor shall submit a separate application for each course at least 60 days in advance.

(c) For each course application, a sponsor shall submit:

(1) course title, subject, and description;

(2) number of requested credit hours;

(3) course date, time, and location;

(4) method of instruction;

(5) course coordinator's name, address, and telephone number;

(6) signature of the sponsor's representative;

(7) a detailed hour-by-hour syllabus describing the material taught in each hour block;

(8) names of all instructors for each block of instruction;

(9) all instructors' curriculum vitae;

(10) proposed advertising showing the course title and content; and

(11) application fee.

(d) A sponsor shall certify the course complies with all Board requirements.

(e) The Board shall notify a sponsor in writing whether a course has been approved.

(f) A sponsor shall hold a Board-approved live course only on the date submitted on the application.

(g) A sponsor may offer a Board-approved online course for up to one calendar year after approval.

(h) If a continuing education program consists of separate sessions on different topics and on different dates, each session is a separate course.

(i) If the same course is held in multiple cities with different speakers, each location is a separate course.

(j) To be approved, each course must:

(1) be presented by instructors with knowledge, training, and expertise in the topic;

(2) have content designed to maintain professional competency;

(3) relate to the scope of practice under Texas Occupations Code §201.002 and Board rules; and

(4) be on one or more of the following:

(A) general or spinal anatomy;

(B) neuro-muscular-skeletal diagnosis;

(C) radiology or radiographic interpretation;

(D) pathology;

(E) public health;

(F) chiropractic adjusting techniques;

(G) chiropractic philosophy;

(H) risk management;

(I) physiology;

(J) microbiology;

(K) hygiene and sanitation;

(L) biochemistry;

(M) neurology;

(N) orthopedics;

(O) jurisprudence;

(P) nutrition;

(Q) adjunctive or supportive therapy;

(R) sexual boundary issues;

(S) insurance reporting procedures;

(T) chiropractic research;

(U) communicable disease;

(V) acupuncture;

(W) ethics;

(X) recordkeeping, documentation, and coding; or

(Y) other Board-identified public health issues.

(k) The Board may not approve or accept credit for any course on practice management.

(l) A sponsor of an approved course shall notify the Board in writing before any change in course location, date, or cancellation.

(m) A sponsor shall submit a roster of course participants that contains each participant's name and Board license number, course number, and number of hours earned by each participant not later than 30 days after the course.

(n) A sponsor shall provide each participant an attendance certificate with the sponsor's name, the participant's name, the course number, title, date, and location, the amount and type of credit earned, and signature of the sponsor's representative.

(o) A sponsor may not give a course participant credit for attendance if the participant is absent more than 10 minutes during any one hour period.

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 February 28, 2020.

TRD-202000912

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

# CHAPTER 81. ENFORCEMENT ACTIONS AND HEARINGS

## 22 TAC §81.2

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §81.2 (Enforcement Actions). The Board will propose a new §81.2 in a separate rulemaking. The purpose is to make the rule's requirements easier to read and understand and to clarify the role of the Enforcement Committee in the enforcement process.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §81.2. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite

3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§81.2. Enforcement Actions.*

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 February 28, 2020.

TRD-202000913
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.2**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §81.2 (Notice for Enforcement and Other Hearings). The purpose is to make the rule easier to read and to clarify all parties' requirements in contested Board administrative actions.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §81.2. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§81.2. Notice for Enforcement and Other Hearings.*

(a) The Board shall file a docket request with the State Office of Administrative Hearings (SOAH) for any enforcement or other case requiring a formal hearing.

(b) All hearings shall be conducted in accordance with the Administrative Procedures Act (Texas Government Code Chapter 2001) and SOAH's rules of procedures (1 Texas Administrative Code Chapter 155).

(c) In an enforcement case where the Board has the burden of proof, the Board is the petitioner and the licensee or other person against whom a complaint has been filed is the respondent.

(d) In a case where the Board does not have the burden of proof, the licensee or other person is the petitioner and the Board is the respondent.

(e) The Board shall provide notice to a respondent not less than 10 days before the hearing.

(f) The notice shall contain a citation to 1 Texas Administrative Code Chapter 155 and include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is being held;

(3) a reference to the specific sections of Texas Occupations Code Chapter 201, Board rules (22 Texas Administrative Code Chapters 71 - 82), or other law or rules which the respondent is alleged to have violated; and

(4) a statement of the alleged acts relied on by the Board as a violation of the law and rules.

(g) The Board shall serve the notice of hearing and formal complaint on the respondent at the respondent's last known address on file with the Board.

(h) The Board shall serve the notice of hearing and formal complaint by registered or certified mail, return receipt requested, and by regular mail.

(i) A respondent may agree in writing to accept service by email or other electronic means.

(j) SOAH acquires jurisdiction over an enforcement case when the Board files a docket 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.

Filed with the Office of the Secretary of State on February 28, 2020.

TRD-202000914
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.5**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §81.5 (Appearance). The Board will propose a new §81.5 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §81.5. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§81.5. Appearance.*

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 February 28, 2020.

TRD-202000915
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.5**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §81.5 (Appearance). The purpose is to clarify the language and make the administrative hearing process easier to understand for respondents in contested cases.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §81.5. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§81.5 Appearance.*

(a) A respondent shall enter an appearance by filing a written answer or other pleading with the State Office of Administrative Hearings, with a copy to the Board, within 20 days of the date on which the notice of hearing and formal complaint was served.

(b) A respondent's failure to timely enter an appearance shall entitle the Board to a continuance at the hearing.

(c) The notice of hearing must contain the following in capital letters in 10-point boldface type: FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING TO THE NOTICE OF HEARING AND FORMAL COMPLAINT WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED SHALL ENTITLE THE BOARD TO A CONTINUANCE AT THE TIME OF THE HEARING.

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 February 28, 2020.

TRD-202000916
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.6**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §81.6 (Default Judgment). The Board will propose a new §81.6 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §81.6. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§81.6. Default Judgment.*

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 February 28, 2020.

TRD-202000917
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.6**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §81.6 (Default Judgment). The purpose is to clarify the language and make the Board's administrative process for obtaining a default judgment in a contested case easier to understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §81.6. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§81.6. Default Judgment.*

(a) If a respondent fails to appear on the day and time set for the hearing, regardless of whether an appearance has been entered, the Administrative Law Judge, on the Board's motion and adequate proof of proper notice having been served on the respondent, shall enter a default judgment against the respondent.

(b) A default judgment will be entered based on the factual allegations in the notice of hearing and upon proof of proper notice to the respondent.

(c) In order for a default judgment to be entered, the notice of hearing shall include the following in capital letters in 12-point boldface type: FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY LEGAL REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, WILL RESULT IN THE FACTUAL ALLEGATIONS CONTAINED IN THE NOTICE OF HEARING BEING ADMITTED AS TRUE AND THE PROPOSED RELIEF REQUESTED BY THE BOARD SHALL BE GRANTED BY DEFAULT.

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 February 28, 2020.

TRD-202000918
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.7**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §81.7 (Depositions, Subpoenas, and Witness Expenses). The Board will propose a new §81.7 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on

small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §81.7. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§81.7. Depositions, Subpoenas, and Witness Expenses.*

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 February 28, 2020.

TRD-202000927
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.7**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §81.7 (Depositions, Subpoenas, and Witness Expenses). The purpose is to clarify the language and make the Board's administrative processes in a contested case easier to understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the language and make the Board's administrative processes in a contested case easier to understand.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §81.7. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§81.7. Depositions, Subpoenas, and Witness Expenses*

(a) On the written request of any party, the executive director may issue a commission for a deposition or a subpoena to require the attendance of witnesses or the production of tangible items in a contested case.

(b) If the commission or subpoena is for a witness to attend a deposition or a hearing, the written request shall contain the name and address of the witness and the date and location where the witness must appear.

(c) If the subpoena is for the production of tangible items, the written request shall contain a description of the items, the name and address of the person who has custody of the items, and the date and location where they must be produced.

(d) Each subpoena request shall contain a statement why it should be issued.

(e) The executive director shall issue a subpoena if there is good cause.

(f) The executive director, with the Enforcement Committee's approval, may issue a commission or subpoena before filing a formal complaint if it is necessary to preserve evidence and testimony or to investigate any potential violations of the law or Board rules.

(g) A witness who is not a party and who is subpoenaed to appear at a deposition or hearing is entitled to reimbursement for expenses in accordance with Texas Government Code §2001.103, or the State of Texas Travel Allowance Guide, whichever is greater.

(h) A party requesting a commission or subpoena shall deposit funds with the Boards sufficient to cover the anticipated expenses for complying with the subpoena.

(i) The executive director may not issue a party's subpoena or commission until sufficient funds are deposited.

(j) A witness shall be reimbursed if the witness submits valid receipts.

(k) The Board shall return all unused funds to the party who deposited them.

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 February 28, 2020.

TRD-202000919
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.8**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §81.8 (Hearing Exhibits and Record). The Board will propose a new §81.8 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government.

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the current rule's requirements easier to read.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §81.8. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: 512-305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§81.8. Hearing Exhibits and Record.*

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 February 28, 2020.

TRD-202000920

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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## 22 TAC §81.8

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §81.8 (Hearing Exhibits and Record). The purpose is to clarify the language and make the Board's administrative processes in a contested case easier to understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §81.8. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§81.8. Hearing Exhibits and Record.*

(a) Every hearing shall be recorded by a court reporter unless the parties agree otherwise and not required by the State Office of Administrative Hearings (SOAH) rules.

(b) The party requesting a transcript shall pay the cost of the transcript.

(c) A party who appeals a final Board decision shall pay the preparation costs of the original and any certified copy of the record required to be transmitted to the reviewing court.

(d) The record shall include:

(1) all pleadings filed with the Board or the Administrative Law Judge (ALJ);

(2) all exhibits admitted by the ALJ;

(3) a statement of the matters officially noticed;

(4) questions and offers of proof, objections, and rulings;

(5) the ALJ's Proposal for Decision;

(6) all written rulings or orders by the ALJ;

(7) all correspondence filed with the ALJ;

(8) the transcribed statement of facts; and

(9) the Board's final order.

(e) In determining the cost of preparing the record, the Board shall use the same procedure as the Board would in responding to an open records request under the Public Information Act.

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 February 28, 2020.

TRD-202000921
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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## 22 TAC §81.9

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §81.9 (Proposal for Decision). The Board will propose a new §81.9 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the

proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §81.9. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§81.9. Proposal for Decision.*

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 February 28, 2020.

TRD-202000922
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.9**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §81.9 (Proposal for Decision). The purpose is to clarify the language and make the Board's administrative processes in a contested case easier to understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §81.9. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§81.9. Proposal for Decision.*

(a) After the conclusion of the hearing, the Administrative Law Judge (ALJ) shall prepare and serve on the parties a proposal for decision (PFD) that includes the ALJ's findings of fact and conclusions of law.

(b) In the PFD, the ALJ may recommend an appropriate disciplinary sanction, either that sought by the Board or another sanction, in accordance with Board rules if the ALJ found a violation of statutes or rules under the Board's jurisdiction.

(c) Any party adversely affected by the PFD may file exceptions and a supporting brief to the ALJ within 15 days after the PFD's date of service.

(d) The other party may file a response to exceptions within 15 days of the filing of exceptions.

(e) All parties shall also serve exceptions and response on the opposing party.

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 February 28, 2020.

TRD-202000923
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.10**

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §81.10 (Board Order). The Board will propose a new §81.10 in a separate rulemaking. The purpose is to make the current rule's requirements easier to read.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove superfluous rules and make the requirements for obtaining an inactive license status clearer for licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §81.10. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed repeal.

*§81.10. Board Order.*
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 February 28, 2020.

TRD-202000924
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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**22 TAC §81.10**

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §81.10 (Final Board Order). The purpose is to clarify the language and make the Board's administrative processes in a contested case easier to understand.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small

businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the requirements for licensees to place their license on inactive status with the Board.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §81.10. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does not repeal an existing Board rule for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

*§81.10. Final Board Order.*

(a) Proposals for decision (PFD), final Board orders, and motions for rehearing are governed by Texas Government Code Chapter 2001.

(b) The Board shall render the final decision in all cases.

(c) The Board's final order shall be written.

(d) A party may submit to the Board a proposed final order based on the Administrative Law Judge's (ALJ) PFD.

(e) The Board shall determine the form and content of any final order.

(f) The Board may act on the PFD after the 10th business day after the filing of replies to exceptions to the PFD.

(g) The Board may change recommended findings of fact or conclusions of law in a PFD or vacate or modify an order issued by an ALJ if the Board finds:

(1) the ALJ did not properly apply or interpret applicable law or rules, board policies, or prior administrative decisions;

(2) a prior administrative decision by the Board on which the ALJ relied is incorrect or should be changed; or

(3) a technical error in a finding of fact should be changed.

(h) If the Board modifies, amends, or changes a recommended finding of fact, or conclusion of law, or order of the ALJ, the Board's final order shall state the legal basis and the specific reasons for the change.

(i) A copy of the final order shall be mailed to all parties, unless service by electronic means has been agreed to.

(j) The Board's order is final and appealable if:

(1) a motion for rehearing is timely filed with the Board and the motion is either overruled by the Board or by operation of law; or

(2) the Board states in the order an imminent threat to the public requires the order to have immediate effect.

(k) A party may appeal a final Board order to a Travis County district court.

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 February 28, 2020.

TRD-202000925
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-6700

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# PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

## CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

### 22 TAC §153.15

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.15, Experience Required for Licensing.

The TALCB Enforcement Committee recommends the proposed amendments to clarify the procedures to be followed when an applicant submits experience that is involved in pending litigation as part of the applicant's license application. The proposed amendments also notify applicants that information submitted to TALCB in support of a license application may be subject to disclosure under the Public Information Act, Chapter 552, Texas Government Code, unless an exception to disclosure applies.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect,

there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be increased transparency and better guidance and information for license applicants and members of the public.

Growth Impact Statement:

For each year of the first five years the proposed amendments are in effect the amendments and rules will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;

- require an increase or decrease in fees paid to the agency;

- create a new regulation;

- expand, limit or repeal an existing regulation; and

- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy as the proposed amendments would simply provide additional guidance to license applicants and members of the public.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Occupations Code §1101.151, which allows TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee.

The statute affected by these proposed amendments is Chapter 1103, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

*§153.15. Experience Required for Licensing.*

(a) Applicants for a license must meet all experience requirements established by the AQB.

(b) The Board awards experience credit in accordance with current criteria established by the AQB and in accordance with the provisions of the Act specifically relating to experience requirements. An hour of experience means 60 minutes expended in one or more of the acceptable appraisal experience areas. Calculation of the hours of experience is based solely on actual hours of experience. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience. Any one or any combination of the following categories may be acceptable for satisfying the applicable experience requirement. Experience credit may be awarded for:

(1) An appraisal or appraisal analysis when performed in accordance with Standards 1 and 2 and other provisions of the USPAP edition in effect at the time of the appraisal or appraisal analysis.

(2) Mass appraisal, including ad valorem tax appraisal that:

(A) conforms to USPAP Standards 5 and 6; and

(B) demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.

(3) Appraisal review that:

(A) conforms to USPAP Standards 3 and 4; and

(B) demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.

(4) Appraisal consulting services, including market analysis, cash flow and/or investment analysis, highest and best use analysis, and feasibility analysis when it demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standards 1 and 2 and using appropriate methods and techniques applicable to appraisal consulting.

(c) Experience credit may not be awarded for teaching appraisal courses.

(d) Recency of Experience.

(1) The Appraisal Experience Log submitted by an applicant must include a minimum of 10 appraisal reports representing at least 10 percent of the hours and property type of experience required for each license category and for which an applicant seeks experience credit that have been performed within 5 years before the date an application is accepted for filing by the Board.

(2) This requirement does not eliminate an applicant's responsibility to comply with the 5-year records retention requirement in USPAP.

(e) Public Information Act. All information and documentation submitted to the Board in support of an application for license or application to upgrade an existing license, including an applicant's experience log, experience affidavit, copies of appraisals and work files, may be subject to disclosure under the Public Information Act, Chapter 552, Texas Government Code, unless an exception to disclosure applies.

(f) [~~(e)~~] Experience credit for first-time applicants. Each applicant must submit a Board-approved Appraisal Experience Log and Appraisal Experience Affidavit listing each appraisal assignment or other work for which the applicant is seeking experience credit. The Board may grant experience credit for work listed on an applicant's Appraisal Experience Log that:

(1) complies with the USPAP edition in effect at the time of the appraisal;

(2) is verifiable and supported by:

(A) work files in which the applicant is identified as participating in the appraisal process; or

(B) appraisal reports that:

*(i)* name the applicant in the certification as providing significant real property appraisal assistance; or

*(ii)* the applicant has signed;

(3) was performed when the applicant had legal authority to do so; and

(4) complies with the acceptable categories of experience established by the AQB and stated in subsection (b) of this section.

(g) [~~(f)~~] Experience credit for current licensed residential or certified residential license holders who seek to upgrade their license.

(1) Applicants who currently hold a licensed residential or certified residential appraiser license issued by the Board and want to upgrade this license must:

(A) submit an application on a Board-approved form;

(B) submit a Board-approved Appraisal Experience Log and Appraisal Experience Affidavit listing each appraisal assignment or other work for which the applicant is seeking experience credit for the full amount of experience hours required for the license sought;

(C) pay the required application fee; and

(D) satisfy any other requirement for the license sought, including but not limited to:

*(i)* the incremental number of experience hours required;

*(ii)* the hours of experience required for each property type;

*(iii)* the minimum length of time over which the experience is claimed; and

*(iv)* the recency requirement in this section.

(2) Review of experience logs.

(A) An applicant who seeks to upgrade a current license issued by the Board must produce experience logs to document 100 percent of the experience hours required for the license sought.

(B) Upon review of an applicant's experience logs, the Board may, at its sole discretion, grant experience credit for the hours shown on the applicant's logs even if some work files have been destroyed because the 5-year records retention period in USPAP has passed.

(h) [~~(g)~~] The Board may, at its sole discretion, accept evidence other than an applicant's Appraisal Experience Log and Appraisal Experience Affidavit to demonstrate experience claimed by an applicant.

(i) [~~(h)~~] The Board must verify the experience claimed by each applicant generally complies with USPAP.

(1) Verification may be obtained by:

(A) requesting copies of appraisals and all supporting documentation, including the work files; and

(B) engaging in other investigative research determined to be appropriate by the Board.

(2) If the Board requests documentation from an applicant to verify experience claimed by an applicant, the applicant has 60 days to provide the requested documentation to the Board.

(3) Experience involved in pending litigation.

(A) The Board will not request work files from an applicant to verify claimed experience if the appraisal assignments are identified on the experience log submitted to the Board as being involved in pending litigation.

(B) If all appraisal assignments listed on an applicant's experience log are identified as being involved in pending litigation, the Board may audit any of the appraisal assignments on the applicant's experience log, regardless of litigation status, with the written consent of the applicant and the applicant's supervisory appraiser.

(4) [~~(3)~~] Failure to comply with a request for documentation to verify experience, or submission of experience that is found not to comply with the requirements for experience credit, may result in denial of a license application.

(5) [~~(4)~~] A license holder who applies to upgrade an existing license and submits experience that does not comply with USPAP may also be subject to disciplinary action up to and including revocation.

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

Filed with the Office of the Secretary of State on March 2, 2020.

TRD-202000942
Chelsea Buchholtz
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 936-3652

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# CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
## SUBCHAPTER E. ALTERNATIVE DISPUTE RESOLUTION

### 22 TAC §157.31

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.31, Investigative Conference.

The TALCB Enforcement Committee recommends the proposed amendments to clarify the procedures for scheduling an investigative conference with a license applicant or a respondent to a complaint and to establish procedures for recording investigative conferences.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be increased transparency and better guidance and information for license applicants, complaint respondents, and members of the public.

Growth Impact Statement:

For each year of the first five years the proposed amendments are in effect the amendments and rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy as the proposed amendments would simply provide additional guidance to license applicants, complaint respondents, and members of the public.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Occupations Code §1103.151, which allows TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

The statute affected by these proposed amendments is Chapter 1103, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

*§157.31. Investigative Conference.*

(a) The Board may request an applicant or [~~A~~] respondent to schedule an investigative conference to discuss a pending license application or the allegations of a pending complaint [~~may meet with the Board for an investigative discussion of the facts and circumstances of the alleged violations~~].

(b) The applicant or respondent may choose to have the investigative conference:

(1) in person at the Board's office in Austin, Texas;

(2) by telephone;

(3) by video conference; or

(4) in writing.

(c) [~~(b)~~] An applicant or [~~A~~] respondent may, but is not required to, have an attorney or other advocate present at an investigative conference.

(d) [~~(c)~~] An applicant or [A] respondent will be provided with a Statement of Investigative Conference Procedures and Rights (IC Form) not later than three days before the date of the investigative conference. The applicant or respondent and the applicant's or respondent's attorney, if any, must acknowledge receipt of the IC Form by signing it and delivering it to the Board at the beginning of the investigative conference.

(e) [~~(d)~~] The Board will provide a copy of the investigative report to the applicant or respondent and the applicant's or respondent's representative(s), if any, not later than three days before the date of the investigative conference if the applicant or respondent and the applicant's or respondent's representative(s), if any:

(1) Submit a written request for a copy of the investigative report not later than five days before the date of the investigative conference; and

(2) Sign the Board's confidentiality agreement prohibiting the re-release of the investigative report, without written permission of the Board or a court order, to anyone other than the:[~~.~~]

(A) applicant;

(B) respondent;

(C) applicant's or respondent's supervisory appraiser, if any;

(D) applicant's or respondent's legal representative(s); or

(E) an expert witness for the applicant or respondent.

(f) [~~(e)~~] Participation in an investigative conference is not mandatory and may be terminated at any time by any person [~~either party~~].

(g) Recording Investigative Conferences. Any person may record an investigative conference by providing the notice required in this section.

(1) Notice Required.

(A) A person choosing to record an investigative conference must provide written notice to the other person(s) participating in the investigative conference three days before the date of the conference.

(B) The notice must state how the person intends to record the investigative conference.

(C) For purposes of this section, the term "written notice" includes a letter or e-mail.

(2) Audio Recordings. A person who chooses to make an audio recording of an investigative conference must provide:

(A) the recording equipment; and

(B) if requested by another person during or after the investigative conference, a copy of the audio recording at the recording person's expense within seven days after the date of the request.

(3) Recording by Court Reporter. A person who chooses to have a court reporter record an investigative conference does so at the person's own expense and must:

(A) allow any person who participates in the investigative conference to make corrections to the court reporter's transcript; and

(B) provide an electronic copy of the final transcript to all persons who participate in the investigative conference at the recording person's expense within seven days after the transcript is final.

(h) [~~(f)~~] At the conclusion of the investigative conference, the Board staff may propose a settlement offer that can include administrative penalties and any other disciplinary action authorized by the Act or recommend that the complaint be dismissed.

(i) [~~(g)~~] The respondent may accept, reject, or make a counter offer to the proposed settlement not later than ten (10) days following the date of the investigative conference.

(j) [~~(h)~~] If the parties cannot reach a settlement not later than ten (10) days following the date of the investigative conference, the matter will be referred to the Director of Standards and Enforcement Services to pursue appropriate action.

(k) In this section, the term "person" includes:

(1) an applicant for a license or registration;

(2) a respondent to a complaint; and

(3) 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 March 2, 2020.

TRD-202000941
Chelsea Buchholtz
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 936-3652

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# TITLE 25. HEALTH SERVICES

## PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

### CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

**25 TAC §703.11, §703.23**

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amendments to 25 Texas Administrative Code §703.11 and §703.23, relating to the requirements for a grant recipient to provide supporting documentation for matching funds and the Institute's payment of advance funds.

Background and Justification

The proposed change to §703.11 requires a grant recipient to submit all supporting documentation for matching funds expenditures at the time that it files its matching fund verification form. Texas law requires that research grant recipients expend their own funds equal to at least one half of grant funds. The grant recipient submits a matching compliance form to CPRIT indicating that it has expended the required amount of matching funds. With this proposed rule amendment, the grant recipient must also submit supporting documentation showing the expenditures made with matching funds at the same time the grant recipient files its matching compliance form. This change assists the Institute in verifying that the grant recipient has accurately calculated and expended the required amount of matching funds. The rule amendment also explains that the Institute will not review or approve a matching compliance form until the grant recipient has uploaded all supporting documentation for the applicable matching funds compliance form.

The proposed change to §703.23 allows the Institute to withhold payment of up to ten percent (10%) of the grant award for grant recipients who receive advance payment of grant funds. CPRIT will not disburse the retained amount to the grant recipient until the grant recipient fulfills all applicable grant award close out requirements and the Institute has approved the grant recipient's required reports. While most grant recipients receive grant funds on a reimbursement basis, CPRIT's statute and administrative rules allow for CPRIT to advance grant funds to grant recipients. Holding back payment of the final 10% helps to ensure that the grant recipient meets the requirements of the grant contract before receiving final payment on a grant award and limits the amount of outstanding CPRIT funds. The proposed amendment includes a process allowing the Institute's CEO to approve for good cause a grant recipient's request that CPRIT retain less than 10% of the grant award.

Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule changes are in effect the public benefit anticipated due to enforcing the rules will be clarifying processes regarding submission of required documents demonstrating the grant recipient's compliance with the matching fund requirement.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule changes will not affect small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule changes will be in effect:

(1) the proposed rule changes will not create or eliminate a government program;

(2) implementation of the proposed rule changes will not affect the number of employee positions;

(3) implementation of the proposed rule changes will not require an increase or decrease in future legislative appropriations;

(4) the proposed rule changes will not affect fees paid to the agency;

(5) the proposed rule changes will not create new rules;

(6) the proposed rule changes will not expand existing rules;

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

(8) The rule changes are unlikely to have an impact on the state's economy. Although the changes are likely to have neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas

78711, no later than April 13, 2020. The Institute asks parties filing comments to indicate whether they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.texas.gov. Comments may be submitted by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule changes under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendments and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

*§703.11. Requirement to Demonstrate Available Funds for Cancer Research Grants.*

(a) Prior to the disbursement of Grant Award funds, the Grant Recipient of a Cancer Research Grant Award shall demonstrate that the Grant Recipient has an amount of Encumbered Funds equal to at least one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award.

(1) The Grant Recipient's written certification of Matching Funds, as described in this section, shall be included in the Grant Contract.

(2) A Grant Recipient of a multiyear Grant Award may certify Matching Funds on a year-by-year basis for the amount of Award Funds to be distributed for the Project Year based upon the Approved Budget.

(3) A Grant Recipient receiving multiple Grant Awards may provide certification at the institutional level.

(4) Nothing herein restricts the Institute from requiring the Grant Recipient to demonstrate an amount of Encumbered Funds greater than one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. To the extent that a greater Matching Funds amount will be required, the Institute shall include the requirement in the Request for Applications and in the Grant Contract.

(b) For purposes of the certification required by subsection (a) of this section, a Grant Recipient that is a public or private institution of higher education, as defined by §61.003, Texas Education Code, may credit toward the Grant Recipient's Matching Funds obligation the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code, subject to the following requirements:

(1) The Grant Recipient shall file certification with the Institute documenting the federal indirect cost rate authorized for research grants awarded to the Grant Recipient;

(2) To the extent that the Grant Recipient's Matching Funds credit does not equal or exceed one-half of the Grant Award funds to be distributed for the Project Year, then the Grant Recipient's Matching Funds certification shall demonstrate that a combination of the dollar amount equivalent credit and the funds to be dedicated to the Grant Award project as described in subsection (c) of this section is available and sufficient to meet or exceed the Matching Fund requirement;

(3) Calculation of the portion of federal indirect cost rate credit associated with subcontracted work performed for the Grant Recipient shall be in accordance with the Grant Recipient's established internal policy; and

(4) If the Grant Recipient's federal indirect cost rate changes six months or less following the anniversary of the Effective Date of the Grant Contract, then the Grant Recipient may use the new federal indirect cost rate for the purpose of calculating the Grant Recipient's Matching Funds credit for the entirety of the Project Year.

(c) For purposes of the certification required by subsection (a) of this section, Encumbered Funds must be spent directly on the Grant Project or spent on closely related work that supports, extends, or facilitates the Grant Project and may include:

(1) Federal funds, including, but not limited to, American Recovery and Reinvestment Act of 2009 funds, and the fair market value of drug development support provided to the recipient by the National Cancer Institute or other similar programs;

(2) State of Texas funds;

(3) funds of other states;

(4) Non-governmental funds, including private funds, foundation grants, gifts and donations;

(5) Unrecovered Indirect Costs not to exceed ten percent (10%) of the Grant Award amount, subject to the following conditions:

(A) These costs are not otherwise charged against the Grant Award as the five percent (5%) indirect funds amount allowed under §703.12(c) of this chapter (relating to Limitation on Use of Funds);

(B) The Grant Recipient must have a documented federal indirect cost rate or an indirect cost rate certified by an independent accounting firm; and

(C) The Grant Recipient is not a public or private institution of higher education as defined by §61.003 of the Texas Education Code.

(6) Funds contributed by a subcontractor or subawardee and spent on the Grant Project, so long as the subcontractor's or subawardee's portion of otherwise allowable Matching Funds for a Project Year may not exceed the percentage of the total Grant Funds paid to the subcontractor or subawardee for the same Project Year.

(d) For purposes of the certification required by subsection (a) of this section, the following items do not qualify as Encumbered Funds:

(1) In-kind costs;

(2) Volunteer services furnished to the Grant Recipient;

(3) Noncash contributions;

(4) Income earned by the Grant Recipient that is not available at the time of Grant Award;

(5) Pre-existing real estate of the Grant Recipient including building, facilities and land;

(6) Deferred giving such as a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or

(7) Other items as may be determined by the Oversight Committee.

(e) To the extent that a Grant Recipient of a multiyear Grant Award elects to certify Matching Funds on a Project Year basis, the failure to provide certification of Encumbered Funds at the appropri-

ate time for each Project Year may serve as grounds for suspending reimbursement or advancement of Grant Funds for project costs or terminating the Grant Contract.

(f) In no event shall Grant Award funds for a Project Year be advanced or reimbursed, as may be appropriate for the Grant Award and specified in the Grant Contract, until the certification required by subsection (a) of this section is filed and approved by the Institute.

(g) No later than thirty (30) days following the due date of the FSR reflecting expenses incurred during the last quarter of the Grant Recipient's Project Year, the Grant Recipient shall file a form with the Institute reporting the amount of Matching Funds spent for the preceding Project Year.

(1) The Grant Recipient must provide all documentation, including proof of payment, showing that the Grant Recipient expended the required amount of Matching Funds on the CPRIT project for the preceding Project Year. The Institute will accept a general ledger from public or private institutions of higher education as proof of payment.

(2) The Institute will not review or approve the Grant Recipient's Matching Funds form until the Grant Recipient submits the form and all required documentation.

(h) If the Grant Recipient failed to expend Matching Funds equal to one-half of the actual amount of Grant Award funds distributed to the Grant Recipient for the same Project Year the Institute shall:

(1) Carry forward and add to the Matching Fund requirement for the next Project Year the dollar amount equal to the deficiency between the actual amount of Grant Award funds distributed and the actual Matching Funds expended, so long as the deficiency is equal to or less than twenty percent (20%) of the total Matching Funds required for the same period and the Grant Recipient has not previously had a Matching Funds deficiency for the project;

(2) Suspend distributing Grant Award funds for the project to the Grant Recipient if the deficiency between the actual amount of Grant Funds distributed and the Matching Funds expended is greater than twenty percent (20%) but less than fifty percent (50%) of the total Matching Funds required for the period;

(A) The Grant Recipient will have no less than eight months from the anniversary of the Grant Contract's effective date to demonstrate that it has expended Encumbered Funds sufficient to fulfill the Matching Funds deficiency for the project.

(B) If the Grant Recipient fails to fulfill the Matching Funds deficiency within the specified period, then the Grant Contract shall be considered in default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract.

(3) Declare the Grant Contract in default if the deficiency between the actual amount of Grant Award funds distributed and the Matching Funds expended is greater than fifty percent (50%) of the total Matching Funds required for the period. The Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract; or

(4) Take appropriate action, including withholding reimbursement, requiring repayment of the deficiency, or terminating the Grant Contract if a deficiency exists between the actual amount of Grant Award funds distributed and the Matching Funds expended and it is the last year of the Grant Contract.

(i) Nothing herein shall preclude the Institute from taking action other than described in subsection (h) of this section based upon the specific reasons for the deficiency. To the extent that other action not described herein is taken by the Institute, such action shall be documented in writing and included in Grant Contract records. The options described in subsection (h)(1) and (2) of this section may be used by the Grant Recipient only one time for the particular project. A second deficiency of any amount shall be considered an event of default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract.

(j) The Grant Recipient shall maintain adequate documentation supporting the source and use of the Matching Funds reported in the certification required by subsection (a) of this section. The Institute shall conduct an annual review of the documentation supporting the source and use of Matching Funds reported in the required certification for a risk-identified sample of Grant Recipients. Based upon the results of the sample, the Institute may elect to expand the review of supporting documentation to other Grant Recipients. Nothing herein restricts the authority of the Institute to review supporting documentation for one or more Grant Recipients or to conduct a review of Matching Funds documentation more frequently.

(k) If a deadline set by this rule falls on a Saturday, Sunday, or federal holiday as designated by the U.S. Office of Personnel Management, the required filing may be submitted on the next business day. The Institute will not consider a required filing delinquent if the Grant Recipient complies with this subsection.

*§703.23. Disbursement of Grant Award Funds.*

(a) The Institute disburses Grant Award funds by reimbursing the Grant Recipient for allowable costs already expended; however, the nature and circumstances of the Grant Mechanism or a particular Grant Award may justify advance payment of funds by the Institute pursuant to the Grant Contract.

(1) The Chief Executive Officer shall seek authorization from the Oversight Committee to disburse Grant Award funds by advance payment.

(A) A simple majority of Oversight Committee Members present and voting must approve the Chief Executive Officer's advance payment recommendation for the Grant Award.

(B) Unless specifically stated at the time of the Oversight Committee's vote, the Oversight Committee's approval to disburse Grant Award funds by advance payment is effective for the term of the Grant Award.

(2) Unless otherwise specified in the Grant Contract, the amount of Grant Award funds advanced in any particular tranche may not exceed the budget amount for the corresponding Project Year.

(3) The Grant Recipient receiving advance payment of Grant Award funds must maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the Grant Award funds and disbursement by the Grant Recipient.

(4) The Grant Recipient must comply with all financial reporting requirements regarding use of Grant Award funds, including timely submission of quarterly Financial Status Reports.

(5) The Grant Recipient must expend at least 90% of the Grant Award funds in a tranche before Institute will advance additional grant funds or reimburse additional costs. To the extent possible, the Institute will work with the Grant Recipient to coordinate the advancement of Grant Award fund tranches in such a way as to avoid affecting work in progress or project planning.

(6) Nothing herein creates an entitlement to advance payment of Grant Award funds; the Institute may determine in its sole dis-

cretion that circumstances justify limiting the amount of Grant Award funds eligible for advance payment, may restrict the period for the advance payment of Grant Award funds, or may revert to payment on a reimbursement-basis. Unless specifically stated in the Grant Contract, the Institute will disburse the last ten percent (10%) of the total Grant Award funds using the reimbursement method of funding, and will withhold payment until the Grant Recipient has closed its Grant Contract and the Institute has approved the Grant Recipient's final reports pursuant to §703.14 of this chapter relating to Termination, Extension, Close Out of Grant Contracts, and De-Obligation of Grant Award funds.

(A) A Grant Recipient receiving advance payment may request in writing that the Institute withhold less than ten percent (10%) of the total Grant Award funds. The Grant Recipient must submit the request and reasonable justification to the Institute no sooner than the start of the final year and no later than the start of the final financial status reporting period of the grant project.

(B) The Chief Executive Officer may approve or deny the request. If approved, the Chief Executive Officer will provide written notification to the Oversight Committee. The Chief Executive Officer's decision to approve or deny a request is final.

(b) The Institute will disburse Grant Award funds for actual cash expenditures reported on the Grant Recipient's quarterly Financial Status Report.

(1) Only expenses that are allowable and supported by adequate documentation are eligible to be paid with Grant Award funds.

(2) A Grant Recipient must pay their vendors and subcontractors prior to requesting reimbursement from CPRIT.

(c) The Institute may withhold disbursing Grant Award funds if the Grant Recipient has not submitted required reports, including quarterly Financial Status Reports, Grant Progress Reports, Matching Fund Reports, audits and other financial reports. Unless otherwise specified for the particular Grant Award, Institute approval of the required report(s) is necessary for disbursement of Grant Award funds.

(d) All Grant Award funds are disbursed pursuant to a fully executed Grant Contract. Grant Award funds shall not be disbursed prior to the effective date of the Grant Contract.

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 February 27, 2020.

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Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 305-8487

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# TITLE 26. HEALTH AND HUMAN SERVICES

## PART 1. HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 711. INVESTIGATIONS OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS

## SUBCHAPTER L. EMPLOYEE MISCONDUCT REGISTRY

### 26 TAC §§711.1401 - 711.1404, 711.1406 - 711.1408, 711.1413 - 711.1415, 711.1417, 711.1419, 711.1421, 711.1423, 711.1425 - 711.1427, 711.1429, 711.1431, 711.1432, 711.1434

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§711.1401 - 711.1404, 711.1406 - 711.1408, 711.1413 - 711.1415, 711.1417, 711.1419, 711.1421, 711.1423, 711.1425 - 711.1427, 711.1429, 711.1431, 711.1432, and 711.1434 in Chapter 711, concerning Investigations of Individuals Receiving Services from Certain Providers. These proposed rules do not propose any substantive changes in the content of the existing rules.

BACKGROUND AND PURPOSE

The purpose is to create a new subchapter in Title 26, Chapter 711, to copy necessary rules from a subchapter shared with Department of Family and Protective Services (DFPS). This is a result of implementing Senate Bill (S.B.) 200, 84th Legislature Regular Session, 2016, which transferred certain functions previously performed by DFPS to Texas Health and Human Services Commission (HHSC), and to update references to other rules and reflect agency language changes where appropriate in Subchapter L, concerning Employee Misconduct Registry. S.B. 200, reorganized health and human services delivery in Texas. Certain functions previously performed by the Department of Family and Protective Services (DFPS) transferred to the HHSC in accordance with Texas Government Code, §531.0201, §531.02011, and §531.02013. As a result, both agencies need the rules currently located in Title 40, Chapter 711, Subchapter O, Employee Misconduct Registry, therefore, HHSC is proposing new rules in Title 26 for use by HHSC. All other subchapters in Title 40, Chapter 711, Investigations of Individuals Receiving Services from Certain Providers, were not needed by DFPS and were administratively transferred to Title 26.

The purpose of this proposal is to create a new subchapter in Title 26, Chapter 711 to copy the necessary rules from the shared subchapter.

SECTION-BY-SECTION SUMMARY

Proposed rule §§711.1401 - 711.1404 clarify the purpose of the subchapter, provide definitions, list applicable investigations, and define physical abuse, sexual abuse, verbal abuse, emotional abuse, neglect, exploitation, and financial exploitation.

Proposed rule §§711.1406 - 711.1408 define the term Agency, describe the Employee Misconduct Registry, and define reportable conduct.

Proposed rule §§711.1413 - 711.1415 HHSC define the notice to an employee before the employee's name is submitted to the Employee Misconduct Registry, method to provide the notice to an employee, and responsibility of maintaining a valid mailing address for an employee.

Proposed rule §711.1417 defines the deadline for filing the Request for EMR hearing.

Proposed rule §711.1419 explains reportable conduct reversal.

Proposed rule §711.1421 defines the hearing place, time and who will be in charge of conducting the hearing.

Proposed rule §711.1423 clarifies the rescheduling option.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the 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 expand, limit, or repeal existing rules;

(6) the proposed rules will not change the number of individuals subject to the rules; and

(7) 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. The rules do not apply to small or micro-businesses, or rural communities.

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 are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner, Regulatory Services Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the public will have access to a single location in the Texas Administrative Code for all HHSC Provider Investigation rules which will prevent confusion for stakeholders. This will ensure easier navigation for people who need information regarding HHSC Provider Investigations, and aligns with the HHS mission, business, and statutory responsibilities.

AND:

Trey Wood, Chief Financial Officer, 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 they will not be required to alter their business practices. The proposed rules will be a duplication of rules currently shared with DFPS and will not result in changes to the practice of either agency.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Provider Investigation Rules, 14000 Summit Dr., Ste. 100, Mail Code: 0165, Austin, Texas 78728, or by email to PI_Rules@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R047" in the subject line.

STATUTORY AUTHORITY

The new subchapter is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. The new subchapter is also authorized by Texas Human Resources Code Ch. 48, Investigations and Protective Services for Elderly Persons and Persons with Disabilities, which authorizes the Executive Commissioner of HHSC to adopt rules to implement Ch. 48.

The new subchapter implements Texas Government Code §531.0055 and Texas Human Resources Code Ch. 48.

*§711.1401. What is the purpose of this subchapter?*

The purpose of this subchapter is to implement Subchapter I, Chapter 48, Human Resources Code, relating to the Employee Misconduct Registry (EMR), established under Chapter 253, Health and Safety Code, and maintained by the Health and Human Services Commission (HHSC).

*§711.1402. How are the terms in this subchapter defined?*

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

(1) Administrative law judge--An attorney who serves as a hearings examiner and conducts an EMR hearing.

(2) Agency--An entity, person, facility, or provider, as defined in §711.1406 of this subchapter (relating to How is the term agency defined for the purpose of this subchapter?).

(3) APS--The Adult Protective Services division within the Department of Family and Protective Services, which is authorized to conduct investigations of alleged abuse, neglect, or exploitation of certain adults under Chapter 48, Human Resources Code, and certain children under §261.404, Family Code.

(4) Designated perpetrator--A person determined by Provider Investigations (PI) to have committed abuse, neglect, or

exploitation who may be eligible for inclusion on the Employee Misconduct Registry, when the abuse, neglect or exploitation meets the definition of reportable conduct.

(5) DFPS--The Department of Family and Protective Services.

(6) Employee--A person who:

(A) works for:

*(i)* an agency, whether as an employee contractor, volunteer or agent; or

*(ii)* an individual employer participating in the consumer-directed service option, as defined by Government Code §531.051;

(B) provides personal care services, active treatment, or any other services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Family Code §261.404, or an individual receiving services through the consumer-directed service option, as defined by Government Code §531.051; and

(C) is not licensed by the state to perform the services the person performs for the agency or the individual employer participating in the consumer-directed service option, as defined by Government Code §531.051.

(7) EMR--The Employee Misconduct Registry.

(8) EMR hearing--An administrative hearing offered to a person who has been found to have committed reportable conduct for the purpose of appealing the finding of reportable conduct as well as the underlying finding of abuse, neglect, or exploitation.

(9) Executive Commissioner--The executive commissioner of HHSC or the executive commissioner's designee.

(10) HHSC--The Texas Health and Human Services Commission.

(11) Individual receiving services: an individual receiving services as provided in §711.3 of this chapter (relating to How are the terms in this chapter defined?).

(12) In-home investigation--An investigation conducted by DFPS Adult Protective Services (APS) under Title 40, Texas Administrative Code, Chapter 705 (relating to Adult Protective Services).

(13) Provider investigation--An investigation conducted by HHSC Provider Investigations under Chapter 48, Subchapter F, Human Resources Code, or §261.404, Texas Family Code, as applicable.

(14) PI--The Provider Investigations program within the Regulatory Services Division of HHSC, which is authorized to conduct investigations of alleged abuse, neglect, or exploitation of certain adults under Chapter 48, Human Resources Code, and certain children under §261.404, Family Code.

(15) Reportable conduct--A confirmed or validated finding of abuse, neglect or exploitation that meets the definition in §48.401(5), Human Resources Code, and as further defined in §711.1408 of this subchapter (relating to What is reportable conduct?).

*§711.1403. To which investigations does this subchapter apply?*

(a) This subchapter applies to PI investigations involving an employee as defined in §711.1402 of this subchapter (relating to How are the terms in this subchapter defined?).

(b) Notwithstanding subsection (a) of this section, a certified nurse aide who commits reportable conduct while working for an agency is eligible to be reported to the EMR, as provided by §253.001(3), Health and Safety Code.

*§711.1404. How are the terms physical abuse, sexual abuse, verbal or emotional abuse, neglect, exploitation, and financial exploitation defined for the purpose of this subchapter?*

(a) For In-home investigations, the definitions of physical abuse, sexual abuse, verbal or emotional abuse, neglect, and financial exploitation are adopted pursuant to §48.002(c), Human Resources Code, and are found in Title 40, Texas Administrative Code, Chapter 705, Subchapter A (relating to Definitions) in the rules adopted pursuant to §48.002(c) of the Human Resources Code.

(b) For provider investigations--the definitions of physical abuse, sexual abuse, verbal or emotional abuse, neglect, and exploitation are adopted pursuant to §48.002(b), Human Resources Code, and are found in Subchapter A of this chapter (relating to Introduction).

*§711.1406. How is the term agency defined for the purpose of this subchapter?*

(a) For the purpose of this chapter, the term "agency" has the meaning given by §48.401, Human Resources Code, as further clarified in this rule. Any terms used within the definition of "agency" have the meaning given by statute or elaborated upon by this chapter or Title 40, Texas Administrative Code, Chapter 705 (relating to Adult Protective Services.) The purpose of this rule is to provide a non-exhaustive list of agencies, the employees of which are subject to being listed on the EMR if they are found to have committed reportable conduct. The list is illustrative and not exclusionary. Employees of agencies not specifically enumerated that are within the meaning of §48.401 continue to be eligible for the EMR without regard to whether the agency is specifically enumerated below.

(b) The term "agency" means:

(1) a home and community support services agency licensed under Chapter 142, Health and Safety Code;

(2) a person exempt from licensure who provides home health, hospice, habilitation, or personal assistance services only to persons receiving benefits under:

(A) the home and community-based services (HCS) waiver program;

(B) the Texas home living (TxHmL) waiver program;

(C) the STAR + PLUS or other Medicaid managed care program under the program's HCS or TxHmL certification; or

(D) Section 534.152, Government Code;

(3) an intermediate care facility for individuals with an intellectual disability or related conditions (ICF-IID) licensed under Chapter 252, Health and Safety Code; or

(4) a provider investigated by HHSC under Subchapter F, Human Resources Code or §261.404, Family Code. Such providers include:

(A) a facility as defined in §711.3 of this chapter (relating to How are the terms in this chapter defined?);

(B) a community center, local mental health authority, and local intellectual and developmental disability authority, as defined in §711.3 of this chapter;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services (HCBS) as that term is defined in §48.251,

Human Resources Code and which is the umbrella term for various long-term services and supports within the Medicaid program, whether delivered in a fee-for-service, managed care, or other service delivery model, and which includes but is not limited to:

*(i)* Waiver programs including:

*(I)* community living assistance and support services (CLASS);

*(II)* Deaf Blind Multiple Disabilities;

*(III)* HCS;

*(IV)* TxHmL;

*(V)* Medically Dependent Child Program (MDCP); and

*(VI)* Youth Empowerment Services (YES);

*(ii)* Community First Choice;

*(iii)* Texas Dual Eligible Integrated Care Project;

*(iv)* State plan services including:

*(I)* Community attendant services; and

*(II)* Personal attendant services;

*(v)* Managed Care Programs including:

*(I)* HCBS - Adult Mental Health;

*(II)* STAR + PLUS Managed Care program; and

*(III)* STAR Kid Managed Care program; and

*(vi)* any other program, project, waiver demonstration, or service providing long-term services and supports through the Medicaid program;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services as that term is defined in §48.251 and which include but are not limited to:

*(i)* Targeted Case Management; and

*(ii)* Psychiatric Rehabilitation services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in subparagraphs (A) - (E) of this paragraph; and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer directed service option, as defined by §531.051, Government Code.

*§711.1407. What is the Employee Misconduct Registry?*

The EMR is a database maintained by HHSC that contains the names of persons who have committed reportable conduct. A person whose name is recorded in the registry is prohibited by law from working for certain facilities or agencies, as provided under Chapter 253, Health and Safety Code.

*§711.1408. What is reportable conduct?*

(a) Reportable conduct is defined in §48.401, Human Resources Code, as:

(1) abuse or neglect that causes or may cause death or harm to an individual receiving agency services;

(2) sexual abuse of an individual receiving agency services;

(3) financial exploitation of an individual receiving agency services in an amount of $25 or more; and

(4) emotional, verbal, or psychological abuse that causes harm to an individual receiving agency services.

(b) For purposes of subsection (a) of this section, the terms abuse, neglect, sexual abuse, and financial exploitation have the meanings provided in Title 40, Texas Administrative Code, Chapter 705, Subchapter A (relating to Definitions) or subchapter A of this chapter (relating to Introduction) and incorporated by reference in §711.1404 of this subchapter (relating to How are the terms physical abuse, sexual abuse, verbal or emotional abuse, neglect, exploitation, and financial exploitation defined for the purpose of this subchapter?).

(c) For purposes of subsection (a)(1) of this section the term harm means:

(1) a significant injury or risk of significant injury, including a fracture, dislocation of any joint, internal injury, a contusion larger than 2 and 1/2 inches, concussion, second or third-degree burn, or any laceration requiring sutures;

(2) an adverse health effect that results or is at risk of resulting from failure to receive medications in the amounts or at the times prescribed; or

(3) any other harm or risk of harm that warranted, or would reasonably be expected to have warranted, medical treatment or hospitalization.

(d) For purposes of subsection (a)(4) of this section, the term harm means substantial harm as evidenced by observable signs of substantial physical or emotional distress or as diagnosed by an appropriate medical professional.

*§711.1413. What notice must HHSC give to an employee before the employee's name is submitted to the EMR?*

When HHSC determines that an employee committed reportable conduct, HHSC must provide a written "Notice of Finding" to the employee. The notice must include:

(1) a brief summary of the incident that resulted in a confirmed or validated finding of abuse, neglect, or exploitation and a brief explanation of why the finding meets the definition of reportable conduct;

(2) a statement of the employee's right to dispute the finding by filing a "Request for EMR Hearing" and the instructions for doing so;

(3) a statement that HHSC will submit the employee's name for inclusion in the EMR if the employee accepts the finding of reportable conduct;

(4) an explanation of how the employee may obtain a copy of the investigation records;

(5) a statement that a person whose name is recorded in the registry is prohibited by law from working for certain facilities or agencies, as provided under Chapters 250 and 253, Health and Safety Code;

(6) a statement that HHSC may determine that this situation is an emergency and that the case information or finding may be released immediately to the agency where the employee is or was employed so that the agency may take any precautions it determines necessary to protect clients or persons served;

(7) a statement that HHSC reserves the right to make an emergency release of the findings to any subsequent employer of the

employee if the employee has access to similar clients or persons served;

(8) a statement that the employee is responsible for keeping HHSC timely informed of the employee's current employment and residential contact information, including addresses and phone numbers, pending the outcome of any appeal filed by the employee; and

(9) a statement that if the employee fails, without good cause, to file a timely request for an EMR hearing, the employee will be deemed to have waived the employee's rights to dispute the finding and the employee's name will be submitted to the EMR.

*§711.1414. How will the Notice of Finding be provided to an employee and who is responsible for ensuring that HHSC has a valid mailing address for an employee?*

(a) The "Notice of Finding" will be mailed to the employee's last known address by first class mail and by certified mail, return receipt requested.

(b) If HHSC knows the employee's last known address is incorrect, or if the employee fails to provide an address, HHSC may hand-deliver the Notice of Finding to the employee. The affidavit of the person delivering the notice is proof of such notice.

(c) It is the responsibility of the employee to provide HHSC with a valid address where notice can be mailed or, if no address is available, with valid contact information, including telephone numbers. It is also the responsibility of the employee to immediately notify HHSC of any change of address or contact information throughout the investigation and any period of time during which a dispute of the finding is pending.

*§711.1415. How does an employee dispute a finding of reportable conduct and what happens if the "Request for EMR Hearing" is not filed or not filed properly?*

(a) An employee may dispute a finding of reportable conduct by submitting a Request for EMR Hearing. The Notice of Finding will contain instructions for filing the Request for EMR Hearing.

(b) The employee will be deemed to have accepted the finding of reportable conduct and HHSC will submit the employee's name for inclusion in the EMR if the employee:

(1) does not file a Request for EMR Hearing;

(2) fails to file the Request for EMR Hearing before the deadline has passed, as provided under §711.1417 of this subchapter (relating to What is the deadline for filing the Request for EMR Hearing?); or

(3) files a Request for EMR Hearing, but fails to follow the filing instructions and, as a result, HHSC does not receive the Request for EMR Hearing in a timely manner or cannot determine the matter being disputed.

*§711.1417. What is the deadline for filing the Request for EMR Hearing?*

(a) The employee must file the Request for EMR Hearing no later than 30 calendar days from the date the employee receives the Notice of Finding.

(b) A Notice of Finding is presumed received by the employee on the date of delivery as indicated on the certified mail return receipt. If the certified mailing is returned unclaimed, but the regular mailing is not returned, the Notice of Finding will be presumed received on the third business day following the date the notice was mailed to the employee's last known address. A personally delivered Notice of Finding is presumed received on the date of delivery as indicated on the affidavit of the person delivering the notice.

(c) If the Request for EMR Hearing is submitted by mail, the envelope must be postmarked no later than 30 days after the date the employee received the Notice of Finding. If the Request for EMR Hearing is hand-delivered or submitted by fax, the request must be received in the appropriate HHSC office by 5:00 p.m., no later than 30 days from the date the employee received the Notice of Finding.

(d) If an employee files the Request for EMR Hearing after the deadline, HHSC will notify the employee that the request was not filed by the deadline, no EMR hearing will be granted, and the employee's name will be submitted for inclusion in the EMR.

(e) If an employee disputes the fact that the Request for EMR Hearing was filed late, the employee may file a request for a telephonic hearing, to be conducted by an administrative law judge, and limited solely to the issue of whether the Request for EMR Hearing was filed on time. If, as a result of that hearing, the employee proves that the original Request for EMR Hearing was filed on or before the deadline, a separate hearing will be scheduled as soon as possible on the issue of whether the employee committed reportable conduct.

*§711.1419. Is a finding of reportable conduct ever reversed without conducting a hearing?*

Prior to a hearing, HHSC, in its sole discretion, may designate a person to conduct a review of the investigation records. If a review of the records results in a reversal of the finding of reportable conduct, HHSC will send the employee a new Notice of Finding, which will indicate that the employee's name will not be submitted to the EMR. If the review does not result in a reversal of the finding of reportable conduct a hearing will be scheduled, as described in this subchapter.

*§711.1421. When and where will the EMR hearing take place and who conducts the hearing?*

(a) An EMR hearing will be conducted by an administrative law judge with HHSC. The administrative law judge is responsible for scheduling the date, time, and location for the hearing. At the discretion of the administrative law judge, a pre-hearing conference may be conducted in person or by phone prior to the scheduling or conduct of the EMR hearing.

(b) The administrative law judge will send the parties a Notice of EMR Hearing providing the date, time, and location for the hearing, as well as the name of the administrative law judge, and how to contact the administrative law judge.

(c) The hearing will usually be held in the same HHSC region where the alleged reportable conduct took place. The administrative law judge reserves the right to take all or some of the testimony at the hearing by telephone or video-conference and may consider a request by any party to have the hearing conducted in a different location for good cause.

(d) If a criminal case against the employee arises because of the same reportable conduct, HHSC may postpone the EMR hearing until the criminal case resolves.

*§711.1423. May an employee or HHSC request that the EMR hearing be rescheduled?*

Yes. Both the employee and HHSC may request that the administrative law judge reschedule the hearing for good cause. Except in cases of emergency, the request to reschedule the hearing must be made no later than three working days prior to the hearing date. The administrative law judge must grant the request if good cause is shown.

*§711.1425. May an employee withdraw a Request for EMR Hearing after it is filed?*

Yes. An employee may withdraw a Request for EMR Hearing any time before the hearing is conducted. An employee who withdraws a

Request for EMR Hearing will be deemed to have accepted the finding of reportable conduct and HHSC will submit the employee's name for inclusion in the EMR.

*§711.1426. What happens if a party fails to appear at a pre-hearing conference or a hearing on the merits?*

(a) If either party fails, without good cause, to appear at a scheduled pre-hearing conference or a hearing on the merits, the administrative law judge may issue a default judgment against the party that failed to appear.

(b) A party against whom a default judgment is rendered may, within 10 calendar days of receipt of the default judgment, request a hearing on the issue of whether good cause existed for failing to appear.

(c) The administrative law judge may make a determination on the issues of good cause based on a review of the assertions and evidence submitted with the party's request for a good cause hearing or may schedule the matter for a hearing if additional testimony and evidence are deemed necessary for making the good cause finding. If a hearing is scheduled on the issue of good cause for failure to appear, the administrative law judge may limit the hearing solely to the issue of good cause or may combine the hearing with other pre-hearing conference matters or with the hearing on the merits, at the discretion of the administrative law judge.

(d) Unless a default judgment for failure to appear is challenged and reversed, as described in subsections (b) and (c) of this section, the default judgment shall be considered the final Hearing Order of HHSC and may not be further appealed except as provided under §711.1431 of this subchapter (relating to How is judicial review requested and what is the deadline?).

(e) If a default judgment rendered against an employee becomes the final Hearing Order, HHSC will submit the employee's name for inclusion in the EMR in the same manner as it would after any other final Hearing Order that affirms the finding of reportable conduct, as provided in this subchapter.

(f) If a default judgment rendered against HHSC becomes the final Hearing Order, HHSC shall amend its records to reverse the findings at issue in the EMR hearing and shall issue an amended Notice of Finding to the employee reflecting that change.

*§711.1427. How is the EMR hearing conducted?*

(a) The hearing is similar to a civil court trial, but less formal. The parties to the hearing are the employee and HHSC.

(b) The hearing is conducted by an administrative law judge who has the duty to provide a fair and impartial hearing and to ensure that the available and relevant testimony and evidence is presented in an orderly manner. The administrative law judge has authority to administer oaths, issue subpoenas, and order discovery.

(c) Prior to the hearing the employee may request a copy of the investigation record, edited to remove the identity of the reporter and any other confidential information to which the employee is not entitled. The administrative law judge will only issue subpoenas or order additional discovery upon request of a party and a finding of good cause for the issuance or order.

(d) Both parties will be given the opportunity to present their own testimony and evidence, as well as the testimony and evidence of witnesses. Any person who provides testimony at the hearing will be sworn under oath.

(e) Both parties will be given the opportunity to examine the evidence presented by the other party, to cross-examine any witnesses presented by the other party, and to rebut or respond to the evidence presented by the other party.

(f) Testimony of a witness may be presented by written affidavit but may be given less weight than the credible testimony of a witness who testifies in person, under oath, subject to cross-examination.

(g) Presentation of evidence at the hearing is not restricted under the rules of evidence used in civil cases. The administrative law judge will admit evidence if it is of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. Evidence will not be admitted if it is irrelevant, immaterial, unduly repetitious, or precluded by statutory law.

(h) Both parties have the right to be represented at the hearing by a person of their choosing who may be, but is not required to be, an attorney.

(i) The administrative law judge will assist either party in presenting their evidence and testimony, as needed, to ensure that a complete and proper record is developed at the hearing.

(j) The administrative law judge will arrange to have an interpreter available for the hearing if a party or witness requires an interpreter in order to effectively participate in the hearing.

(k) The hearing will be recorded by audio or video tape in order to preserve a record of the hearing. A transcription of the hearing tape will not be made or provided unless an employee seeks judicial review, as provided in this subchapter. The costs of transcribing the testimony and preparing the record for judicial review shall be paid by the party who files for judicial review, unless the party establishes indigence as provided in Rule 20 of the Texas Rules of Appellate Procedure.

(l) The hearing is closed to the general public consistent with the required statutory confidentiality of records, as outlined in the Texas Human Resources Code, Chapter 48. Only the employee, the employee's representative, and any testifying witnesses may attend the hearing.

*§711.1429. How and when is the decision made after the EMR hearing?*

(a) The administrative law judge will prepare a "Hearing Order" which will be mailed to the employee at the employee's last known mailing address. The Hearing Order must contain the following:

(1) separate statements of the findings of fact and conclusions of law that uphold, reverse, or modify the findings as to whether:

(A) the employee committed abuse, neglect, or financial exploitation; and

(B) the abuse, neglect, or financial exploitation committed by the employee meets the definition of reportable conduct; and

(2) if reportable conduct is found to have occurred:

(A) a statement of the right of the employee to seek judicial review of the order; and

(B) a statement that the finding of reportable conduct will be forwarded to HHSC to be recorded in the EMR unless the employee timely files a petition for judicial review as provided in §711.1431 of this subchapter (relating to How is judicial review requested and what is the deadline?).

(b) The executive commissioner may designate a Hearing Order to be published in an Index of Hearing Orders that are deemed to have precedential authority for guiding future decisions and HHSC policy. A Hearing Order must be edited to remove all personal identifying information before publication in the Index of Hearing Orders.

*§711.1431. How is judicial review requested and what is the deadline?*

(a) A timely motion for rehearing is a prerequisite to judicial review and must be filed in accordance with Subchapters F and G, Chapter 2001, Government Code. The motion for rehearing must be served on the administrative law judge and on HHSC's attorney of record.

(b) To seek judicial review of a Hearing Order, a party must file a petition for judicial review in a Travis County district court, in accordance with Subchapters F and G, Chapter 2001, Government Code.

(c) Judicial review by the court is under the substantial evidence rule, as provided by §48.406, Human Resources Code.

(d) Unless citation for a petition for judicial review is served on HHSC within 90 days after the date on which the order under review becomes final, HHSC will submit the employee's name for inclusion in the EMR. If valid service of citation is received after the employee's name has been recorded in the registry, HHSC will request that the employee's name be removed from the registry pending the outcome of the judicial review in district court.

*§711.1432. What action does HHSC take when an employee has exhausted the employee's administrative remedies?*

(a) An employee has exhausted the employee's administrative remedies if the employee has been found to have committed reportable conduct and the employee has received or is no longer eligible for:

(1) an EMR hearing;

(2) a rehearing of the employee's case following an EMR hearing; or

(3) judicial review.

(b) HHSC takes the following actions once an employee has exhausted the employee's administrative remedies:

(1) modifies HHSC's internal records to reflect the final outcome in the case;

(2) provides notice of the final outcome in the case to any person or entity that was previously notified of HHSC's findings, if the finding is modified; and

(3) sends the employee's name and required information to the EMR if the finding of reportable conduct was sustained.

*§711.1434. What special considerations apply to employees of state-operated facilities?*

(a) The sole way to dispute a finding of reportable conduct and submission of the employee's name to the EMR is provided by the procedures in this subchapter. A Request for EMR hearing filed under this subchapter is not a request for a grievance on disciplinary action from an employer.

(b) If an employee of a state-operated facility is notified by the employer that the employee is entitled to a grievance on disciplinary action based on a finding of reportable conduct by HHSC, the employee makes a separate request for a grievance hearing in accordance with the employment policies of the employer. A request for a grievance on disciplinary action will not be considered a request for an EMR hearing under this subchapter.

(c) When an employee files both a Request for EMR hearing under this subchapter and a grievance on disciplinary action based on HHSC's finding of reportable conduct, the EMR hearing will take place prior to the grievance hearing.

(d) The outcome of a grievance on disciplinary action will not change HHSC's finding of reportable conduct.

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 February 28, 2020.

TRD-202000926
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: April 12, 2020
For further information, please call: (210) 861-7465

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# TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 3. TAX ADMINISTRATION

### SUBCHAPTER BB. BATTERY SALES FEE

**34 TAC §3.711**

The Comptroller of Public Accounts proposes amendments to §3.711, concerning collection and reporting requirements. The comptroller proposes amendments to add the fee amounts for sales of lead-acid batteries; to explain the penalty and interest provisions relating to delinquent fees and reports; and to add an exemption for maquiladora enterprises.

The comptroller amends the title of §3.711 to "Battery Sales Fee Collection and Reporting Requirements" to clearly identify the fee addressed by the section.

The comptroller amends subsection (b)(1) to include the battery sales fee amounts due under Health and Safety Code, §361.138(b) (Fee on the Sale of Batteries).

The comptroller renames subsection (c) "Due date and reporting requirements" to better reflect the content of this subsection. The comptroller moves information currently in subsection (c) to subsection (d) and information in subsection (d) to subsection (c) to reorganize the rule structure for better flow. The discussion of the due date and reporting requirements should logically come before a discussion on the report forms on which the report is filed.

The comptroller moves the content of existing subsection (e)(2) with minor wording changes, and re-letters this as subsection (f). The comptroller titles subsection (f) "Discount." and re-letters subsequent subsections. The comptroller amends re-lettered subsection (e)(2) to remove unnecessary language.

The comptroller adds subparagraph (E) to re-lettered subsection (h)(3) that provides an exemption for exports to a maquiladora enterprise. This exemption memorializes the comptroller's longstanding practice of allowing a maquiladora enterprise to purchase batteries tax-free for export to Mexico and references §3.358 of this title (relating to Maquiladoras).

Additionally, the comptroller rewords subsection (h)(7) to state that the sale of a battery may be exempt from the fee if the battery meets certain criteria.

The comptroller adds new subsection (j) regarding penalty on unremitted fees or failure to file a report as provided under Health and Safety Code, §361.138(g).

The comptroller adds new subsection (k) regarding interest due on delinquent fees as provided under Tax Code, §111.060 (Interest on Delinquent Tax).

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 conforming the rule to longstanding comptroller practice. 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.

You may submit comments on the proposal to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The section implements Health & Safety Code, §361.138 (Fee on the Sale of Batteries).

*§3.711. Battery Sales Fee Collection and Reporting Requirements.*

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

(1) Dealer--A wholesaler, retailer, or any other person who sells or offers to sell lead-acid batteries.

(2) Lead-acid battery--Any battery, new or used, which contains lead and sulfuric acid, in liquid or gel form.

(3) Sale for resale--A sale of a lead-acid battery to a purchaser for the purpose of reselling the battery in the normal course of business in the form or condition in which it is acquired (i.e., as a separate item). A sale of a battery that is attached to or becomes an integral part of a vehicle, boat, or other equipment that is being sold, rented, or leased is not a sale for resale. The battery sales fee is due on the sale prior to the battery becoming a part of this equipment.

(b) Collection and remittance of the fee.

(1) Except as provided in subsection (h)[~~(g)~~] of this section, a dealer must collect the fee on each sale of a lead-acid battery. For each lead-acid battery with a capacity of less than 12 volts, the fee is $2.00. For each lead-acid battery with a capacity of 12 or more volts, the fee is $3.00. A fee shall not be charged, collected, or allowed as an offset on a battery taken as a trade-in.

(2) If a dealer fails to collect the fee required in paragraph (1) of this subsection, the comptroller may collect the fee from the purchaser.

(3) The fee is not due on the sale of a vehicle, boat, or other equipment that has a battery as an integral part of it.

(4) The amount of the fee due must be separately stated on the invoice, bill, or contract to the customer and shall be identified as the Texas battery sales fee.

(5) A dealer may not advertise, make public, indicate, or imply that the dealer will absorb, assume, or refund any portion of the fee.

(c) Due date and reporting requirements[~~Report forms. The battery sales fee is to be reported on the Texas battery sales fee report form as prescribed by the comptroller. The fact that the dealer does not receive the form or does not receive the correct form from the comptroller for the filing of the return does not relieve the dealer of the responsibility of filing a return and remitting the fee~~].

(1) Monthly filing. The battery sales fee is due and payable on or before the 20th day of the month following the end of each calendar month. Returns must be filed on a monthly basis unless a dealer qualifies as a quarterly filer under paragraph (2) of this subsection.

(2) Quarterly filing. A dealer who owes an average, as computed for the year, of less than $50 for a calendar month or less than $150 for a calendar quarter is required to file a return and remit the collected fees on or before the 20th day of the month following the end of the calendar quarter. The comptroller will notify a dealer when the report and payment may be submitted quarterly.

(d) Report forms. The battery sales fee is to be reported on the Texas battery sales fee report form as prescribed by the comptroller. The fact that the dealer does not receive the form or does not receive the correct form from the comptroller for the filing of the return does not relieve the dealer of the responsibility of filing a return and remitting the fee[~~Reporting period~~].

~~(1) Monthly filing. The battery sales fee is due and payable on or before the 20th day of the month following the end of each calendar month. Returns must be filed on a monthly basis unless a dealer qualifies as a quarterly filer under paragraph (2) of this subsection.~~

~~(2) Quarterly filing. A dealer who owes an average, as computed for the year, of less than $50 for a calendar month or less than $150 for a calendar quarter is required to file a return and remit the collected fees on or before the 20th day of the month following the end of the calendar quarter. The comptroller will notify a dealer when the report and payment may be submitted quarterly.~~

(e) Remittance of the fee.

(1) On or before the 20th day of the month following each reporting period, every person required to collect the fee shall file a consolidated return for all businesses operating under the same taxpayer number and remit the total fee due.

~~(2) A dealer may retain $ .025 of each battery fee reported and remitted with his return.~~

(2)[~~(3)~~] The returns must be signed by the dealer required to file the return or by the dealer's duly authorized agent[~~, but need not be verified by oath~~].

(f) Discount. A dealer who is required to collect the battery sales fee may retain $.025 from each sale made.

(g)[(f)] Records required.

(1) Invoices or other records must be kept for at least four years after the date on which the invoices or records are prepared.

(2) The comptroller or an authorized representative has the right to examine any records or equipment of any person liable for the fee in order to verify the accuracy of any return made or to determine the fee liability in the event no return is filed.

(h)[(g)] Exemptions.

(1) Sales for resale are not subject to the fee.

(2) The sale of a battery that under the sales contract is shipped to a point outside Texas is not subject to the fee imposed by this section if the shipment is made by the seller by means of:

(A) the facilities of the seller;

(B) delivery by the seller to a carrier for shipment to a consignee at a point outside this state; or

(C) delivery by the seller to a forwarding agent for shipment to a location in another state of the United States or its territories or possessions.

(3) Exports beyond the territorial limits of the United States are not subject to the fee. Proof of export may be shown only by:

(A) a copy of a bill of lading issued by a licensed and certificated carrier showing the seller as consignor, the buyer or purchaser as consignee, and a delivery point outside the territorial limits of the United States;

(B) documentation provided by a licensed United States customs broker certifying that delivery was made to a point outside the territorial limits of the United States;

(C) formal entry documents from the country of destination showing that the battery was imported into a country other than the United States. For the country of Mexico, the formal entry document is the pedimento de importaciones document with a computerized, certified number issued by Mexican customs officials; [or]

(D) a copy of the original airway, ocean, or railroad bill of lading issued by a licensed and certificated carrier which describes the items being exported and a copy of the freight forwarder's receipt if the freight forwarder takes possession of the property in Texas; or[.]

(E) a purchaser's blanket maquiladora exemption certificate and a copy of the purchaser's maquiladora export permit provided to the seller as required under §3.358 of this title (relating to Maquiladoras).

(4) There is no exemption provided for any organization or governmental agency, except as provided in paragraph (5) of this subsection.

(5) The United States, its instrumentalities, and agencies are exempted from the battery sales fee.

(6) Sales for disposal or reclamation are not subject to the fee.

(7) The battery sales fee does not apply to a sale of a battery made by a dealer when[A battery is exempt from this fee if] it meets all of the following criteria:

(A) the ampere-hour rating of the battery is less than 10 ampere-hours;

(B) the sum of the dimensions of the battery (height, width, and length) is less than 15 inches; and

(C) the battery is sealed so that no access to the interior of the battery is possible without destroying the battery.

(i)[(h)] Replacements covered by a warranty or service contract.

(1) The replacement of a battery under a manufacturer's warranty, without an additional charge to the purchaser, is not the sale of a battery to the purchaser. This replacement, therefore, is not subject to the fee. If there is a charge to the customer for the replacement (such as a pro rata warranty adjustment), then the customer must pay the battery sales fee.

(2) The replacement of a battery under an extended warranty or a service contract, for which the customer pays an extra charge, depends on the terms of the contract.

(A) If the replacement is free of charge to the customer, the dealer is responsible for paying the fee.

(B) If there is a charge to the customer for the replacement, the customer must pay the fee.

(j) Penalty. A person who does not file a report as provided by this section, or who possesses a fee collected or payable under this section and does not timely remit the fee to the comptroller, shall pay a penalty of 5.0% of the amount of the fee due and payable. If the person does not file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional 5.0% of the amount of the fee due and payable.

(k) Interest. Interest accrues on the unpaid fee due beginning 60 days after the due date and ends the day on which the fee is paid.

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 March 2, 2020.

TRD-202000950
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 475-0387

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# PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

## CHAPTER 23. ADMINISTRATIVE PROCEDURES

**34 TAC §23.5**

The Teacher Retirement System of Texas (TRS) proposes amendments to rule §23.5, relating to nomination for appointment to the Board of Trustees.

BACKGROUND AND PURPOSE

TRS proposes amendments to TRS Rule §23.5, relating to nomination for appointment to the Board of Trustees. The proposed amendments are necessary to address minor issues identified in the most recent election and clarify terminology to update TRS

election practices. TRS proposes these amendments at this time in order for the amendments to be effective prior to June 2020, which is the beginning of the nomination period for the 2021 Trustee election.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the amended rule will be to remedy minor issues identified in the most recent election and clarify terminology to update TRS election practices. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amended rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rule is in effect, the proposed amendments will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; 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 affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rule, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rule because it does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Government Code §825.002, which provides that nominees for appointment to the Board of Trustees must be nominated at an election conducted under rules adopted by the Board of Trustees; and Texas Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed amendments affect the following statutes: §825.002, Government Code, which establishes the method of nominating candidates for positions on the Board of Trustees and for appointment by the Governor; §825.0031, Government Code, which provides that appointments to the TRS Board of Trustees shall be made without regard to race, color, disability, sex, religion, age, or national origin; §825.004, Government Code, which describes how a vacancy on the Board of Trustees will be filled; and §821.001, Government Code, which defines "employee" and "employer" for TRS purposes.

*§23.5. Nomination for Appointment to the Board of Trustees.*

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

(1) Retiree - a former member who has retired under Chapter 824, Government Code and is currently entitled to receive service retirement benefits or disability retirement benefits, disregarding any forfeiture of benefits under Government Code §824.601.

(2) Member - A TRS member whose membership has not terminated and who has not elected to participate in the Optional Retirement Program.

(3) TRS - the Teacher Retirement System of Texas

(4) Board of trustees - the Board of Trustees of TRS

(b) [~~(a)~~] During any calendar year in which the term of office expires for one of the four trustees of TRS [~~the Teacher Retirement System of Texas (TRS or system)~~] for which an election is required, TRS will conduct the required election between March 15 and May 5 of that calendar year to select the nominees to be considered by the governor for appointment to the position. To be a nominee, an individual must first either qualify as a candidate in a nominee election in accordance with subsection (d) of this section or be elected as a nominee as a write-in candidate under subsection (k) of this section.

(c) TRS may designate an agent to implement or monitor any procedure under this section.

(d) An individual may qualify as a candidate on the ballot for a nominee election under this section if the individual meets the applicable nomination eligibility requirement under subsection (e) of this section and submits an official petition that meets the requirements of subsection (f) of this section. If more than one position is open during the same election period, an individual may be a candidate for only one of the positions.

(e) To be eligible for nomination under this section, an individual must meet the following requirements:

(1) To be a public school district nominee, the individual must be a member currently employed by a public school district, a charter school, or a regional education service center in a position eligible for TRS membership.

(2) To be an at-large nominee, the individual must be either a retiree or a member currently employed by an institution of higher

education, a public school district, a charter school, or a regional education service center, in a position eligible for TRS membership.

(3) To be a retiree nominee, the individual must be a retiree.

(f) Official petitions must be on a form prescribed by TRS and include the following:

(1) the name and expiration date of the appointment sought;

(2) the signature of 250 individuals who meet the requirements to vote in the election for the nomination sought by the candidate at the time the individual signed the petition;

(3) the date each individual signed the petition;

(4) the printed or typed name of each individual who signed the petition and the first five digits of each individual's current residential zip code; and

(5) any additional information required to identify the individuals signing the petition.

(g) An individual may sign more than one candidate's petition in any election in which the individual is eligible to vote. The signature of an individual shall not be counted on a petition for a candidate in an election in which the individual is ineligible to vote.

[(b) Members of the system who are currently employed by a public school district, a charter school, or a regional education service center may have their names listed on the official ballot as candidates for nomination to a public school district position by filing an official petition bearing the signature, printed or typed name, first five digits of the member's current residential zip code, and last four digits of the Social Security numbers of 250 members of the retirement system whose most recent credited service is or was performed for a public school district, a charter school, or a regional education service center.]

[(c) Retirees may have their names listed on the official ballot as candidates for nomination to the retiree position by filing an official petition bearing the signature, printed or typed name, first five digits of the retiree's current residential zip code, and last four digits of the Social Security numbers of 250 retirees of the system.]

[(d) Retirees or members of the system who are currently employed by either a public school district, a charter school, a regional education service center, or an institution of higher education may have their names listed on the official ballot as candidates for nomination to the at-large position by filing an official petition bearing the signature, printed or typed name, first five digits of the signatory's current residential zip code, and last four digits of the Social Security numbers of 250 signatories who are retirees or who are members of the system whose most recent credited service is or was performed for an institution of higher education, a public school district, a charter school, or a regional education service center.]

(h) [(e)] Official petition forms, as required under subsection (f) [subsections (b), (c), and (d)] of this section, shall be available from the Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Official petitions must be received by TRS [the system] by January 25 [20] of the calendar year in which the election is to be held. If January 25 [20] is a Saturday, Sunday or legal holiday, the filing period is extended to include the next day that is not a Saturday, Sunday or legal holiday.

(i) An individual may vote in any election under this section if the individual meets the following requirements at the time of voting:

(1) For elections for public school district nominees, individuals must be members whose most recent credited service is or was performed for a public school district, a charter school, or a regional education service center.

(2) For elections for retiree nominees, individuals must be retirees.

(3) For elections for at-large nominees, individuals must be either a retiree or a member whose most recent credited service is or was performed for an institution of higher education, a public school district, a charter school, or a regional education service center.

[(f) A qualified member who is employed by a public school district, a charter school, a regional education service center, or an institution of higher education or who is a retiree may sign more than one candidate's petition in any election in which the member or retiree, respectively, is eligible to vote. The signature of a member or retiree shall not be counted on a petition for a candidate in an election in which the member or retiree is ineligible to vote.]

(j) [(g) ] Upon verification of petitions by TRS [the system] or its designated agent, the names of qualified candidates shall be represented on the ballot. [The system may designate an agent to implement and to monitor the voting process.] Voting may be conducted by paper ballot or in another manner established by the board of trustees under subsection (l) [(h)] of this section[, including by telephone or other electronic means. Upon request by a qualified voter, the system or its designated agent shall provide the voter the means to vote for a candidate who is not represented on the ballot, and such means shall be in a manner consistent with the method by which the election is conducted]. Voting instructions shall be sent on or before March 15 of the year in which the election is held to the last known home address of each [active] member or retiree or to an electronic mail address designated by the [active] member or retiree. To be counted, a completed ballot must be received by TRS [the system] or its designated agent by May 5 of the year in which the election is held and in accordance with the provided voting instructions. If May 5 is a Saturday, Sunday or legal holiday, the voting period is extended to include the next day that is not a Saturday, Sunday or legal holiday. The executive director shall cause the votes to be counted. Names of the candidates for each position receiving the three highest number of votes shall be certified by the executive director as the nominees to be considered by [to] the governor for appointment.

(k) TRS or its designated agent shall provide the voter the means to vote for a candidate who is not represented on the ballot. A candidate not represented on the ballot must be eligible for the nomination under subsection (e) of this section and receive a minimum of 250 votes to be considered as one of the three candidates who received the highest number of votes.

(l) [(h)] The board of trustees may establish the manner by which TRS [the system] or its designated agent conducts the election, provided that the manner of voting is secure, effective, verifiable, and is conducted using:

(1) paper ballot;

(2) telephone or other electronic means; or [, including an automated telephone system;]

[(3) electronic mail, an internet-enabled service or other application or other electronic means of transmission; or]

(3) [(4)] a combination of paper ballot and one or more of the means authorized under this subsection.

(m) [(i)] When a vacancy in a public school district position, at-large position, or retiree position occurs for a reason other than the expiration of a term of office, the board of trustees may conduct an election at any time it determines appropriate.

(n) [(j)] In conducting an election under subsection (m) [(i)] of this section, the board of trustees shall establish deadlines for filing petitions, the date of mailing ballots, the date for returning ballots, and any other necessary details related to the election process, and the executive director or a designee shall ensure that each candidate has met the requirements of subsection (d) of this section to qualify to be on the ballot for nomination.[:]

[(1) that each nominee placed on the ballot for any public school district position vacancy is employed by a public school district, a charter school, or a regional education service center and has submitted an official petition consistent with subsections (b) and (e) of this section;]

[(2) that each nominee placed on the ballot for any retiree position vacancy is a retiree of the system and has submitted an official petition consistent with subsections (c) and (e) of this section; and]

[(3) that each nominee placed on the ballot for any at-large position vacancy is employed by a public school district, a charter school, a regional education service center, or an institution of higher education or is a retiree of the system, and has submitted an official petition consistent with subsections (d) and (e) of this section.]

[(k) Beginning on September 1, 2011 the higher education trustee position has been expanded and is referred to as the at-large position. If a vacancy in the institution of higher education trustee position appointed by the governor on August 30, 2011 occurs for a reason other than the expiration of the term of office, the board of trustees shall conduct an election in the same manner it would to fill any other vacancy. The executive director or a designee shall ensure each nominee placed on the ballot is a retiree or is employed by a public school district, a charter school, a regional education service center, or an institution of higher-education and that each nominee has submitted an official petition consistent with subsections (d) and (e) of this section. This subsection expires August 31, 2017 or upon the appointment of an at-large trustee, whichever occurs earlier.]

[(l) When more than one position on the board of trustees is being contested during the same election period, each candidate shall specify on his or her official petition which position he or she is seeking by indicating the name and expiration date of the office sought. Petitions that fail to specify the position sought shall be returned to the candidates for completion if time permits. Failure to designate a specific position by the deadline shall disqualify the candidate. When more than one position is contested during the same election period, a person may be a candidate for only one of the positions.]

(o) [(m)] Terms of board members run for six years and expire August 31. Terms expire on the following dates and every six years thereafter:

(1) Public school district appointment, Place One, August 31, 2025 [2013].

(2) Gubernatorial appointment, Place One, August 31, 2025 [2013].

(3) State Board of Education appointment, Place One, August 31, 2025 [2013].

(4) Public School district appointment, Place Two, August 31, 2021 [2015].

(5) Gubernatorial appointment, Place Two, August 31, 2021 [2015].

(6) State Board of Education appointment, Place Two, August 31, 2021 [2015].

(7) At-large appointment, [formerly the Higher Education appointment, ]August 31, 2023. [If there is a vacancy in the Higher Education appointment prior to August 31, 2017, then the remainder of the term that expires August 31, 2017 will be filled with an at-large appointment.]

(8) Retiree appointment, August 31, 2023 [2017].

(9) Gubernatorial appointment, Place Three, August 31, 2023 [2017].

[(10) Higher education appointment, August 31, 2017. This paragraph expires August 31, 2017 or upon the appointment of an at-large trustee, whichever occurs earlier.]

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 February 28, 2020.

TRD-202000933
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 542-6569

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# TITLE 43. TRANSPORTATION

## PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

### CHAPTER 3. PUBLIC INFORMATION

### SUBCHAPTER B. ACCESS TO OFFICIAL RECORDS

**43 TAC §§3.11 - 3.13**

The Texas Department of Transportation (department) proposes amendments to §§3.11 - 3.13, concerning access to official records.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments to §3.11, Definitions, delete the definitions of "political subdivision" and "special district," as these definitions are not used in the subchapter. Amendments to §3.11 also modify the definition of "written request" to update the definition to comply with the changes made by this rulemaking in §3.12 and to remove the reference to facsimile transmission.

Amendments to §3.12, Public Access, modify the manner in which a request for records under Government Code, Chapter 552, the Texas public information law, may be made to the department. Government Code, §552.234, which was added by S. B. No. 944, Acts of the 86th Legislature, Regular Session, provides that a written request for public information must be made by United States mail, email, hand delivery, or another appropriate method approved by the agency's governing body and allows a governmental body to designate addresses for receipt of open records requests. The amendments provide that a person may send a request by United States mail or by hand delivery to any district or division office. For email requests, the amended

section continues to authorize email requests through the department's Internet website and adds a specified email address as another option. Requests will no longer be accepted by facsimile transmission.

Amendments to §3.13, Waiver of Fees for Certain Copies of Official Records, provide clarity concerning the waiver of fees for official records. Subsection (a) currently requires the department to provide without charge records that are relevant to a filed internal employee grievance, with the General Counsel of the department determining which records are relevant. The amendments clarify that on request, the department will provide without charge to an official party to an internal complaint relating to discrimination, harassment, retaliation, or unprofessional conduct copies of documents that are relevant to that complaint. The amendments also provide that the division responsible for performing the complaint investigation, rather than the department's general counsel, will determine which records are relevant because that division will have all information relating to the investigation and can make the determination more efficiently and economically.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules. Neither an increase nor a decrease in the number of open records requests is anticipated as a result of the changes even though fax requests will no longer be accepted. The number of fax requests has been very small and if a requestor improperly submits a request, the department assists the requestor by suggesting the appropriate corrections for submission. No change is anticipated in the number of internal employee complaint documents for which fees are waived.

LOCAL EMPLOYMENT IMPACT STATEMENT

Jeff Graham, General Counsel, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Graham has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be greater transparency because the rules provide the public with several clear and accessible methods from which to choose to make an open records request and consistency in the department's application of Texas public information law.

COSTS ON REGULATED PERSONS

Mr. Graham has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government 3 Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Graham has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not neither positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Jeff Graham has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§3.11 - 3.13 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Official Records." The deadline for receipt of comments is 5:00 p.m. on April 13, 2020. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department and Government Code, §552.234, which authorizes the commission to approve one or more methods of delivery of requests for public information in addition to those required by statute and to designate one electronic mail address for receiving requests for public information.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, §552.234.

*§3.11. Definitions.*

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

(1) Commission--Texas Transportation Commission.

(2) Department--Texas Department of Transportation.

(3) District engineer--The chief administrative officer of a district of the department.

(4) Division director--The chief administrative officer of a division or office of the department.

[(5) Political subdivision--A county, municipality, local board, or other governmental body of this state having authority to provide a public service.]

[(6) Special district--A political subdivision of the state established to provide a single public service within a specific geographical area.]

(5) [(7)] Written request--A request made in writing, including a request made by electronic means [mail, electronic media, and facsimile transmission].

*§3.12. Public Access.*

(a) Request for records. A person seeking records under Government Code, Chapter 552, Public Information, must [public information shall] submit a request in writing to the department. The department will accept only a written request that is delivered to the officer for public information or a person designated by that officer and that is made using one of the following methods:

(1) United States mail to any district or division office;

(2) hand delivery to any district or division office;

(3) electronic mail to TxDOT_ORR@txdot.gov; or

(4) electronic submission through the open records portal on the department's Internet website, located at http://www.txdot.gov

[(1) A request made by other than electronic mail may be submitted to:]

[(A) the department's General Counsel;]

[(B) the department's officer for public information; or]

[(C) the district engineer or division director of the district or division responsible for the information.]

[(2) A request made by electronic mail shall be sent via the department's Internet site, located at http://www.txdot.gov].

(b) Production of records. Except as provided in subsections (d), (e), and (f) of this section, the department will provide copies or promptly produce official department records for inspection, duplication, or both. If the requested information is unavailable for inspection at the time of the request because it is in active use or otherwise not readily available, the department will certify this fact in writing within 10 business days after the date the information is requested to the applicant and specify a date within a reasonable time when the record will be available for inspection or duplication.

(c) Examination of information.

(1) A person requesting to examine official records in the offices of the department must complete the examination without disrupting the normal operations of the department and not later than the 10th day after the date the records are made available to the person. Upon written request, the department will extend the examination period by increments of 10 days, not to exceed a total of 30 days.

(2) The inspection of records may be interrupted by the department if the records are needed for use by the department. The period of interruption will not be charged against the requestor's 10-day period to examine the records.

(3) A person may not remove an original copy of an official department record from the offices of the department.

(d) Request for opinion. If the department considers that requested records fall within an exception under the Government Code, and that the records should be withheld, the department will ask for a decision from the attorney general about whether the records are within that exception if there has not been a previous determination about whether the records fall within one of the exceptions. The request for a decision from the attorney general will be made by the 10th business day after the date of receiving the written request.

(e) Certified records. In accordance with Transportation Code, §201.501, the following officials shall serve as the executive director's authorized representatives for the purpose of certifying official department records.

(1) The department's chief clerk to the commission or assistant chief clerk may certify commission minute orders. The executive director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

(2) Other official records of the department may be certified by the district engineer, division director, or other department official having official custody of the records. A district engineer or division director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

(f) Correction of Information. An individual may request the correction of information about that individual in the following manner:

(1) A request to correct information may be submitted in writing or through the department's Internet site, located at http://www.txdot.gov. The request must be directed to the district engineer or division director of the district or division responsible for the information.

(2) The request must include the individual's name, address, and telephone number.

(3) The request must identify the record to be corrected with as much specificity as reasonably possible. The department will not process requests that do not identify particular records.

(4) This subsection applies only to a request to correct information that relates directly to an individual, including the individual's name, address, telephone number, and similar information.

(5) The department may contact the individual or take other steps as necessary to obtain additional information with regard to the record to be corrected, the nature of the correction to be made, the reasons that the current information maintained by the department is incorrect, or other relevant matters.

(6) The district engineer or division director responsible for the information will determine if the current information maintained by the department is incorrect.

(A) If the current information maintained by the department is determined to be incorrect, the department's records will be corrected. The district engineer or division director responsible for the information will determine the manner in which the correction will be made.

(B) If the current information maintained by the department is determined to be correct, the request for correction will be noted in connection with the relevant record.

(C) The department may refuse to alter records that were correct at the time they were first prepared, but are no longer correct. If the department refuses to alter a record that was correct at the time it was first prepared, but is no longer correct, the request for correction will be noted in connection with the relevant record.

(7) This subsection does not authorize the cancellation, issuance, or alteration of any official record, including a title, a license, or a permit. Application for a new official record must be made in the manner required by law.

*§3.13. Waiver of Fees for Certain Copies of Official Records.*

(a) On request, [~~When an employee files an internal employee grievance,~~] the department will provide copies of relevant records free of charge to an official party to an internal employee complaint regarding discrimination, harassment, retaliation, or unprofessional conduct [~~the proceeding~~]. The division responsible for performing the complaint investigation [~~department's General Counsel~~] will determine which records are relevant under this subsection.

(b) The department may waive or reduce the fees charged for copies of records if the executive director or the district engineer or division director with jurisdiction over the records determines a waiver to be in the public interest because providing the records primarily benefits the general public or because the records can be produced at a minimal expense to the public.

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 February 27, 2020.

TRD-202000887
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 463-8630

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# PART 16. WILLIAMSON COUNTY TAX ASSESSOR-COLLECTOR

## CHAPTER 435. MOTOR VEHICLE TITLE SERVICES

### 43 TAC §435.14

The Williamson County Tax Assessor-Collector proposes new 43 TAC §435.14, concerning the regulation of motor vehicle title services, regarding the suspension of a motor vehicle title service license. The Williamson County Tax Assessor-Collector, Larry Gaddes, has linked these services to document fraud and vehicle theft. Texas Transportation Code, Chapter 520, Subchapter E regulates motor vehicle title services in counties with a population of more than 500,000. Subchapter E requires motor vehicle title services in these counties to be registered, licensed, and required to maintain records for inspection.

Mr. Gaddes has considered the impact of the proposed section on government growth during the first five years that the rule would be in effect, and has determined that: (1) it creates a government program; (2) implementation will not require the creation or elimination of employee positions; (3) implementation will not require an increase or decrease in any future appropriations from the Texas legislature; (4) it requires an increase in payment of fees to the Tax Assessor-Collector which will offset the costs of regulating motor vehicle title services to reduce vehicle theft and related document fraud; (5) the proposed section creates a new regulation in accordance with Chapter 520, Subchapter E of the Texas Transportation Code; (6) it does not expand, limit or repeal an existing regulation; (7) as a new regulation, it increases the number of individuals subject to its applicability; and (8) it does not affect this state's economy.

The Williamson County Tax Assessor-Collector has received motor vehicle title services records from approximately 8 - 10 distinct entities per year since 2017. Nearly all of these entities are small businesses, many of which are micro-businesses. The economic costs for persons who are required to comply with this section will be the license fee, which is due upon application and is not refundable. Small businesses that comply with the section may experience increased business opportunities because non-compliant competitors will be sanctioned. Mr. Gaddes does not believe that the adopted section will have an adverse economic effect on rural communities.

In preparing the proposed section, Mr. Gaddes has considered processes which require less information from applicants, informal tracking of records, and random document confirmation. However, study and experience lead to the conclusion that public welfare and safety would benefit from clear, consistent, and published standards.

Comments on the proposed new sections may be submitted to Matt Johnson, Williamson County Chief Deputy, Williamson County Tax Office, 904 S. Main St. Georgetown, Texas 78626. The deadline for all comments is 30 days after publication in the *Texas Register.*

Statutory Authority. The Williamson County Tax Assessor-Collector proposes the new section pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

This proposal does not affect any other statutes, articles or codes.

*§435.14. Suspension.*

(a) Suspension for unpaid fines/fees. The Williamson County Tax Assessor-Collector may suspend a license if the licensee or any applicant for the license is delinquent in the payment of criminal fines or fees owed to Williamson County.

(1) Suspension notice. The Williamson County Tax Assessor-Collector shall send notice of suspension, which shall include a statement identifying the unpaid fines/fees, by certified mail. Notice of suspension of a Runner license under this section shall be sent to the most recent home address on file for the licensee. Notice of a Title Service license suspension under this section shall be sent to the attention of "all" MVTS partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file for the licensee. Suspension shall become effective upon the date notice is sent. Failure to pay the fines/fees identified in the suspension notice within 30 days of the suspension date shall result in revocation of the license.

(2) A license suspended under this subsection will be reinstated if, within 30 days of the suspension's effective date, the licensee provides the Williamson County Tax Assessor-Collector with notice that includes a certified copy of the Williamson County invoice

showing that the fines/fees identified in the suspension notice have been paid in full. The licensee may deliver such notice in writing by certified mail, return receipt requested, in which case notice will be considered received by the Williamson County Tax Assessor-Collector on the date the return is signed. The licensee may deliver such notice in person by presenting a certified copy of the paid invoice at a Williamson County Tax Assessor-Collector location, in which case notice shall be considered received when the Williamson County Tax Assessor-Collector issues the licensee a copy of the file-stamped invoice submitted. If the Williamson County Tax Assessor-Collector becomes aware that, within 30 days of suspension, the fines/fees identified in the suspension notice were paid in full, the Williamson County Tax Assessor-Collector is not required but may elect to reinstate the suspended license without notice from the licensee.

(b) Automatic Suspension.

(1) A Title Service license shall be automatically suspended upon the addition or replacement of any of the Title Service's principals, partners, officers, owners or directors. A Title Service shall immediately deliver written notice of any such addition or replacement and the license issued under §435.12(b) of this chapter (relating to License Renewal) to the Williamson County Tax Assessor-Collector by certified mail, return receipt requested.

(2) Within ten (10) days of becoming a new principal, partner, owner, officer or director in a Title Service described in paragraph (1) of this subsection, a person may submit an MVTS application that meets the criteria set forth in §435.5 of this chapter (relating to Submission of Application) and §435.6 of this chapter (relating to Completion of Motor Vehicle Title Service License Application). If the application is granted following completion of the process set forth in §435.8 of this chapter (relating to Application Review/Applicant Background Check/Applicant Interview), the license shall become effective again on the date notice is sent under §435.8(c)(2) of this chapter. In this event, the license shall expire on the anniversary or its original effective date.

(3) If the completed application of a prospective principal, partner, owner, officer or director in a licensed MVTS is received, reviewed and approved in accordance with §§435.5, 435.6, and 435.8 of this chapter before the prospective position is actually assumed, the license will not become ineffective under paragraph (1) of this subsection when the applicant assumes that position.

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 February 26, 2020.

TRD-202000878
Larry Gaddes
Williamson County Tax Assessor-Collector
Williamson County Tax Assessor-Collector
Earliest possible date of adoption: April 12, 2020
For further information, please call: (512) 943-1641

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINI STRATION

## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES

### SUBCHAPTER J. PURCHASED HEALTH SERVICES

### DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

**1 TAC §355.8201**

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8201, concerning Waiver Payments to Hospitals for Uncompensated Care. Section §355.8201 is adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 25). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to eliminate the requirement that a secondary reconciliation be performed for a hospital that submitted a request for an adjustment to cost and payment data for its UC application in demonstration year (DY) 2 (October 1, 2012, to September 30, 2013). The UC applicants did not have the benefit of fully knowing the consequences of requesting an adjustment before they submitted their UC applications. The adjustments were requested prior to the effective date of the rule amendment that required a secondary reconciliation process to occur if cost and payment data adjustments were requested.

COMMENTS

The 31-day comment period ended February 3, 2020.

During the comment period, HHSC received five comments regarding the proposed rule from Parkland Health & Hospital System, Texas Children's Hospital, Tenet Healthcare, Teaching Hospitals of Texas, and Universal Health Services, Inc. A summary of comments relating to the §355.8201 and HHSC's responses follow.

Comment: All commenters support the proposed amendment.

Response: HHSC appreciates the comments in support of the proposal. No changes were made in response to the comments.

Comment: Two commenters identified that HHSC should consider additional amendments because of the impact the *Children's Hospital Association of Texas, et. al. v. Azar* lawsuit would have on the secondary reconciliation process of other demonstration years. The commenters stated that because of the rulings there would be a difference in the methodology used to compute estimated hospital costs and the methodology used for the final cost calculation. The commenters were concerned that applying the different methodologies could result in recoupments following the reconciliation.

Response: HHSC will take these comments under advisement, but at this time declines to make further amendments to the secondary reconciliation provision of the rule because it does not yet have complete information about the methodology the federal government plans to use for the affected years for auditing purposes.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

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 February 26, 2020.

TRD-202000874
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: March 17, 2020
Proposal publication date: January 3, 2020
For further information, please call: (512) 424-6863

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## TITLE 10. COMMUNITY DEVELOPMENT

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

### CHAPTER 1. ADMINISTRATION

### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

**10 TAC §1.23**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP), without changes to the text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8139). The rule will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2020 SLIHP.

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. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2020 SLIHP, as required by Tex. Gov't Code §2306.0723.

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 in order to adopt by reference the 2020 SLIHP.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate 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 section would be an updated rule under separate action, in order to adopt by reference the 2020 SLIHP. 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 public comment period for the proposed repeal and proposed new rule was held between December 27, 2019, and January 15, 2020. The public comment period for the draft 2020 SLIHP was held between December 16, 2019, and January 15, 2020. A public hearing for the draft 2020 SLIHP was held on December 19, 2019, in Austin, TX. Written comments were accepted by mail, email, and facsimile. While the Department received two public comments on the draft 2020 SLIHP, no comments were received specifically on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2020 SLIHP and the final order adopting the repeal on February 27, 2020.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and §2306.0723, which requires the SLIHP be considered a rule.

Except as described herein the repealed section 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 March 2, 2020.

TRD-202000944
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 22, 2020
Proposal publication date: December 27, 2019
For further information, please call: (512) 463-7961

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**10 TAC §1.23**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP), without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8140). The rule will not be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2020 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2020 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2018, through August 31, 2019).

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

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

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

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

1. The new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2020 SLIHP, as required by Tex. Gov't Code §2306.0723.

2. The new 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 new rule does 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 new rule will not expand, limit, or repeal an existing regulation.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.0723.

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. There are no small or micro-businesses subject to the new rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the new rule will adopt by reference the 2020 SLIHP, 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 the new rule will adopt by reference the 2020 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

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 the rule will adopt by reference the 2020 SLIHP 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 section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2020 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

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 new rule will adopt by reference the 2020 SLIHP.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the proposed new rule was held between December 27, 2019, and January 15, 2020. The public comment period for the draft 2020 SLIHP was held between December 16, 2019, and January 15, 2020. A public hearing for the draft 2020 SLIHP was held on December 19, 2019, in Austin, TX. Written comments were accepted by mail, email, and facsimile. While the Department received two public comments on the draft 2020 SLIHP, no comments were received specifically on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2020 SLIHP and the final order adopting the new rule on February 27, 2020.

STATUTORY AUTHORITY. The new section is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and §2306.0723, which requires the SLIHP be considered a rule.

Except as described herein the proposed new section 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 March 2, 2020.

TRD-202000945
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 22, 2020
Proposal publication date: December 27, 2019
For further information, please call: (512) 463-7961

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# TITLE 13. CULTURAL RESOURCES

## PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

### CHAPTER 2. GENERAL POLICIES AND PROCEDURES

### SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

**13 TAC §2.51**

The Texas State Library and Archives Commission (commission) adopts amendments to 13 TAC §2.51, Public Records Fees. The amendments are adopted with clarifying, non-substantive changes to the text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 258). The rule will be republished.

EXPLANATION OF AMENDMENTS. The amendments update and clarify the commission's rule regarding charges for providing copies and reproductions of public records. The proposed amendments also implement Management Action 1.3 in the Sunset Advisory commission Staff Report with Final Results, 2018-2019, 86th Legislature, directing the commission to adopt a fee schedule in accordance with the Public Information Act (PIA) by December 1, 2019.

The amendments clarify the charges for reproductions of materials from the commission's collections of library and archival materials, copies of public records of other agencies stored in the State Records Center, and commission records provided in response to PIA requests. The commission will charge the fees established by the Office of the Attorney General (OAG) for responding to PIA requests, including charges for labor, overhead, computer programming, computer resource time, and remote document retrieval, when applicable. The commission will also charge the specific amounts specified in the rule or listed on the fee schedule for reproductions of library and archival materials.

Government Code, §552.261 authorizes charges for providing copies of public information that reasonably include all costs related to reproducing the public information, including costs of materials, labor, and overhead. Government Code, §552.262 requires the OAG to adopt rules for use by each governmental body in determining charges for providing copies and making public information available. Under Texas Administrative Code (TAC) §70.3, the OAG specifies certain standard charges, such as $0.10 per page for standard paper copies, but also authorizes agencies to charge actual cost for other items. The amendments and the specific amounts listed on the commission's fee schedule reflect both the OAG's standard costs and the commission's actual costs for reproducing certain information.

The amendments clarify that the commission will maintain a fee schedule outlining charges and will review the schedule annually. The amendments also increase the charge for certification of copies from $1 per instrument to $5 per instrument (may include multiple pages but only one certification) or $1 per page if certification is required on each page ($5 minimum). This amount more appropriately covers the staff time involved in certifying copies and is consistent with the amount several other state agencies charge for certification. It is also considerably less than the amounts charged by many other state agencies for certification. Amendments also update the charge for duplication of non-standard materials from the archival collections to be consistent with statute - actual commercial reproduction cost plus 25%.

SUMMARY OF COMMENTS. No comments were received regarding the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §552.230, which authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied; and, more specifically, Government Code, §441.193, which provides the commission shall adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission; Government Code, §441.196, which provides the commission may sell copies of state archival records and other historical resources in its possession at a price not exceeding 25 percent above the cost of publishing or producing the copies; and Government Code, §603.004, which authorizes the state librarian to charge for a photographic copy a fee determined by the Texas State Library and Archives Commission with reference to the amount of labor, supplies, and materials required.

*§2.51. Public Record Fees.*

(a) The Texas State Library will charge the fees established by the Office of the Attorney General at 1 TAC §§70.1 - 70.12 (relating to Cost of Copies of Public Information) and the amounts described in subsection (b) of this section for providing any person the following:

(1) Reproductions of materials from its collections of library and archival materials that are maintained for public reference;

(2) Copies of public records of other agencies stored in the State Records Center; and

(3) Records of the commission.

(b) The Texas State Library will maintain a fee schedule outlining the charges for providing information to any individual and review the schedule annually. In addition to the fees described in subsection (a) of this section and listed on the fee schedule, the library will charge as follows:

(1) Certification of copies is $5.00 per instrument, which may include several pages with certification required only once. If certification is requested on each page, the cost is $5 per instrument if the instrument consists of 5 pages or less or $1 per page if the instrument consists of more than 5 pages.

(2) If a customer requests items printed from digital information resources, the items will be billed at the page rate for paper copies.

(3) If a customer requests printing of large format materials held in the Texas State Archives, the charge will be assessed at an established rate available on the agency fee schedule.

(4) The charge for duplication of non-standard materials from the archival collections is the actual commercial reproduction cost plus 25% of that cost.

(5) If any materials must first be digitized prior to duplication, an additional fee to cover the cost of digitization, available on the agency fee schedule, will be charged.

(6) A customer will be billed for third party access or use charges. Examples of services where use charges might occur include, but are not limited to:

(A) Digital information resources available through online services; or

(B) Document delivery or interlibrary loan services for providing materials or copies.

(7) The minimum charge for any service requiring preparation of an invoice is $1.00.

(c) Reproduction of copyrighted materials will be carried out in conformance with the copyright law of the United States (Title 17, United States Code).

(d) The library will charge for labor, overhead, computer programming, computer resource time, and remote document retrieval, when applicable, as authorized by the rules established by the Office of the Attorney General.

(e) The library will not provide copies of or access to the records of other agencies housed in the State Records Center without written permission of the agency.

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 February 27, 2020.

TRD-202000879
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: March 18, 2020
Proposal publication date: January 10, 2020
For further information, please call: (512) 463-5591

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### 13 TAC §2.76

The Texas State Library and Archives Commission (commission) adopts new 13 TAC §2.76, Enhanced Contract Monitoring. The new section is adopted without changes to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 260). The rule will not be republished.

EXPLANATION OF NEW SECTION. New §2.76 is adopted to implement Government Code, §2261.253(c), which requires each state agency to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

New §2.76 establishes that the commission will identify contracts that require enhanced contract or performance monitoring by considering several factors, including the total dollar amount of the contract, contract duration, vendor past performance, impacts of contract delay or failure, and the risk of fraud, waste, or abuse. The new section also provides direction for procedures and notification of serious issues or risks that are identified with respect to a monitored contract and states the exceptions for specific contract types that do not require enhanced monitoring.

SUMMARY OF COMMENTS. No comments were received regarding the proposed new section.

STATUTORY AUTHORITY. The new section is adopted under Government Code, §2261.253.

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

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5591

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## SUBCHAPTER C. GRANT POLICIES
## DIVISION 1. GENERAL GRANT GUIDELINES

### 13 TAC §§2.111, 2.117, 2.118

The Texas State Library and Archives Commission (commission) adopts amendments to 13 TAC §2.111, General Selection Criteria, 13 TAC §2.117, Grant Review and Award Process, 13 TAC §2.118, Decision Making Process. The amendments are adopted without changes to the text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 261). The rules will not be republished.

EXPLANATION OF AMENDMENTS. The amendments respond to directions from the Sunset Commission to adjust grant award criteria and scoring to better disperse grant funding to a wider pool of libraries.

The amendment to 13 TAC §2.111 adds to the general grant selection criteria consideration of improved access to funding for libraries that have not received grants from the agency within a specified time frame to be determined by the agency or with limited resources.

The amendment to 13 TAC §2.117 provides that a person may not serve as a peer reviewer for a grant category with which the reviewer is associated with an applicant or with an application, or who stands to benefit directly from an application.

The amendment to 13 TAC §2.118 allows the agency to award extra points to libraries that have not received a grant from the agency within a specified time frame to be determined by the agency or with limited resources.

SUMMARY OF COMMENTS. No comments were received regarding the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.135, which requires the Commission to establish a program of grants and adopt by rule the guidelines for awarding grants, and Government Code, §441.136, which allows the Commission to propose rules necessary to the administration of the program of state grants.

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

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Sarah Swanson
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For further information, please call: (512) 463-5591

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## CHAPTER 7. LOCAL RECORDS
## SUBCHAPTER D. RECORDS RETENTION SCHEDULES

### 13 TAC §7.125

The Texas State Library and Archives Commission (Commission) adopts amendments to 13 TAC §7.125, without changes to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 263). The rule will not be republished.

EXPLANATION OF AMENDMENTS. The Commission finds that the adoption of these amendments is necessary to keep the schedules up-to-date with current laws and administrative rules, and to improve the retention of public records.

The amendments update the Local Schedule EL to the 4th edition and make revisions to record series and guidance related to voter registration and election records based on statutory changes from the 85th Legislative Session, 2017 (Senate Bill 5) and 86th Legislative Session, 2019 (House Bill 2910). Amendments also remove obsolete and unnecessary language, update and correct statutory references, and clarify language as appropriate.

SUMMARY OF COMMENTS: No comments were received regarding the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.158, which requires the Commission to adopt records retention schedules for local governments by rule, and Government Code, §441.160, which allows the commission to revise records retention schedules.

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

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5591

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# TITLE 22. EXAMINING BOARDS

# PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

## CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

### 22 TAC §153.21

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.21, Appraiser Trainees and Supervisory Appraisers, without changes to the proposed text as published in the December 6, 2019, issue of the *Texas Register* (44 TexReg 7479). The rule will not be republished.

The amendments to §153.21 implement changes adopted by the Appraiser Qualifications Board (AQB) on November 1, 2019, which became effective on January 1, 2020. The amendments change the eligibility criteria for supervisory appraisers under subsection (b)(1) of this section. Under the amendments a certified appraiser must be in good standing and not have had, within the last three years, a certified appraiser credential canceled, surrendered in lieu of discipline, suspended, or revoked in any state for a substantive cause related to practice.

No comments were received on the amendments as published.

The amendments are adopted under Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

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

Filed with the Office of the Secretary of State on March 2, 2020.

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Chelsea Buchholtz
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: March 22, 2020
Proposal publication date: December 6, 2019
For further information, please call: (512) 936-3652

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### 22 TAC §153.40

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.40, Approval of Continuing Education Providers and Courses, with changes to the proposed text as published in the December 6, 2019, issue of the *Texas Register* (44 TexReg 7481). The rule will be republished.

Section 153.40 sets forth the criteria for approving continuing education providers and courses. The amendments implement statutory changes to Chapter 1103, Occupations Code, enacted by the 86th Legislature in SB 624 as part of TALCB's Sunset Review process, allowing TALCB to deny a renewal application if a continuing education provider is in violation of a TALCB order.

The amendments also define who is an "exempt provider"; substitute the term "renewal" for "subsequent approval"; define the

term "severe weather"; and allow continuing education providers to reschedule certain continuing education courses if a course must be cancelled due to circumstances beyond the provider's control, including severe weather or instructor illness. Under the amendments, a provider may reschedule certain continuing education courses without incurring additional fees by providing notice of the new course date to TALCB and offering the course in the same manner originally approved by TALCB.

The TALCB adopts the amendments with the following changes to the proposed text: In the renumbered subsection (a)(1) the words "or instructor" are removed, since the rule does not address approval of instructors; and in new subsection (b)(3) the word "an" is substituted for the word "a" to correct a grammatical error.

These changes as adopted do not change the nature or scope so much that the rule as adopted could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed rule.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Occupations Code §1101.153, which allows TALCB to adopt rules relating to the requirements for approval of a provider or course of continuing education, and SB 624 to implement Texas Occupations Code §1103.214, which took effect on September 1, 2019, and allows TALCB to deny a license or renewal if an applicant is in violation of a Board order.

*§153.40. Approval of Continuing Education Providers and Courses.*

(a) Definitions. The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A person seeking accreditation or approval to be an appraiser continuing education (ACE) provider.

(2) ACE--Appraiser continuing education.

(3) ACE course--Any education course for which continuing education credit may be granted by the Board to a license holder.

(4) ACE provider--Any person approved by the Board; or specifically exempt by the Act, Chapter 1103, Texas Occupation Code, or Board rule; that offers a course for which continuing education credit may be granted by the Board to a license holder.

(5) Classroom course--A course in which the instructor and students interact face to face, in real time and in the same physical location.

(6) Distance education course--A course offered in accordance with AQB criteria in which the instructor and students are geographically separated.

(7) Severe weather--weather conditions, including but not limited to severe thunderstorms, tornados, hurricanes, snow and ice, that pose risks to life or property and require intervention by government authorities and office or school closures.

(b) Approval of ACE Providers.

(1) A person seeking to offer ACE courses must:

(A) file an application on the appropriate form approved by the Board, with all required documentation;

(B) pay the required fees under §153.5 of this title; and

(C) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the continuing education provider is required to maintain by this subchapter.

(2) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(3) Exempt Providers. A unit of federal, state or local government may submit ACE course approvals without becoming an approved ACE provider.

(4) Standards for approval. To be approved by the Board to offer ACE courses, an applicant must satisfy the Board as to the applicant's ability to administer courses with competency, honesty trustworthiness and integrity. If an applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(5) Approval notice. An applicant shall not act as or represent itself to be an approved ACE provider until the applicant has received written notice of the approval from the Board.

(6) Period of initial approval. The initial approval of a CE provider is valid for two years.

(7) Disapproval.

(A) If the Board determines that an applicant does not meet the standards for approval, the Board will provide written notice of disapproval to the applicant.

(B) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Chapter 2001, Government Code, and Chapter 157 of this title. Venue for any hearing conducted under this section shall be in Travis County.

(8) Renewal.

(A) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for renewal for another two year period.

(B) Approval or disapproval of a renewal application shall be subject to the standards for initial applications for approval set out in this section.

(C) The Board may deny an application for renewal if the provider is in violation of a Board order.

(c) Application for approval of ACE courses. This subsection applies to appraiser education providers seeking to offer ACE courses.

(1) For each ACE course an applicant intends to offer, the applicant must:

(A) file an application on the appropriate form approved by the Board, with all required documentation; and

(B) pay the fees required by §153.5 of this title, including the:

*(i)* base fee; and

*(ii)* content review fee.

(2) An ACE provider may file a single application for an ACE course offered through multiple delivery methods.

(3) An ACE provider who seeks approval of a new delivery method for a currently approved ACE course must submit a new application and pay all required fees.

(4) The Board may:

(A) request additional information be provided to the Board relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information within 60 days from the Board's request.

(5) Standards for ACE course approval.

(A) To be approved as an ACE course by the Board, the course must:

*(i)* cover subject matter appropriate for appraiser continuing education as defined by the AQB;

*(ii)* submit a statement describing the objective of the course and the acceptable AQB topics covered;

*(iii)* be current and accurate; and

*(iv)* be at least two hours long.

(B) The course must be presented in full hourly units.

(C) The course must be delivered by one of the following delivery methods:

*(i)* classroom delivery; or

*(ii)* distance education.

(D) The course design and delivery mechanism for all distance education courses must be approved by an AQB approved organization.

(6) Approval notice.

(A) An ACE provider cannot offer an ACE course until the provider has received written notice of the approval from the Board.

(B) An ACE course expires two years from the date of approval. ACE providers must reapply and meet all current requirements of this section to offer the course for another two years.

(d) Approval of currently approved ACE course for a secondary provider.

(1) If an ACE provider wants to offer an ACE course currently approved for another provider, the secondary provider must:

(A) file an application on the appropriate form approved by the Board, with all required documentation;

(B) submit written authorization to the Board from the author or provider for whom the course was initially approved granting permission for the secondary provider to offer the course; and

(C) pay the fees required by §153.5 of this title, including:

*(i)* base fee; and

*(ii)* content review fee.

(2) If approved to offer the currently approved course, the secondary provider must:

(A) offer the course as originally approved;

(B) assume the original expiration date;

(C) include any approved revisions;

(D) use all materials required for the course; and

(E) meet the requirements of subsection (j) of this section.

(e) Approval of ACE courses currently approved by the AQB or another state appraiser regulatory agency.

(1) To obtain Board approval of an ACE course currently approved by the AQB or another state appraiser regulatory agency, an ACE provider must:

(A) be currently approved by the Board as an ACE provider;

(B) file an application on the appropriate form approved by the Board, with all required documentation; and

(C) pay the course approval fee required by §153.5 of this title.

(2) If approved to offer the ACE course, the ACE provider must offer the course as approved by the AQB or other state appraiser regulatory agency, using all materials required for the course.

(3) Any course approval issued under this subsection expires the earlier of two years from the date of Board approval or the remaining term of approval granted by the AQB or other state appraiser regulatory agency.

(f) Approval of ACE courses for a 2-hour in-person one-time offering.

(1) To obtain Board approval of a 2-hour ACE course for an in-person one-time offering, an ACE provider must:

(A) be currently approved by the Board as an ACE provider;

(B) file an application on the appropriate form approved by the Board, with all required documentation; and

(C) pay the one-time offering course approval fee required by §153.5 of this title.

(2) Any course approved under this subsection is limited to the scheduled presentation date stated on the written notice of course approval issued by the Board.

(3) If a course approved under this subsection must be rescheduled due to circumstances beyond the provider's control, including severe weather or instructor illness, the Board may approve the revised course date if the provider:

(A) submits a request for revised course date on a form acceptable to the Board; and

(B) offers the course on the revised date in the same manner as it was originally approved.

(g) Application for approval to offer a 7-Hour National USPAP Update course.

(1) To obtain approval to offer a 7-Hour National USPAP Update course, the provider must:

(A) be approved by the Board as an ACE provider;

(B) file an application on the appropriate form approved by the Board, with all required documentation;

(C) submit written documentation to the Board demonstrating that the course and instructor are currently approved by the AQB;

(D) pay the course approval fee required by §153.5 of this title;

(E) use the current version of the USPAP; and

(F) ensure each student has access to his or her own electronic or paper copy of the current version of USPAP.

(2) Approved ACE providers of the 7-Hour National USPAP Update course may include up to one additional classroom credit hour of supplemental Texas specific information. This may include topics such as the Act, Board rules, processes and procedures, enforcement issues or other topics deemed appropriate by the Board.

(h) Application for ACE course approval for a presentation by current Board members or staff. As authorized by law, current members of the Board and Board staff may teach or guest lecture as part of an approved ACE course. To obtain ACE course approval for a presentation by a Board member or staff, the provider must:

(1) file an application on the appropriate form approved by the Board, with all required documentation; and

(2) pay the fees required by §153.5 of this title.

(i) Responsibilities and Operations of ACE providers.

(1) ACE course examinations:

(A) are required for ACE distance education courses; and

(B) must comply with AQB requirements.

(2) Course evaluations. A provider shall provide each student enrolled in an ACE course a course evaluation form approved by the Board and a link to an online version of the evaluation form that a student may complete and submit to the provider after course completion.

(3) Course completion rosters.

(A) Classroom courses. Upon successful completion of an ACE classroom course, a provider shall submit to the Board a course completion roster in a format approved by the Board no later than the 10th day after the date a course is completed. The roster shall include:

*(i)* the provider's name and license number;

*(ii)* the instructor's name;

*(iii)* the course title;

*(iv)* the course approval number;

*(v)* the number of credit hours;

*(vi)* the date of issuance;

*(vii)* the date the student started and completed the course; and

*(viii)* the signature of an authorized representative of the provider who was in attendance and for whom an authorized signature is on file with the Board.

(B) Distance education courses. A provider shall maintain a Distance Education Reporting Form and submit information contained in that form by electronic means acceptable to the Board for each student completing the course not earlier than the number of hours for course credit after a student starts the course and not later than the 10th day after the student completes the course.

(C) The Board will not accept unsigned course completion rosters.

(4) An ACE provider may withhold any official course completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(5) Security and Maintenance of Records.

(A) An ACE provider shall maintain:

*(i)* adequate security against forgery for official completion documentation required by this subsection;

*(ii)* records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements; and

*(iii)* any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(B) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(C) Upon request, an ACE provider shall produce instructor and course evaluation forms for inspection by Board staff.

(6) Changes in Ownership or Operation of an approved ACE provider.

(A) An approved ACE provider shall obtain approval of the Board at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

*(i)* ownership;

*(ii)* management; and

*(iii)* the location of main office and any other locations where courses are offered.

(B) An approved provider requesting approval of a change in ownership shall provide a Principal Application Form for each proposed new owner who would hold at least a 10% interest in the provider to the Board.

(j) Non-compliance.

(1) If the Board determines that an ACE course or provider no longer complies with the requirements for approval, the Board may suspend or revoke approval for the ACE course or provider.

(2) Proceedings to suspend or revoke approval of an ACE course or provider shall be conducted in accordance with §153.41 of this title.

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 March 2, 2020.

TRD-202000939
Chelsea Buchholtz
Commissioner
Texas Appraiser Licensing and Certification Board
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Proposal publication date: December 6, 2019
For further information, please call: (512) 936-3652

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**22 TAC §153.41**

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.41, ACE Providers: Compliance and Enforcement, without changes to the proposed text as published in the December 6, 2019, issue of the *Texas Register* (44 TexReg 7485). The rule will not be republished.

The amendments to §153.41 provide more information to education providers and members of the public regarding the process for auditing continuing education providers and courses and the process for handling complaints when deficiencies are identified during an audit. Under the amendments providers will receive a copy of the audit report and be given a reasonable opportunity to cure any deficiencies identified during an audit. The amendments clarify when an audit report may be treated as a complaint and referred for enforcement. The amendments also define a "reasonable opportunity to cure" and allow providers to request an extension of time to cure a deficiency if certain criteria are met.

No comments were received on the amendments as published.

The amendments are adopted under Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to the requirements for approval of a provider or course of continuing education.

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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Chelsea Buchholtz
Commissioner
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652

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# TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 3. TAX ADMINISTRATION
### SUBCHAPTER G. CIGARETTE TAX

#### 34 TAC §3.102

The Comptroller of Public Accounts adopts amendments to §3.102 concerning applications, definitions, permits, and reports, without changes to the proposed text as published in the January 24, 2020, issue of the *Texas Register* (45 TexReg 502). The rule will not be republished. The amendments implement House Bill 4614, 86th Legislature, 2019, effective September 1, 2019. The bill adds definitions to Chapter 154 and updates cigarette permit requirements. The comptroller amends this section to comply with these provisions.

The comptroller amends subsection (a) to revise existing definitions as described in Chapter 154 and include a definition of export warehouse and engage in business as added by HB 4614. The comptroller amends existing definitions in paragraphs (2) "bonded agent," (3) "cigarette," (4) "commercial business location," (6) "distributor," (9) "first sale," (11) "manufacturer," (13) "permit," (14) "permit holder," (15) "place of business," (16) "retailer," and (17) "stamp" to give the terms the meanings as amended by HB 4614.The comptroller renumbers subsequent paragraphs accordingly.

The comptroller amends subsections (b)(1) and (2) to include a permit requirement for a person who engages in the business of an export warehouse. The comptroller also adds new paragraph (6) to address non-issuance of a permit for a residence or a unit in a public storage facility. The comptroller adds new paragraph (7) to indicate that a permit is not required for a research facility that possesses and only uses cigarettes for experimental purposes. Lastly, the comptroller adds paragraph (8) to address permitting requirements for a person who provides a roll-your-own machine for consumers to use.

The comptroller adds subsection (c) to outline sale and purchase requirements between permit holders based on revisions to the Texas Tax Code 154.1015 (Sales; Permit Holders and Nonpermit Holders) from HB 4614. The comptroller renumbers subsequent subsections accordingly.

The comptroller amends subsection (e) to remove the permit fee requirement for an importer permit. The comptroller amends paragraph (6) to remove language regarding the effective date of a retailer permit issuance as this is twenty years in the past. The comptroller amends paragraphs (7) and (8) by reversing the order of the paragraphs so that fees for permit requirements are listed before a penalty for failure to obtain a permit. The comptroller amends paragraph (7) to state that an export warehouse is not required to pay a permit fee. The comptroller amends paragraph (10) to address permits for a business that closes prior to the permit expiration.

The comptroller amends subsection (f) to add that the comptroller shall issue a permit upon receipt of an application and applicable fees from a person who intends to engage in business activities related to an export warehouse.

The comptroller amends subsection (g) to include that a manufacturer must file a report on or before the 25th of each month.

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §§154.001 (Definitions), 154.002 (Storage), 154.101 154.1015 (Sales; permit holders and nonpermit holders), 154.110 (Issuance of permit), and 154.204 (Manufacturer's records and reports).

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 February 25, 2020.

TRD-202000854

William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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## SUBCHAPTER H. CIGAR AND TOBACCO TAX

### 34 TAC §3.121

The Comptroller of Public Accounts adopts amendments to §3.121 concerning definitions, imposition of tax, permits, and reports, without changes to the proposed text as published in the January 24, 2020, issue of the *Texas Register* (45 TexReg 505). The rule will not be republished. The amendments implement House Bill 3475, 86th Legislature, 2019, effective September 1, 2019. The comptroller adds definitions as described in Chapter 155, removes attached graphics related to tax rates for tobacco products other than cigars and provides the rate per ounce for each year in the text of the rule.

The comptroller amends subsection (a) to add definitions of commercial business location, engage in business, export warehouse, and raw tobacco as described in Chapter 155 and amended by HB 3475. The comptroller amends existing definitions in paragraphs (1) "bonded agent," (5) "distributor," (9) "first sale," (11) "manufacturer," (14) "permit holder," (17) "retailer," and (18) "tobacco product" to give the terms the meanings as amended by HB 3475. The comptroller renumbers subsequent paragraphs accordingly.

The comptroller amends subsection (b) to remove the attached graphics and incorporate into the section language associated with the attached graphics concerning the tax rate per ounce on tobacco products other than cigars and include the tax rate per ounce for prior fiscal years. The comptroller amends paragraph (1)(B) to address the minimum rate of tax imposed on a can or package of a tobacco product that weighs 1.2 ounces.

The comptroller adds subsection (c) to outline sale and purchase requirements between permit holders based on revisions to Tax Code, §155.0415 (Sales: Permit Holders and Nonpermit Holders) from HB 3475. The comptroller reletters subsequent subsections accordingly.

The comptroller adds subsection (d) to address tax liability on transactions between permitted distributors. The language provides that a permitted distributor who makes a first sale to a permitted distributor in this state is liable for and shall pay the tax. This implements the provisions of HB 3475.

The comptroller amends subsection (e) to include a permit requirement for a person who engages in the business of an export warehouse. Consistent with provisions of HB 3475, as of September 1, 2019, a person who engages in the business of an export warehouse must apply for and receive a permit from the comptroller's office.

The comptroller adds export warehouse to subsection (f)(1) since the permit period of an export warehouse follows the same period as permits other than retailer permits.

The comptroller amends subsection (g) to address that there are no permit fees for obtaining a permit for an export warehouse and an importer, and to address permits for a business that closes prior to the permit expiration. The comptroller amends paragraphs (7) and (8) by reversing the order of the paragraphs so that fees for permit requirements are listed before a penalty for failure to obtain a permit. The comptroller amends paragraph (10) to address permits for a business that closes prior to the permit expiration.

The comptroller amends subsection (h) to add that the comptroller shall issue a permit upon receipt of an application and applicable fees from a person who intends to engage in business activities related to an export warehouse.

The comptroller amends subsection (j) to change the date a manufacturer must file a report from the end of the month to a date on or before the 25th of each month.

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §§155.001 (Definitions); 155.0212 (Liability of permitted distributors); 155.041 (Permits); 155.0415 (Sales: permit holder and nonpermit holders); and 155.049 (Permit year; fees).

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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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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## SUBCHAPTER S. MOTOR FUEL TAX

### 34 TAC §3.441

The Comptroller of Public Accounts adopts amendments to §3.441, concerning documentation of imports and exports, import verification numbers, export sales, and diversion numbers, without changes to the proposed text as published in the January 24, 2020, issue of the *Texas Register* (45 TexReg 509). The rule will not be republished. The amendments implement Senate Bill 1557, 85th Legislature, 2017, House Bill 3954, 86th Legislature, 2019, and update the section by modernizing and removing obsolete references. The comptroller adopts the amendments to address motor fuel storage facilities that are part of the bulk transfer system; exports and movements of gasoline and diesel fuel by marine vessels; and address subsequent sales within Texas of tax-free gasoline and diesel fuel purchased for export.

The comptroller amends subsection (a) to delete the current text addressing application to transactions that occurred prior to January 1, 2004, because a reference to a date so far into the past is unnecessary. Subsection (a), as amended, now includes definitions found in Tax Code, §162.001 (Definitions), for terms used but not previously defined in this section. We give the terms the meanings assigned by Tax Code, §162.001 (Definitions).

The comptroller amends subsections (b) and (c) to replace the term "motor fuel" with "gasoline or diesel fuel." Motor fuel consists of several different fuel types and the amendment specifies that gasoline and diesel fuel are the two fuel types subject to the requirements for reporting subsequent sales in this state of tax-free fuel purchased for export. The comptroller amends subsection (b) and (c) to remove titles of the paragraphs, and subsection (c) to update the title. The comptroller also corrects formatting in subsection (c)(3).

New subsection (e) addresses reporting requirements for subsequent sales in this state of tax-free gasoline or diesel fuel purchased for export. See Tax Code, §162.1155 (Duty to Report Subsequent Sales of Tax-Free Gasoline Purchased for Export), and Tax Code, §162.2165 (Duty to Report Subsequent Sales of Tax-Free Diesel Fuel Purchased for Export).

New subsection (f) addresses penalties related to the reporting requirements for subsequent sales in this state of tax-free gasoline and diesel fuel purchased for export. See Tax Code, §162.401(e) and (f) (Failure to Pay Tax or File Report).

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §§162.001 (Definitions), 162.016 (Importation and Exportation of Motor Fuel), 162.1155 (Duty to Report Subsequent Sales of Tax-Free Gasoline Purchased for Export), and 162.2165 (Duty to Report Subsequent Sales of Tax-Free Diesel Fuel Purchased for Export).

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

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## SUBCHAPTER HH. MIXED BEVERAGE TAXES

**34 TAC §3.1002**

The Comptroller of Public Accounts adopts amendments to §3.1002, concerning reporting periods for mixed beverage sales tax, without changes to the proposed text as published in the January 24, 2020, issue of the *Texas Register* (45 TexReg 512). The rules will not be republished.

The comptroller amends the section to reflect the changes in Tax Code, §183.0421 (Tax Return Due Date) and §183.0422 (Payment) made by House Bill 3006, 86th Legislature, 2019, effective October 1, 2019.

The comptroller adds subsection (c)(1)(C) to indicate that the confidentiality provisions of Tax Code, Chapter 151 do not apply to reports filed by certain permitees.

The comptroller amends subsection (c)(5) to correct the name of §3.302 of this title.

The comptroller amends subsection (i) to implement House Bill 3006, which eliminated quarterly filing of mixed beverage sales tax reports. The comptroller amends the title of subsection (i) to monthly mixed beverages sales tax reports and to provide that mixed beverage sales tax reports are due monthly. The comptroller also amends the subsection to include provisions in existing paragraphs (1), (2), and (3) relating to reports due on weekends and holidays and relating to filing reports even if no sales of alcoholic beverages were made in a month. Those paragraphs are subsequently deleted.

The comptroller did not receive any comments regarding adoption of the amendment.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §183.0421 (Tax Return Due Date) and §183.0422 (Payment).

*§3.1002. Mixed Beverage Sales Tax.*

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

(1) Alcoholic beverage--This term has the same meaning as assigned by §3.1001 of this title (relating to Mixed Beverage Gross Receipts Tax).

(2) Complimentary alcoholic beverage--This term has the same meaning as assigned by §3.1001 of this title.

(3) Governmental entity--An organization that is exempted from sales and use tax otherwise imposed on their purchases under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Taxes), by operation of Tax Code, §151.309 (Governmental Entities).

(4) Nonprofit organization--An organization that is exempted from the sales and use tax imposed under Tax Code, Chapter 151, by operation of Tax Code, §151.310(a) (Religious, Educational, and Public Service Organizations).

(5) Permittee--This term has the same meaning as assigned by §3.1001 of this title.

(b) Mixed beverage sales tax. A tax at a rate of 8.25% is imposed on each alcoholic beverage sold, prepared, or served by a permittee, and on ice and each nonalcoholic beverage sold, prepared, or served by a permittee to be mixed with alcohol and consumed on the permittee's premises. The sales price of each item on which mixed

beverage sales tax is imposed includes, but is not limited to, those items identified in §3.1001(c) of this title. Those items identified in §3.1001(f)(1) - (7) of this title are excluded from the sales price of items on which mixed beverage sales tax is imposed. Mixed beverage sales tax is imposed in addition to the mixed beverage gross receipts tax imposed under Tax Code, Chapter 183, Subchapter B.

(c) Administration, collection, and enforcement of mixed beverage sales tax.

(1) Except as otherwise provided in this paragraph, mixed beverage sales tax is administered, collected, and enforced in the same manner as sales and use tax is administered, collected, and enforced in Tax Code, Chapter 151, except:

(A) a permittee may not deduct or withhold any amount of taxes collected as reimbursement for the cost of collecting the tax, pursuant to Tax Code, §151.423 (Reimbursement to Taxpayer for Tax Collection); and

(B) a permittee may not receive a discount for prepaying the tax, pursuant to Tax Code, §151.424 (Discount for Prepayments).

(C) any record, report or other instrument required to be filed by a permittee is not confidential under Tax Code, §151.027(a) (Confidentiality of Tax Information).

(2) Tax due is debt of the purchaser. Mixed beverage sales tax is a debt of the purchaser to the permittee until collected.

(3) Tax-included sales price. The total amount shown on a customer's sales invoice, billing, service check, ticket, or other receipt for sales that are subject to mixed beverage sales tax is presumed to be the sales price, without tax included. Contracts, bills, invoices, or other receipts that merely state that "all taxes" are included are not sufficient to relieve either the customer or the permittee of their tax responsibilities on the transaction. The permittee may overcome the presumption by using the permittee's records to show that tax was included in the sales price.

(4) Record-keeping requirements. Permittees are responsible for creating and maintaining records of purchases and sales as required by §3.1001(j) - (m) and (o) of this title.

(5) Bad debts. The exclusion of bad debts from the mixed beverage gross receipts tax base, as established in §3.1001(n) of this title, does not apply to mixed beverage sales tax. Bad debt deductions from mixed beverage sales tax are treated in the same manner as bad debt deductions from sales tax. For more information on bad debt deductions from sales tax, refer to §3.302 of this title (relating to Accounting Methods, Credit Sales, Bad Debt Deductions, Repossession, Interest on Sales Tax, and Trade-Ins).

(d) Separate tax disclosure statement.

(1) A permittee may include on a customer's sales invoice, billing, service check, ticket, or other receipt that includes an item subject to mixed beverage sales tax:

(A) a statement that mixed beverage sales tax is included in the sales price;

(B) a separate statement of the amount of mixed beverage gross receipts tax to be paid by the permittee on that sale;

(C) a separate statement of the amount of mixed beverage sales tax imposed on that item;

(D) a statement of the combined amount of mixed beverage gross receipts tax and mixed beverage sales tax to be paid on that item; or

(E) a statement of the combined amount of mixed beverage sales tax and sales and use tax imposed under Tax Code, Chapter 151, to be paid on all items listed on that sales invoice, billing, service check, ticket, or other receipt.

(2) Mixed beverage gross receipts tax cannot be charged to or paid by the customer. A receipt with a statement of the combined amount of mixed beverage gross receipts tax and mixed beverage sales tax provided in paragraph (1)(D) of this subsection must clearly show that the customer is not being charged mixed beverage gross receipts tax.

(3) For each receipt with a statement of the combined amount of mixed beverage sales tax and sales and use tax, as provided in paragraph (1)(E) of this subsection, the permittee's books and records must clearly show the amount of mixed beverage sales tax and sales and use tax on each sale of alcohol.

(4) Examples of disclosure of tax statements.
Figure: 34 TAC §3.1002(d)(4) (No change)

(e) Complimentary beverages. A permittee owes sales and use tax, as imposed by Tax Code, Chapter 151, on the purchase of alcoholic beverages, ice, and nonalcoholic beverages that are ingredients of a complimentary alcoholic beverage or that are served or provided by the permittee, without any consideration from the customer, to be mixed with a complimentary alcoholic beverage and consumed on the permittee's premises. The permittee also owes sales and use tax on taxable items that are furnished with a complimentary alcoholic beverage, such as napkins and straws.

(f) Exemptions; governmental entities; nonprofit organizations; university and student organizations; volunteer fire departments; temporary permit.

(1) Governmental entity exempt on purchase of alcohol. A governmental entity can claim an exemption from mixed beverage sales tax on the purchase of alcohol in the same manner as a governmental entity can claim exemption from the payment of sales and use tax on the purchase of alcohol under Tax Code, §151.309.

(2) Purchase of alcohol by nonprofit organization not exempt. A nonprofit organization cannot claim an exemption from the mixed beverage sales tax on the purchase of alcohol. In addition, except as provided in this subsection, a nonprofit organization is responsible for collecting mixed beverage sales tax on the sale, preparation, or service of alcoholic beverages to the same extent that the organization is responsible for paying mixed beverage gross receipts tax on such beverages. For more information, refer to §3.1001(e) of this title.

(3) Nonprofit organizations; fundraising events.

(A) The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a nonprofit organization that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(1) or (2) during a qualifying fundraising sale or auction authorized by Tax Code, §151.310(c).

(B) Except as provided in subparagraph (A) of this paragraph, the sale, preparation, or service of alcohol by a nonprofit organization that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(1) or (2) is computed in the same manner as mixed beverage gross receipts tax is computed in §3.1001(e) of this title.

(4) University and college student organizations. The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a university or college student organization that is certified as an affiliated organization by a university or college as defined

in Education Code, §61.003 (Definitions) during a sale authorized by Tax Code, §151.321 (University and College Student Organizations).

(5) Volunteer fire departments; fundraising events. The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a volunteer fire department that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(4) during a qualifying fundraising sale or auction authorized by Tax Code, §151.310(c-1). This exemption is effective May 28, 2015. A previous exemption from mixed beverage sales tax on the sale, preparation, or service of alcohol when sold by volunteer fire departments at fundraising events expired on September 1, 2014.

(6) Temporary mixed beverage permit required. Nonprofit organizations, university or college student organizations, and volunteer fire departments must hold a daily temporary mixed beverage permit or daily temporary private club permit, issued by the Texas Alcoholic Beverage Commission, in order to sell alcoholic beverages and claim an exemption from mixed beverage sales tax on those sales pursuant to paragraphs (3) - (5) of this subsection.

(7) Governmental entities and nonprofit organizations owe mixed beverage gross receipts tax. A governmental entity or nonprofit organization is not exempt from the payment of mixed beverage gross receipts tax on receipts from the sale, service, or preparation of alcoholic beverages. This includes sales of alcohol during any fundraising sale or auction. For more information, refer to §3.1001(e) of this title.

(g) Lump-sum charges that include alcoholic beverages and additional items together for a single price.

(1) Permittees shall compute mixed beverage sales tax on alcoholic beverages that are served together with meals for a single charge in the same manner as mixed beverage gross receipts tax is computed in §3.1001(c)(1)(D) of this title.

(2) Permittees shall compute mixed beverage sales tax on alcoholic beverages that are served at private clubs, special events, or functions in the same manner as mixed beverage gross receipts tax is computed in §3.1001(d) of this title.

(h) Inventory used in cooking. Alcoholic beverages used in cooking are exempt from both mixed beverage sales tax under Tax Code, Chapter 183, and sales and use tax under Tax Code, Chapter 151, provided that the permittee follows the record-keeping requirements set out in §3.1001(h) and (l) of this title.

(i) Monthly mixed beverage sales tax reports. Each permittee must file a monthly mixed beverage sales tax report on or before the 20th day of the following month even if no sales or services of alcoholic beverages were made during the month. Reports and payments due on a Saturday, Sunday, or legal holiday may be submitted on the next business day. The Texas Mixed Beverage Sales Tax report is due in addition to the Texas Mixed Beverage Gross Receipts Tax report to be filed under Tax Code, Chapter 183, Subchapter B, and the Texas Sales and Use Tax report required to be filed under Tax Code, Chapter 151.

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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TRD-202000855

William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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# PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

## CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
## SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

**34 TAC §41.51**

The Teacher Retirement System of Texas (TRS) adopts amendments to rule §41.51, concerning appeals relating to eligibility to enroll in the Texas School Employees Uniform Group Health Coverage Program ("TRS-ActiveCare"), without changes to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 329). The rule will not be republished.

House Bill 2629 requires that in adopting rules governing the appeal of a final administrative decision, TRS ensures that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as TRS has to issue a decision. While TRS does not believe that the appeal process under rule §41.51 results in a final administrative decision by TRS, the amendments to this rule are in the spirit of House Bill 2629.

TRS received no public comments related to the amendments to 34 TAC §41.51.

Statutory Authority: The amendments are adopted under the authority of Texas Insurance Code §1579.051 and §1579.052 (a), (b) and (e) relating to the adoption of rules for TRS-ActiveCare.

Cross-Reference to Statute: The amendments implement the Texas School Employees Uniform Group Health Coverage Act (Chapter 1579 of the Texas Insurance Code).

Filed with the Office of the Secretary of State on February 28, 2020.

TRD-202000934
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: March 19, 2020
Proposal publication date: January 10, 2020
For further information, please call: (512) 542-6524

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## CHAPTER 43. CONTESTED CASES

**34 TAC §§43.1, 43.3, 43.5, 43.6, 43.8 - 43.10, 43.12**

The Teacher Retirement System of Texas (TRS) adopts amendments to 34 TAC §§43.1, relating to administrative review of individual requests; 43.3, relating to definitions; 43.5, relating to request for adjudicative hearing; 43.6, relating to filing of documents; 43.8, relating to extensions; 43.9, relating to docketing of appeal for adjudicative hearing and dismissal for failure to obtain setting; 43.10, relating to authority to grant relief; and 43.12, relating to forms of petitions and other pleadings. Sections 43.1 and 43.3 are adopted with changes to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 330). Sections 43.1 and 43.3 will be republished. Sections 43.5, 43.6, 43.8 - 43.10, 43.12 are adopted without changes to the proposed text as published in the same issue of the *Texas Register.* Sections 43.5, 43.6, 43.8 - 43.10, 43.12 will not be republished.

Chapter 43 addresses procedures for appeals of administrative decisions and contested cases relating to the TRS pension plan. TRS adopts amendments to §43.1 and §43.9 to stream-line and simplify the benefit administrative appeals process. Adopted amended §43.1 authorizes the Chief Benefit Officer to make the final administrative decision of TRS and clarifies the administrative appeal process for members applying for disability retirement. Adopted amended §43.9 authorizes the Chief Operations and Administration Officer to review petitions for adjudicative hearing for docketing. In addition, the adopted amended §43.5 implements House Bill 2629, enacted by the 86th Texas Legislature, which requires TRS to modify the deadline for members or retirees to appeal a final administrative decision of TRS by affording a members or retirees at least the same amount of time to file such an appeal as TRS had to issue the final administrative decision. Lastly, TRS makes non-substantive conforming and modernizing changes to the rule text in §§43.3, 43.6, 43.8, 43.10, and 43.12.

TRS received no public comments related to the amendments.

STATUTORY AUTHORITY The amended rules are adopted under the authority of Government Code §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the Board; Government Code §825.115(b), which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority; and under Government Code §825.521, which provides that in adopting rules relating to appeals, the board of trustees shall ensure that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as the retirement system has to issue the retirement system's decision.

The amended rules implement the following sections or chapters of the Government Code: §825.101, concerning the general administration of the retirement system; §825.115, concerning the applicability of certain laws; and §825.204, concerning the TRS Medical Board.

*§43.1. Administrative Review of Individual Requests.*

(a) Organization. TRS is divided into administrative divisions, which are further divided into departments, for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department.

(b) Final administrative decision by chief benefit officer. In the event that a person is adversely affected by a determination, decision, or action of department personnel, the person may appeal the determination, decision, or action to the appropriate manager within the department, and then to the chief benefit officer of TRS. The chief benefit officer shall mail a final written administrative decision, which shall include:

(1) the chief benefit officer's determination regarding the person's appeal and reasons for denying the appeal, if applicable; and

(2) a statement that if the person is adversely affected by the decision, the person may request an adjudicative hearing to appeal the decision and the deadline for doing so.

(c) A person adversely affected by a decision of the chief benefit officer may request an adjudicative hearing to appeal the decision of the chief benefit officer as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The deputy director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(d) Final administrative decision by Medical Board. In the event that the Medical Board does not certify disability of a member under Government Code, §824.303(b), or the Medical Board certifies that a disability retiree is no longer mentally or physically incapacitated for the performance of duty under Government Code, §824.307(a), the member or retiree may request reconsideration and submit additional information to the Medical Board. The Medical Board shall consider a request for reconsideration and additional information and make a determination on the disability of the member or retiree. If a request for reconsideration has been denied, a member or retiree may appeal the decision by requesting an adjudicative hearing as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The deputy director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(e) Applicability. The procedures of this chapter apply only to administrative decisions, appeals, and adjudicative hearings relating to the TRS pension plan, unless rules relating to other programs specifically adopt by reference the provisions of this chapter.

*§43.3. Definitions.*

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

(1) Administrative law judge--An individual appointed to conduct the adjudicative hearing in a contested case. The deputy director may refer an appeal to be heard by an administrative law judge employed by the State Office of Administrative Hearings or may employ, select, or contract for the services of another administrative law judge or hearing examiner to conduct a hearing.

(2) Appeal--A formal request to the executive director or board, as applicable under this chapter, to reverse or modify a final administrative decision by the chief benefit officer or the Medical Board on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(3) Board--The Board of Trustees of TRS.

(4) Chief Benefit Officer--The Chief Benefit Officer of TRS or person acting in that position.

(5) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by TRS after an opportunity for adjudicative hearing on a matter over which TRS has

jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(6) Deputy Director--The Deputy Director of TRS or person acting in that position.

(7) Executive director--The executive director of TRS or person acting in that position; when the executive director determines that a need exists, the executive director at his or her discretion may designate a person to accomplish the duties assigned in this chapter to the executive director.

(8) Final administrative decision--An action, determination, or decision by the chief benefit officer or the Medical Board, as applicable, based on review of a person's request on an administrative basis (i.e., without an adjudicative hearing).

(9) Final decision of TRS--A decision that may not be appealed further within TRS, either because of exhaustion of all opportunities for appeal within TRS or because of a failure to appeal the decision further within TRS in the manner provided for in this chapter.

(10) Medical board--The medical board appointed by the TRS board of trustees under Government Code, §825.204.

(11) Member--A person who is a member, retiree, or beneficiary of TRS.

(12) Order--The whole or a part of the final disposition of an appeal, whether affirmative, negative, injunctive, or declaratory in form, of the executive director, deputy director, or the board in a contested case.

(13) Party--Each person named or admitted in a contested case.

(14) Person--Any natural person or other legal entity.

(15) Pleading--A written document that is submitted by a party, by TRS staff, or by a person seeking to participate in a case as a party and that requests procedural or substantive relief, makes claims or allegations, presents legal arguments, or otherwise addresses matters involved in a contested case.

(16) SOAH--The State Office of Administrative Hearings.

(17) State Office of Administrative Hearings--The state agency established by Chapter 2003, Government Code, which may serve as the forum for the conduct of an adjudicative hearing upon referral of an appeal by TRS.

(18) Third party respondent or petitioner--A person joined as an additional party to a proceeding; a party shall be designated as either a third party respondent or third party petitioner based on whether the person opposes the action requested in the petition or supports it or whether the person's interests are aligned with petitioner or respondent.

(19) TRS--The Teacher Retirement System of Texas.

(20) Trustee--One of the members of the board.

(21) With prejudice--Barring a subsequent contested case on the same claim, allegation, or cause of action.

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 February 28, 2020.

TRD-202000935

Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: March 19, 2020
Proposal publication date: January 10, 2020
For further information, please call: (512) 542-6560

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 17. STATE PENSION REVIEW BOARD

### CHAPTER 609. PUBLIC RETIREMENT SYSTEM INVESTMENT EXPENSE REPORTING

**40 TAC §§609.101, 609.103, 609.105, 609.107, 609.109, 609.111**

The State Pension Review Board (the Board or PRB) adopts new 40 TAC Chapter 609, concerning Public Retirement System Investment Expense Reporting. Sections 609.101, 609.103, 609.105, 609.107, and 609.109 are adopted without changes to the text as published in the December 6, 2019, issue of the *Texas Register* (44 TexReg 7529), and will not be republished. Section 609.111, concerning Investment Expense Reporting Structure, is adopted with changes and will be republished.

BACKGROUND AND JUSTIFICATION

The PRB is adopting these rules to implement Texas Government Code §802.103(a)(3), as added by Senate Bill 322 (86R). The new rules enhance the investment fee disclosure requirements for the purpose of financial reporting by Texas public retirement systems. Texas Government Code §802.103(a)(3) requires Texas public retirement systems to list, by asset class, all direct and indirect commissions and fees paid by the retirement system during the system's previous fiscal year for the sale, purchase or management of system assets.

To standardize reporting, the new rules provide a comprehensive definition of investment expense including direct and indirect investment management fees and commissions, separated by five asset classes, and other investment-related expenses, such as expenses for investment consultant(s), custodial, investment-related legal, and investment research.

Over the past decade, institutional investors, including public retirement systems, have increased their allocation to alternative investments. Those investors have raised concerns that expenses for alternative investments are opaque and generated momentum for greater fee transparency in this asset class. A 2015 report by CEM Benchmarking showed that a substantial portion of private equity expenses comprised carried interest and other performance incentives and bonuses.

Many of the large public retirement systems, outside of and within Texas, already require their managers to disclose performance fees. The 2017 Sunset legislation for the Employees Retirement System of Texas required the system to report profit-share expenses for alternative investments, including investments in private equity, hedge funds, and private real estate. Therefore, to increase transparency and disclosure for the alternative/other asset class, the new rules require a

retirement system to report any financial remuneration related to profit-share arrangements.

Greater investment fee transparency and standardized reporting will allow the PRB, policymakers, public retirement systems, system members, and the public to effectively compare the investment expenses associated with the operation and management of a public retirement system's investment activities.

PUBLIC COMMENTS

The public comment period on the proposed rules began December 6, 2019, and ended January 10, 2020. The PRB received two comments, which are summarized below.

Comment: One commenter stated that they currently report certain fees and profit share information on a different 12-month period than the fiscal year and were not interpreting any of the rules to prevent this from occurring.

Response: The proposed rules would not prevent systems from reporting certain expenses, such as profit share, on a different time period. The PRB found no changes needed to be made due to this comment.

Comment: One commenter stated that it would be more appropriate to require investment fee disclosure in the annual financial report rather than in the notes to financial statements, which would require additional work for financial auditors and increase the cost to the system.

Response: The PRB agreed with the recommended change because the clarification would achieve the same disclosure of fee information without requiring additional work or increasing costs to retirement systems. As a result, changes were made to 40 TAC §609.111(a)(1)(C) at adoption to require investment fee disclosures to be included within a public retirement system's annual financial report, rather than in the notes to financial statements.

STATUTORY AUTHORITY

The new rules are authorized by the Texas Government Code, §802.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §802.103(e), which allows the Board to adopt rules to implement requirements related to a public retirement system's annual financial report.

*§609.111. Investment Expense Reporting Structure.*

(a) Public retirement systems shall:

(1) report direct and indirect fees and commissions:

(A) in the fiscal year they are incurred;

(B) by asset class;

(C) in a supplemental schedule as part of the system's annual financial report; and

(2) identify amounts netted from returns separately from those paid from the trust.

(b) Investment services provided to the system shall be reported in a supplemental schedule contained in the notes to the financial statements that are part of a public retirement system's annual financial report.

(c) A retirement system shall report expenses incurred for investment services by type of service provided, even if multiple investment services are provided by a single firm. Those expenses should not be reported by asset class.

(d) The asset classes are:

(1) Cash;

(2) Public Equity;

(3) Fixed Income;

(4) Real Assets;

(5) Alternative/Other.

(e) The Board hereby adopts by reference the 2020 Asset Class Categorization Guide (2020 ACC Guide) to assist in categorizing items by asset class.

(f) The Asset Class Categorization Guide is available to all public retirement systems. A public retirement system may obtain the most current version of the Asset Class Categorization Guide from the offices of the State Pension Review Board and from its website at http://www.prb.texas.gov.

(g) For an investment product containing investments in more than one asset class, a public retirement system shall report fees according to the corresponding asset class.

(h) For a fund of funds, reported fees must include the top-layer management fees charged by the fund-of-fund manager and the fees charged by all subsidiary fund managers, and all profit share, reported as a single amount.

(i) A public retirement system must list the types of investment included in the "Alternative/Other" asset class as described in the 2020 ACC Guide.

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 February 24, 2020.

TRD-202000837
Anumeha Kumar
Executive Director
State Pension Review Board
Effective date: March 15, 2020
Proposal publication date: December 6, 2019
For further information, please call: (512) 463-1736

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# TITLE 43. TRANSPORTATION

## PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

### CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

### SUBCHAPTER O. COUNTY TRANSPORTATION INFRASTRUCTURE FUND GRANT PROGRAM

**43 TAC §§15.185, 15.188, 15.191**

The Texas Department of Transportation (department) adopts amendments to §§15.185, Allocation to Counties, 15.188, Appli-

cation Procedure, and 15.191, Agreement, all concerning procedures related to the County Transportation Infrastructure Fund Grant Program. The amendments to §§15.185 and 15.191 are adopted without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7368) and will not be republished. Due to publication error by the *Texas Register,* the amendments to §15.188 are adopted with changes and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS

H.B. No. 4280, 86th Regular Session, 2019, amended Subchapter C, Chapter 256, Transportation Code, by modifying the statutory allocation formula for the County Transportation Infrastructure Fund Grant Program (program)and adding certain program requirements for county grant recipients. The department's procedures for administering the program, located in Title 43, Part 1, Chapter 15, Subchapter O of the Texas Administrative Code, must be amended to reflect the changes to the program made by H.B. 4280.

Amendments to §15.185, Allocation to Counties, provide that the department will make allocations from the transportation infrastructure fund in accordance with Transportation Code, §256.103(b). The prior rules merely restated the statutory requirements verbatim. An express reference to the applicable statute provides the necessary allocation formula without conflict if the legislature modifies that statute in the future.

Amendment to §15.188, Application Procedure, deletes the requirement that an application by a county include a map delineating project locations and termini. This is to simplify the preparation of an application by no longer requiring information that can be determined through other information included in an application.

Amendments to §15.191, Agreement, add, as a provision in the award agreement, that the county will comply with the requirements of Transportation Code, §256.107, relating to bidding requirements, and §256.108, relating to the period during which grant funds must be spent. These references alert counties to new statutory requirements enacted by the legislature.

COMMENTS

A comment concerning the proposed amendments was received from Texas Oil & Gas Association (TXOGA).

Comment: TXOGA thanked the Commission's leadership for its commitment to improving road conditions in energy sector areas of the state. TXOGA also stated that H.B. 4280 was passed to increase the efficiency and transparency of the program and that the changes will allow the grant program to generate a greater benefit to Texas' energy producing counties.

Response: The department appreciates the comment and support of TXOGA on this grant program. These rules address the statutory changes as required in H.B. 4280.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §256.103, which authorizes the commission to adopt rules to administer the County Transportation Infrastructure Fund Grant Program.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 256.

*§15.188. Application Procedure.*

(a) Application form. An eligible county may submit to the department an application for a grant from the fund.

(1) The application must be submitted electronically using the department's automated system designated for the grant program.

(2) A county is responsible for obtaining its use of a computer system and access to the Internet.

(3) Upon request, a county may use the department's computer system at any district office location.

(4) For an application to be valid, the county must submit the application during a period designated under §15.187 of this subchapter (relating to Acceptance of Applications) and satisfy the requirements of this section.

(b) Plan requirements. An application must contain a plan that:

(1) provides a prioritized list of transportation infrastructure projects to be funded by the grant;

(2) describes the scope of each listed transportation infrastructure project including:

(A) a clear and concise description of the proposed work;

(B) an implementation plan, including a schedule of proposed activities;

(C) an estimate of project costs;

(D) the project funding sources; and

(E) other information required by the department;

(3) specifies the total amount of grant funds being requested in the application;

(4) identifies matching funds required under §15.183 of this subchapter (relating to Matching Funds); and

(5) identifies other potential sources of funding to maximize resources available for the listed transportation infrastructure projects.

(c) Additional submissions. In addition to the application form, the county must also submit a road condition report described by Transportation Code, §251.018 made by the county for the preceding year.

(d) Information for previous grant. If the county has received a grant under this subchapter, it must also submit:

(1) a certification that all previous grants have been or are being spent in accordance with the applicable plan submitted under subsection (b) of this section; and

(2) an accounting of expenditures under the previous grant, including any amounts spent on administrative costs.

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 February 27, 2020.

TRD-202000888
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: March 18, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 463-8630

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# 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

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 P, concerning Other Forms of Equity Capital, consisting of §91.7000, concerning Certificates of Indebtedness.

The Commission will also review and consider for re-adoption, revision, or repeal, Subchapter Q, concerning Access to Confidential Information, consisting of §91.8000, concerning Discovery of Confidential Information.

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.* 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-202000959

John J. Kolhoff
Commissioner
Credit Union Department
Filed: March 3, 2020

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Texas State Library and Archives Commission

**Title 13, Part 1**

In accordance with Government Code, §2001.039, the Texas State Library and Archives Commission (commission) files this notice of intention to review and consider for readoption, readoption with amendments, or repeal Title 13 Texas Administrative Code, Part 1, Chapter 4, School Library Programs.

The commission will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding this rule review may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, 1201 Brazos Street, P.O. Box 12927, Austin, Texas 78711-2927 or to rules@tsl.texas.gov with the subject line "Rule Review." The deadline for receipt of comments is 30 days after publication of this notice in the *Texas Register.*

TRD-202000883
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Filed: February 27, 2020

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In accordance with Government Code, §2001.039, the Texas State Library and Archives Commission (commission) files this notice of intention to review and consider for readoption, readoption with amendments, or repeal Title 13 Texas Administrative Code, Part 1, Chapter 8, Texshare Library Consortium.

The commission will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding this rule review may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, 1201 Brazos Street, P.O. Box 12927, Austin, Texas 78711-2927 or to rules@tsl.texas.gov with the subject line "Rule Review." The deadline for receipt of comments is 30 days after publication of this notice in the *Texas Register.*

TRD-202000884
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Filed: February 27, 2020

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Texas Workforce Investment Council

**Title 40, Part 22**

Pursuant to Texas Government Code §2001.039, Agency Review of Existing Rules, the Texas Workforce Investment Council (Council) proposes the review of 40 Texas Administrative Code (TAC), Part 22, Chapter 901, Designation and Redesignation of Local Workforce Development Areas; Rule §901.1, Procedures for Considering Redesignation of Workforce Development Areas; and Rule §901.2, Appeal of Decision on Designation or Redesignation.

An assessment will be made by the Council as to whether the reasons for initially adopting the rules continue to exist. This assessment will be conducted during the review process. Each rule will be reviewed, at a minimum, to determine whether the rule is obsolete and whether the rule reflects current procedures of the Council.

Written comments on this review may be submitted by mail to Lee Rector, Director, Texas Workforce Investment Council, Post Office Box 2241, Austin, Texas 78768-2241, or by email to twic@gov.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register.*

TRD-202000956
Lee Rector
Director
Texas Workforce Investment Council
Filed: March 2, 2020

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# 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, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/09/20 - 03/15/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/09/20 - 03/15/20 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009[3] for the period of 03/01/20 - 03/31/20 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 03/01/20 - 03/31/20 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-202000961
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 3, 2020

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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 **April 13, 2020.** 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 **April 13, 2020.** 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: ARTAVIA Development Company; DOCKET NUMBER: 2019-1428-WQ-E; IDENTIFIER: RN110469897; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System General Permit Number TXR15682Q, Part III, Section F(6)(a) and Section G(3), by failing to install and maintain best management practices at the site which resulted in an unauthorized discharge; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: BEACH RV PARTNERSHIP, LTD.; DOCKET NUMBER: 2019-1452-PWS-E; IDENTIFIER: RN100825074; LOCATION: Buchanan Dam, Llano County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; and 30 TAC §290.109(d)(4)(B) (formerly §290.109(c)(4)(B)), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on February 10, 2015, March 9, 2015, and January 30, 2018, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each of the two active groundwater sources in use at the time the distribution coliform-positive samples were collected; PENALTY: $5,195; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: City of Morgan's Point; DOCKET NUMBER: 2019-1586-PWS-E; IDENTIFIER: RN102677002; LOCATION: Morgan's Point, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(e)(3)(G), by failing to obtain an exception, in accordance with 30 TAC §290.39(l), prior to using blended water containing free chlorine and water containing chloramines; PENALTY: $51; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Jack Dexter; DOCKET NUMBER: 2020-0276-WOC-E; IDENTIFIER: RN110909652; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: DFW Creative Homes & Renovation, LLC; DOCKET NUMBER: 2020-0224-WQ-E; IDENTIFIER: RN110495496; LOCATION: Reno, Parker County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 2309 Gravel Drive, Forth Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: DG RV Properties, LLC; DOCKET NUMBER: 2019-1468-PWS-E; IDENTIFIER: RN108378654; LOCATION: Cleveland, San Jacinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.43(c)(3), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch; 30 TAC §290.43(c)(4), by failing to provide the ground storage tank with a liquid level indicator; 30 TAC §290.43(d)(2), by failing to provide the facility's four pressure tanks with a pressure release device and an easily readable pressure gauge; 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $3,674; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Double Diamond Utilities Co.; DOCKET NUMBER: 2019-1178-IWD-E; IDENTIFIER: RN102328515; LOCATION: Graford, Palo Pinto County; TYPE OF FACILITY: reverse osmosis water treatment plant and domestic wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0002789000, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0002789000, Monitoring and Reporting Requirements Number 7.a, by failing to report an unauthorized discharge in writing to the TCEQ Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; and 30 TAC §317.3(b)(6)(A), by failing to provide ventilation for the Oak Tree Drive lift station wet well; PENALTY: $4,388; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Double Diamond Utilities, Co.; DOCKET NUMBER: 2019-1518-PWS-E; IDENTIFIER: RN101265213; LOCATION: Graford, Palo Pinto County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressures and water outages; PENALTY: $378; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Fred Havlak and Tommy Wright, Jr. dba WYN-LOR; DOCKET NUMBER: 2019-1455-PST-E; IDENTIFIER: RN101816627; LOCATION: Sterling City, Sterling County; TYPE OF FACILITY: unmanned cooperative fueling station; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $3,083; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: Frio LaSalle Pipeline, LP; DOCKET NUMBER: 2019-1566-AIR-E; IDENTIFIER: RN109980268; LOCATION: Atascosa County; TYPE OF FACILITY: pipeline that transports natural gas, refined petroleum, and all other products; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; and 30 TAC §112.31 and THSC, §382.085(a) and (b), by failing to prevent unauthorized emissions and failing to not cause, suffer, allow, or permit emissions of hydrogen sulfide (H2S) from a source or multiple sources operated on a property or multiple sources operated on contiguous properties to exceed a net ground level concentration of 0.08 parts per million (ppm) averaged over any 30-minute period. Also, the H2S maximum ground level concentration one-hour average was 0.82 ppm for 12 hours from September 2, 2017 - September 3, 2017; PENALTY: $7,876; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,938; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: J&J EXCAVATING MATERIALS CO; DOCKET NUMBER: 2020-0206-WR-E; IDENTIFIER: RN110887114; LOCATION: Elm Creek, Maverick County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §297.11, by failing to obtain authorization prior to diverting, storing, importing, using state water, or beginning of construction of any work designed for the storage, taking or diversion of water without first obtaining a water right; PENALTY: $350; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(12) COMPANY: Juan G Jasso; DOCKET NUMBER: 2020-0275-WOC-E; IDENTIFIER: RN110910627; LOCATION: Snyder, Kent County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(13) COMPANY: Justin B. Bownds; DOCKET NUMBER: 2018-1264-MLM-E; IDENTIFIER: RN110394731; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: unauthorized municipal solid waste site; RULES VIOLATED: 30 TAC §330.15(a)

and (c) and §335.2(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste and industrial solid waste; PENALTY: $73,500; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(14) COMPANY: Sidney Eugene Kuykendall, DOCKET NUMBER: 2020-0243-OSI-E; IDENTIFIER: RN103399473; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: installer; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: $175; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2019-1436-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 19005 and PSDTX753, Special Conditions Number 1, Federal Operating Permit Number O1959, General Terms and Conditions and Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: MJP Investment Properties, LLC; DOCKET NUMBER: 2019-0311-PWS-E; IDENTIFIER: RN102708153; LOCATION: Baytown, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(A), by failing to locate the facility's well at least 150 feet away septic tank perforated drainfields, areas irrigated by low dosage, low angle spray on-site sewage facilities, absorption beds, evapotranspiration beds, improperly constructed water wells, or underground petroleum and chemical storage tanks or liquid transmission pipelines; 30 TAC §290.45(b)(1)(E)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection with a maximum of 2,500 gallons; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or associated late fees for TCEQ Financial Administration Account Number 91013249 for Fiscal Years 2015 - 2019; PENALTY: $1,781; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: MOMENTUM INVESTMENT, INCORPORATED dba Angels Gas & Grocery; DOCKET NUMBER: 2018-1299-PST-E; IDENTIFIER: RN101727758; LOCATION: Highlands, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to maintain spill prevention equipment in good operating condition; PENALTY: $9,188; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Remarkable Homes LLC; DOCKET NUMBER: 2020-0223-WQ-E; IDENTIFIER: RN110917416; LOCATION: Buffalo Gap, Taylor County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: SAM RAYBURN WATER, INCORPORATED; DOCKET NUMBER: 2019-1692-PWS-E; IDENTIFIER: RN101249787; LOCATION: Anthony Harbor, San Augustine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1), Texas Health and Safety Code, §341.0315(c), and TCEQ Agreed Order Docket Number 2017-1285-PWS-E, Ordering Provision Number 2.d.i, by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $277; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: SOUTH CENTRAL WATER COMPANY; DOCKET NUMBER: 2019-1033-MWD-E; IDENTIFIER: RN105921738; LOCATION: Bulverde, Comal County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014988001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $14,500; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2019-1396-PWS-E; IDENTIFIER: RN101190361; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(3)(A) and (f), and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter total trihalomethanes (TTHM) based on the locational running annual average, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the MCL for TTHM during the first quarter of 2019; PENALTY: $441; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: UTLX Manufacturing LLC; DOCKET NUMBER: 2019-1441-AIR-E; IDENTIFIER: RN100212828; LOCATION: Houston, Harris County; TYPE OF FACILITY: railroad rolling stock manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O1729, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $4,575; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $1,830; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202000957

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 3, 2020

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Enforcement Orders

An agreed order was adopted regarding Granbury Excavating, Inc., Docket No. 2018-1014-WQ-E on March 3, 2020, assessing $6,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202000963
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 4, 2020

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Enforcement Orders

An agreed order was adopted regarding REVEILLE PEAK RANCH, L.L.C., Docket No. 2014-1024-WR-E on March 4, 2020, assessing $8,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SSAM INDUSTRIES LLC, Docket No. 2018-0276-MSW-E on March 4, 2020, assessing $16,021 in administrative penalties with $3,202 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mary Regina Hunt, Docket No. 2018-0803-MLM-E on March 4, 2020, assessing $15,100 in administrative penalties with $13,900 deferred. Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS TRANSEASTERN, INC., Docket No. 2018-0833-PST-E on March 4, 2020, assessing $27,349 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding MANJARI INC. dba OM Mart, Docket No. 2018-0976-PST-E on March 4, 2020, assessing $18,025 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Kingsville, Docket No. 2018-1065-MWD-E on March 4, 2020, assessing $38,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PORT NECHES FORTUNE, LLC dba 24 Seven 27, Docket No. 2018-1215-PST-E on March 4, 2020, assessing $21,199 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North Texas Municipal Water District, Docket No. 2018-1236-WQ-E on March 4, 2020, assessing $7,275 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding San Augustine Rural Water Supply Corporation, Docket No. 2018-1279-PWS-E on March 4, 2020, assessing $210 in administrative penalties with $210 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Formosa Plastics Corporation, Texas, Docket No. 2018-1384-AIR-E on March 4, 2020, assessing $56,250 in administrative penalties with $11,250 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding INVISTA S.a r.l., Docket No. 2018-1504-AIR-E on March 4, 2020, assessing $15,000 in administrative penalties with $3,000 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Burnet, Docket No. 2018-1650-WQ-E on March 4, 2020, assessing $7,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2018-1669-AIR-E on March 4, 2020, assessing $13,126 in administrative penalties with $2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SNZ INVESTMENTS, INC. dba Lockhart Grocery, Docket No. 2018-1736-PST-E on March 4, 2020, assessing $13,525 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jaime Garcia, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oxy Vinyls, LP, Docket No. 2019-0039-AIR-E on March 4, 2020, assessing $16,575 in administrative penalties with $3,315 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS GIANT KIM'S, INC. dba Fast & Low, Docket No. 2019-0063-PST-E on March 4, 2020, assessing $7,624 in administrative penalties with $1,524 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Phillips 66 Company, Docket No. 2019-0145-AIR-E on March 4, 2020, assessing $11,250 in administrative penalties with $2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2019-0147-AIR-E on March 4, 2020, assessing $15,000 in administrative penalties with $3,000 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Davis Gas Processing, Inc., Docket No. 2019-0151-AIR-E on March 4, 2020, assessing $13,598 in administrative penalties with $2,719 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding J. L. Refrigeration, LLC, Docket No. 2019-0204-PWS-E on March 4, 2020, assessing $113 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GenTex Power Corporation, Docket No. 2019-0289-AIR-E on March 4, 2020, assessing $13,500 in administrative penalties with $2,700 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ranch Hand Apartments, LLC, Docket No. 2019-0303-PWS-E on March 4, 2020, assessing $1,550 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Andrews, Docket No. 2019-0304-PWS-E on March 4, 2020, assessing $690 in administrative penalties with $690 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ERICKSDAHL WATER SUPPLY CORPORATION, Docket No. 2019-0310-PWS-E on March 4, 2020, assessing $486 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Colleen Ortiz dba River Oaks Water System and Gerard Ortiz dba River Oaks Water System, Docket No. 2019-0327-PWS-E on March 4, 2020, assessing $655 in administrative penalties with $465 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Chemours Company FC, LLC, Docket No. 2019-0340-IWD-E on March 4, 2020, assessing $30,187 in administrative penalties with $6,037 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Agrium U.S. Inc., Docket No. 2019-0359-AIR-E on March 4, 2020, assessing $7,875 in administrative penalties with $1,575 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Glenn A. Smith Corporation, Docket No. 2019-0364-WQ-E on March 4, 2020, assessing $8,500 in administrative penalties with $1,700 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Marathon Oil EF LLC, Docket No. 2019-0381-AIR-E on March 4, 2020, assessing $8,888 in administrative penalties with $1,777 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Riverbend Water Resources District, Docket No. 2019-0390-IWD-E on March 4, 2020, assessing $46,037 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Owens Corning Insulating Systems, LLC, Docket No. 2019-0397-AIR-E on March 4, 2020, assessing $16,000 in administrative penalties with $3,200 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Addie Marlin dba Marlin Marina Water System, Docket No. 2019-0428-PWS-E on March 4, 2020, assessing $778 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Clearstream Wastewater Systems, Incorporated, Docket No. 2019-0448-AIR-E on March 4, 2020, assessing $9,563 in administrative penalties with $1,912 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Opdyke West, Docket No. 2019-0470-PWS-E on March 4, 2020, assessing $1,700 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of East Tawakoni, Docket No. 2019-0500-MWD-E on March 4, 2020, assessing $20,625 in administrative penalties with $4,125 deferred. Information concern-

ing any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Key Largo Utilities LLC, Docket No. 2019-0542-PWS-E on March 4, 2020, assessing $3,385 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Taft Independent School District, Docket No. 2019-0615-PST-E on March 4, 2020, assessing $3,563 in administrative penalties with $712 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KARMAN DHILLON INC dba Nu Way, Docket No. 2019-0643-PST-E on March 4, 2020, assessing $10,525 in administrative penalties with $2,105 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lake Texoma Highport, L.L.C. dba Highport Resort & Marina, Docket No. 2019-0647-PWS-E on March 4, 2020, assessing $157 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KHBM Partners III, Ltd., Docket No. 2019-0658-WQ-E on March 4, 2020, assessing $8,438 in administrative penalties with $1,687 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Steamboat Mountain Water Supply Corporation, Docket No. 2019-0702-PWS-E on March 4, 2020, assessing $420 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pecos County, Docket No. 2019-0762-PWS-E on March 4, 2020, assessing $210 in administrative penalties with $210 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Thomas Steel Drums, Inc., Docket No. 2019-0780-AIR-E on March 4, 2020, assessing $9,500 in administrative penalties with $1,900 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Luling, Docket No. 2019-0784-PWS-E on March 4, 2020, assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Universal City, Docket No. 2019-0813-WQ-E on March 4, 2020, assessing $4,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WOODLAKE-JOSSERAND WATER SUPPLY CORPORATION, Docket No. 2019-0836-PWS-E on March 4, 2020, assessing $1,995 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Monarch Utilities I L.P., Docket No. 2019-1141-PWS-E on March 4, 2020, assessing $690 in administrative penalties with $690 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202000967
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 4, 2020

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## Notice of Water Rights Application

Notices Issued February 26, 2020

APPLICATION NO. 13631; RR 417, LLC, 9 South Cheska Lane, Houston, Texas 77024, Applicant,has applied for a water use permit to authorize the maintenance of two existing reservoirs on Commissioners Creek, Nueces River Basin for recreational purposes in Bandera County. RR 417, LLC also seeks authorization to use the bed and banks of Commissioners Creek to convey 40 acre-feet of groundwater per year for subsequent diversion of 10 acre-feet of groundwater for agricultural and recreational purposes in Bandera County and to maintain the reservoirs with groundwater. The application does not request a new appropriation of water. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on September 5, 2019. Additional information and fees were received on September 17, and October 7, 2019. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 8, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, maintaining an alternate source of water. 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, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice.

WATER USE PERMIT No. 12810; Daisy Farms, LLC, 4482 Highway 24, Paris, Texas, 75462, Applicant, seeks authorization to extend the time to commence and complete the construction of three dams and reservoirs located on unnamed tributaries of Auds Creek, Sulphur River Basin. The application and fees were received on August 30, 2019, additional information was received on November 15 and November 18, 2019. The application was declared administratively complete and filed with office of the Chief Clerk on November 27, 2019. The Executive Director has determined the applicant has shown due diligence and justification for delay. In the event a hearing is held on this application, the Commission shall also consider whether the appropriation shall be forfeited for failure to demonstrate sufficient due diligence and justification for delay. The Executive Director has completed the technical review of the application and prepared a draft Order. The draft Order, if granted, would authorize the extension of time to commence and complete construction. The application, technical memorandum, and Executive Director's draft Order are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

To view the complete issued notice, view the notice on our web site at 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. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202000965
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 4, 2020

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## REVISED Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40307

Application. Diversified Waste Management, Inc. has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40307, to construct and operate a Medical Waste Processing Facility. The proposed facility, Diversified Waste Management, Inc. will be located 13511 Indian Hill Road, Amarillo, Texas 79124, in Potter County. The Applicant is requesting authorization to store, treat, and transfer medical waste, trace chemotherapy waste, and non-hazardous pharmaceutical waste. The registration application is available for viewing and copying at the Southwest Amarillo Public Library located at 6801 Southwest 45th Street, Amarillo, Texas 79109 and may be viewed online at https://www.gdsassociates.com/txprojects. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=35.190972&lng=-101.99622&zoom=13&type=r. For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly

specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Diversified Waste Management, Inc. at the address stated above or by calling Mr. Brandon Brown, Owner, at (806) 371-0120.

TRD-202000964
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 4, 2020

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## Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of January, 2020, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amend-ment Number | Date of Action |
|---|---|---|---|---|---|
| Throughout TX | Atex Environmental Group L.L.C. | L07037 | Andrews | 00 | 01/28/20 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amend-ment Number | Date of Action |
|---|---|---|---|---|---|
| Austin | Austin Radiological Association | L00545 | Austin | 225 | 01/27/20 |
| Austin | ARA St. David's Imaging L.P. | L05862 | Austin | 99 | 01/27/20 |
| Beaumont | Exxon Mobil Corporation dba Exxonmobil Chemical Company | L02316 | Beaumont | 54 | 01/28/20 |
| Clifton | Lhoist North America of Texas L.L.C. | L02461 | Clifton | 17 | 01/24/20 |
| Dallas | Cardiology & Interventional Vascular | L05412 | Dallas | 12 | 01/31/20 |
| Dallas | University of Texas Southwestern Medical Center at Dallas | L05947 | Dallas | 44 | 01/28/20 |
| Dallas | Sofie Co. | L06174 | Dallas | 29 | 01/31/20 |
| Dallas | UT Southwestern Medical Center | L06663 | Dallas | 21 | 01/22/20 |
| Freeport | Braskem America Inc. | L06443 | Freeport | 06 | 01/16/20 |
| Gatesville | Coryell County Memorial Hospital Authority dba Coryell Memorial Healthcare System | L02391 | Gatesville | 39 | 01/16/20 |
| Houston | Houston Refining L.P. | L00187 | Houston | 78 | 01/27/20 |
| Houston | Harris County Hospital District dba Harris Health System | L01303 | Houston | 98 | 01/29/20 |
| Houston | Houston Medical Imaging | L05184 | Houston | 23 | 01/31/20 |
| Houston | American Diagnostic Tech. L.L.C. | L05514 | Houston | 144 | 01/31/20 |

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

| | | | | | |
|---|---|---|---|---|---|
| Houston | Houston Northwest Operating Company L.L.C.<br>dba Houston Northwest Medical Center | L06190 | Houston | 41 | 01/16/20 |
| Houston | Veterinary Specialists of Texas Pc<br>dba Gulf Coast Veterinary Specialists | L06978 | Houston | 02 | 01/22/20 |
| Irving | Gregory A. Echt M.D. P.L.L.C.<br>dba Choice Cancer Care | L06985 | Irving | 01 | 01/22/20 |
| L05077 | Red River Pharmacy Services | L05077 | Texarkana | 33 | 01/29/20 |
| Lubbock | ISORX Texas Ltd. | L05284 | Lubbock | 35 | 01/21/20 |
| Mont Belvieu | Enterprise Products Operating L.L.C. | L06963 | Mont Belvieu | 01 | 01/27/20 |
| N. Richland Hills | Columbia North Hills Hospital Subsidiary L.P.<br>dba Medical City North Hills | L02271 | N. Richland Hills | 85 | 01/21/20 |
| Orange | Performance Materials NA Inc. | L07026 | Orange | 01 | 01/31/20 |
| Pasadena | Afton Chemical Corporation | L06740 | Pasadena | 05 | 01/16/20 |
| Round Rock | St. David's Healthcare Partnership L.P., L.L.P.<br>dba St. David's Round Rock Medical Center | L03469 | Round Rock | 63 | 01/28/20 |
| Rowlett | Lake Pointe Operating Company L.L.C.<br>dba Baylor Scott & White Medical Center – Lake Pointe | L04060 | Rowlett | 21 | 01/29/20 |
| Sweeny | Phillips 66 Company Sweeny Refinery | L06524 | Sweeny | 16 | 01/28/20 |
| Texas City | Valero Refining Company | L02578 | Texas City | 40 | 01/17/20 |
| Texas City | Blanchard Refining Company L.L.C. | L06526 | Texas City | 21 | 01/23/20 |
| Throughout TX | RWLS L.L.C.<br>dba Renegade Services | L06307 | Andrews | 38 | 01/30/20 |
| Throughout TX | NQS Inspection Ltd. | L06262 | Corpus Christi | 18 | 01/16/20 |
| Throughout TX | NCS Multistage L.L.C. | L06361 | Corpus Christi | 13 | 01/29/20 |
| Throughout TX | NCS Multistage L.L.C. | L06361 | Corpus Christi | 12 | 01/16/20 |
| Throughout TX | Rone Engineering Services Ltd. | L02356 | Dallas | 55 | 01/31/20 |
| Throughout TX | Team Consultants Inc. | L04012 | Dallas | 17 | 01/31/20 |
| Throughout TX | Geoscience Engineering & Testing - North Texas Division L.L.C. | L06398 | Dallas | 01 | 01/23/20 |
| Throughout TX | QES Wireline L.L.C. | L06620 | Fort Worth | 22 | 01/23/20 |
| Throughout TX | The University of Texas Medical Branch Office of Environmental Health and Safety | L01299 | Galveston | 114 | 01/29/20 |
| Throughout TX | Haimo America Inc. | L06936 | Houston | 06 | 01/16/20 |
| Throughout TX | CES Partners L.L.C. | L06994 | Ingleside | 03 | 01/29/20 |
| Throughout TX | Mistras Group Inc. | L06369 | La Porte | 33 | 01/01/20 |
| Throughout TX | Intertek Asset Integrity Management Inc. | L06801 | Longview | 11 | 01/29/20 |
| Throughout TX | Quantum Technical Services L.L.C. | L06406 | Pasadena | 20 | 01/16/20 |
| Throughout TX | Pinnacleais Inspection L.L.C. | L07014 | Pasadena | 01 | 01/24/20 |
| Throughout TX | Raba-Kistner Consultants Inc.<br>dba Raba-Kistner-Brytest Consultants Inc. | L01571 | San Antonio | 92 | 01/21/20 |
| Tyler | The University of Texas Health Science Center at Tyler | L04117 | Tyler | 66 | 01/24/20 |
| Waller | NRG Manufacturing Inc. | L06550 | Waller | 04 | 01/28/20 |

RENEWAL OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amend-ment Number | Date of Action |
|---|---|---|---|---|---|
| Corsicana | Navarro Hospital Inc. L.P.<br>dba Navarro Regional Hospital | L02458 | Corsicana | 36 | 01/24/20 |
| Dallas | Immuno Diagnostic Center Inc. | L04365 | Dallas | 13 | 01/16/20 |
| League City | Gulf Coast Heart Clinic P.L.L.C. | L06286 | League City | 06 | 01/27/20 |

RENEWAL OF LICENSES ISSUED (continued):

| | | | | | |
|---|---|---|---|---|---|
| Pasadena | The Goodyear Tire & Rubber Company | L04321 | Pasadena | 18 | 01/28/20 |
| San Antonio | Sonterra Cardiovascular Institute P.A. | L06264 | San Antonio | 03 | 01/16/20 |
| Throughout TX | JV Industrial Companies Ltd | L06214 | Freeport | 05 | 01/22/20 |
| Throughout TX | Statewide Maintenance Company dba Diamond G Inspection Inc. | L06229 | Houston | 13 | 01/23/20 |
| Wichita Falls | Texas Oncology P.A. | L06288 | Wichita Falls | 14 | 01/28/20 |

TERMINATIONS OF LICENSES ISSUED:

| Location of Use/Possession of Material | Name of Licensed Entity | License Number | City of Licensed Entity | Amend-ment Number | Date of Action |
|---|---|---|---|---|---|
| Dallas | OKM Engineering Inc. | L05946 | Dallas | 03 | 01/23/20 |
| Needville | Wilco NDT L.L.C. | L06916 | Needville | 03 | 01/28/20 |
| San Antonio | BTDI J.V. L.L.P. dba Sendero Imaging Main | L06768 | San Antonio | 02 | 01/16/20 |
| Throughout TX | Anderson Pollution Control Inc. | L06715 | Houston | 02 | 01/31/20 |

IMPOUND ORDERS ISSUED:

| Name | Type of Order | License # | Address | Action | Date of Issuance |
|---|---|---|---|---|---|
| Garth Denyer, MD d/b/a Cenegenics – Houston | Impound Order | Unregistered | 1790 Hughes Landing Boulevard, Building 2, Suite 125 The Woodlands | Impound Bone Density Unit | 01/29/20 |

TRD-202000894
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: February 27, 2020

♦ ♦ ♦

## Texas Department of Housing and Community Affairs

### 2020-4 Multifamily Special Purpose Notice of Funding Availability: Predevelopment

**Multifamily Finance Division 2020-4 Special Purpose Notice of Funding Availability (NOFA):**

**Predevelopment**

**1) Summary.** The Texas Department of Housing and Community Affairs (the Department) announces the availability of $200,000.00 in Multifamily Tax Credit Assistance Program Repayment Funds (TCAP RF) funding for eligible predevelopment activities for Applications to finance affordable multifamily rental housing for low-income Texans through the Department. Additional funds may be added in order to completely fund awards. Applications under this Special Purpose NOFA will be accepted starting at 8:00 a.m. Austin local time on March 27, 2020, through October 9, 2020, at 5:00 p.m. Austin local time (unless ended sooner by Board Action).

**2) Eligible Applicants.** Each eligible Applicant (a private 501(c)3 or 501(c)4 nonprofit organization), including any staff or Board members of the organization, Affiliate entity, or any individual with Control of the proposed Development (a private nonprofit corporation that does not share a Principal with the Applicant and will not have an Ownership interest in the proposed Development, will not be deemed to have control for this eligibility determination, but may still have Control in accordance with other rules listed in this NOFA), that has not received an award of funds from the Department for a multifamily development after January 1, 2010), and did not receive an award under the 2019-2 Special Purpose Notice of Funding Availability: Predevelopment, may apply for a predevelopment grant in an amount of up to $50,000.00. A nonprofit organization (inclusive of any Affiliate organization) may receive only one award under this NOFA.

**3) Availability and Use of Funds.** Except as noted herein, if any provisions of this NOFA are in conflict with provisions of the following rules, as applicable, for which the use of these TCAP RF grant funds are subject to, the applicable rule will control, as further described in Addendum A.

**a. 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 13 (Multifamily Direct Loan Rule)

**b. Texas Government Code.**

Tex. Gov't Code Chapter 2306 (State Act)

**c. Federal Cross-Cutting Standards.**

Federal Fair Housing Act, 42 U.S.C. 3601-19

**4) Eligible Costs.**

**a. Eligible for Reimbursement.** Costs eligible for reimbursement under this NOFA are limited to those which are necessary in order to ultimately submit an Application for Development Funding in accordance with the applicable 10 TAC Chapter 11 or Chapter 13. All costs must be supported by a contract or similar agreement with the third party. Examples of eligible costs include, but are not limited to: costs for Third-Party Reports, accounting fees, architectural and engineering fees, zoning change fees, land surveys, legal fees unrelated to Application preparation, fees related to obtaining site control (e.g. earnest money fees, extension fees), etc.

**b. Ineligible for Reimbursement.** The Applicant's internal costs of operation are not eligible. Costs for consultants and similar entities to prepare an Application are not eligible. Costs incurred prior to Application Acceptance Period are not eligible.

**i. Costs related to Ineligible Development Site.** Additionally, costs related to a Development Site that is ineligible under 10 TAC §11.101 related to Site and Development Requirements and Restrictions are ineligible costs, unless the Department's Governing Board has made a determination of eligibility , or ineligibility is the result of information gained from Third-Party Reports or other work completed under this NOFA. For Neighborhood Risk Factors (10 TAC 11.101(a)(3)) and any other site requirement or restriction impacting eligibility that an Applicant knows at Application, an Applicant must submit a request for pre-determination prior to or with its Application under this NOFA. If a site requirement or restriction that would make the site or development ineligible is discovered as a result of information gained from Third-Party Reports or other work completed under this NOFA, an Applicant must submit a request for determination before incurring other costs under its award.

**ii. Costs related to Non-Conforming Existing Development.** Costs related to an Existing Development that is not able to meet the minimum Development size identified in 10 TAC §11.101(b)(2) are ineligible costs, unless the Department's Governing Board has made a determination of eligibility. An Applicant must submit a waiver request outlining conformance with the Development's Underwriting Rules and Guidelines as described in 10 TAC Chapter 11, Subchapter D.

**5) Restrictions on Third-Party Reports.** Awardees under this NOFA will be required to receive the Department's explicit written consent to allow Third-Party Reports paid for with funds awarded under this NOFA to be shared with any other public or private financing entities.

**6) Application Submission Requirements.**

**a. Summary.** Applications under this Special Purpose NOFA will be accepted starting at 8:00 a.m. Austin local time on March 20, 2020, through October 9, 2020, at 5:00 p.m. Austin local time (unless ended sooner by Board Action).

**b. Date of Receipt.** All Applications under this NOFA will be prioritized based on the business day of receipt until 5:00 p.m., Austin local time on October 9, 2020 (unless earlier closed by Board action). The earliest date of receipt will be March 27, 2020.

**c. Tie Breaker.** All Applications with the same date of receipt will be ranked based on the greatest linear distance from the nearest Housing Tax Credit assisted Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report.

**d. Fees.** Applicants are **not** required to remit a Predevelopment Application fee.

**e. Required Materials for all Applications under this Special Purpose NOFA.** All Application materials including manuals, NOFAs, program guidelines, and rules will be available on the Department's website at https://www.tdhca.state.tx.us/multifamily/nofas-rules.htm and https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm. An Application must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department. Applicant must submit the Application materials as detailed in the Multifamily Predevelopment Procedures Manual (Manual) in effect at the time the Application is submitted. An Application must be uploaded to the Department's secure web transfer server in accordance with 10 TAC §11.201(1)(C). Access to the ServU system is available with this request: https://www.tdhca.state.tx.us/multifamily/docs/19-ElectronicFilingAgreement.xls.

**7) Post Award Requirements.** Applicants are strongly encouraged to review the applicable Post-Award Requirements in 10 TAC Chapter 13, as well as the Compliance Monitoring requirements in 10 TAC Chapter 10, Subchapter F.

**a. Grant Agreement.** An Applicant awarded under this Special Purpose NOFA will be required to fully execute and adhere to any and all requirements under the 2020 Multifamily Predevelopment Contract and related Certifications. The Contract will have up to an 18 month period to pay for eligible predevelopment costs, and up to an additional six month period to submit draw requests for reimbursement of eligible predevelopment costs. The Contract performance period will be five years (unless extended). If the Applicant (or any Affiliate or assignee) receives an award of credits, bonds, grants, or loan funds for the Site identified in the Contract before the end of the performance period, Applicant will agree to put one TCAP-RF unit on the Development. That TCAP-RF Unit must meet the requirements for HOME-Match, as identified 24 CFR Part 92 and the Department's rules.

**b. Draw Funds.** Awarded Applicants may be required to meet additional documentation requirements in order to draw funds, in accordance with Previous Participation results and Contractual conditions.

**8) Miscellaneous.**

**a.** This NOFA does not include text of the various applicable regulatory provisions pertinent to the TCAP RF Program. For proper completion of the Application, the Department strongly encourages potential Applicants to review all State and Federal regulations.

**b.** An award under this NOFA does not constitute a finding of eligibility with regard to Site and Development Requirements and Restrictions under future Department rules.

**c.** The Board may on a case-by-case basis, or in whole, waive procedural provisions of this NOFA where such waiver or exception to the provision(s) are warranted and documented, and where such exception is not in violation with any state or federal requirement(s) and the NOFA is open.

**d.** For questions regarding this Special Purpose NOFA, please contact Alena R. Morgan, Multifamily Direct Loan Policy and Research Specialist, at alena.morgan@tdhca.state.tx.us or 512-475-2596.

**ADDENDUM A**

Unless otherwise specified, the following is a list of relevant provisions of the Texas Administrative Code (TAC) applicable to Applications proposing Predevelopment under this Special Purpose NOFA, as cited and enforceable by the TDHCA Governing Board:

**10 TAC Chapter 1 (Administration)**

**10 TAC Chapter 2 (Enforcement)**

**10 TAC Chapter 11 (Housing Tax Credit Program Qualified Allocation Plan)**

**Subchapter A - Pre-Application, Definitions, Threshold Requirements, and Competitive Scoring**

§11.1 (General)

**Subchapter B - Site and Development Requirements and Restrictions**

§11.101(a) Site and Development Requirements and Restrictions

**Subchapter C - Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules**

§11.201(1)(General Requirements)

§11.201(6)(Order of Review of Applications under Various Programs)

§11.201(7)(Deficiency Process)

§11.201(8)(Limited Reviews)

§11.202(Ineligible Applicants and Applications)

§11.204(1)(Certification)

§11.204(2)(Applicant Eligibility Certification)

§11.204(10)(Site Control)

§11.204(13)(Ownership Structure and Previous Participation)

§11.204(14)(Nonprofit Ownership)

§11.206(Board Decisions)

§11.207(Waiver of Rules)

**Subchapter D - Underwriting and Loan Policy**

§11.303 Market Analysis Rules and Guidelines

§11.304 Appraisal Rules and Guidelines

§11.305 Environmental Site Assessment Rules and Guidelines

§11.306 Scope and Cost Review Guidelines

**Subchapter E - Fee Schedule, Appeals, and Other Provisions**

§11.903 (Adherence to Obligations)

§11.904 (Alternative Dispute Resolution Policy)

**10 TAC Chapter 13 (Multifamily Direct Loan Rule)**

§13.1(Purpose)

§13.2(Definitions)

§13.3(Loan Requirements)

§13.4(d)(Other Priorities)

§13.5(Award Process)

§13.11(b)(e) (Contract execution)

§13.11(b)(13)(A)(B)(D) and (H), (Disbursement of Funds)

TRD-202000972
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 4, 2020

♦ ♦ ♦

## First Amendment to 2020-1 Multifamily Direct Loan Annual Notice of Funding Availability

This amendment adds $5,385,999.20 in National Housing Trust Fund (NHTF) to the Soft Repayment Set-Aside and increases the maximum request under the Soft Repayment Set-Aside from $1,000,000 to $2,000,000. None of this $5,385,999.20 in NHTF will be subject to the Regional Allocation Formula, therefore all NHTF is available on a statewide basis. This amendment replaces in its entirety sections 1, 2b, and the table in section 2. All other sections of the 2020-1 NOFA remain as originally published.

**1) Summary.** The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to **$19,232,167.20** in HOME funds (HOME funds under this NOFA may only be awarded to Applications with Development Sites in non-Participating Jurisdictions) and NHTF funding for the development of affordable multifamily rental housing for low-income Texans. Applications under the CHDO and General Set-Asides of the 2020-1 NOFA will be accepted from January 13, 2020, through August 31, 2020 (if sufficient funds remain). Applications under the Soft Repayment Set-Aside of the 2020-1 NOFA will be accepted February 28, 2020, through August 31, 2020 (if sufficient funds remain). The availability and use of these funds are subject to the following rules, as applicable:

a. 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.ViewTAC?tac_view=3&ti=10&pt=1

b. Texas Government Code

Tex. Gov't. Code Chapter 2306

http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm

c. 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)

d. Fair Housing

Federal Fair Housing Act, 42 U.S.C. 3601-19.

https://www.tdhca.state.tx.us/fair-housing/index.htm

e. 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.

https://www.tdhca.state.tx.us/program-services/environmental/index.htm

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.

https://www.tdhca.state.tx.us/program-services/ura/index.htm

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).

https://www.tdhca.state.tx.us/program-services/davis-bacon/index.htm

Employment Opportunities

HOME and NSP1 PI require compliance with 24 CFR Part 135 (Section 3).

https://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm

**If HOME or NHTF funds are awarded and Federal regulations or subsequent guidance imposes additional requirements, such Federal regulations or guidance shall govern.**

f. 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) Soft Repayment Set-Aside.** $5,385,999.20 in NHTF is available in this Set-Aside. Applicants within this Set-Aside must restrict rent and income for all Direct Loan-assisted units to 30% as defined in 24 CFR Part 93. Applicants in this Set-Aside must meet the Supportive Housing requirements in 10 TAC §11.1(d)(122) including the underwriting considerations for Supportive Housing Developments in 10 TAC §11.302(g)(4) or the requirements in 10 TAC §13.4(a)(1)(A)(ii).

| Set-Aside | Eligible Activities | Fund Source and Amount Available | | Maximum Request |
|---|---|---|---|---|
| CHDO | NC, A/R, R | HOME | $4,733,439 | $3,000,000 |
| Soft Repayment | NC | NHTF | $5,385,999.20* | $2,000,000 |
| General | NC, A/R, R | HOME | $9,112,729 | $3,000,000 |

**Key:**
NC – New Construction (For the Soft Repayment Set-Aside, New Construction includes Reconstruction, as defined in 24 CFR Part 93)
A/R – Acquisition/Rehabilitation
R – Rehabilitation

*Because the Department has not yet met its federal commitment deadline for the 2018 or 2019 NHTF funds, the Department will condition all NHTF awards under this NOFA, that the award of NHTF funds may be proportionally reduced or terminated if the Department and Applicant are unable to enter into a Contract by a specific date listed in the Board approval, despite any other deadlines existing in the Texas Administrative Code.

TRD-202000971
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 4, 2020

♦ ♦ ♦

## Texas Department of Licensing and Regulation

Public Notice - Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held February 18, 2020, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan, which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The

enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to include the penalty matrix for the Behavior Analysts program.

The Texas Legislature enacted Senate Bill 589 (S.B. 589), 85th Legislature, Regular Session (2017), which created the licensing requirement for Behavior Analysts in Texas. The Behavior Analysts penalty matrix provides for a single range of penalties for each class to eliminate confusion and allow the industry to fully understand the penalties assessed. The penalty matrix describes the specific ranges of penalties and license sanctions that apply to specific violations of the statutes and rules enforced by the Department. This penalty matrix may differ slightly from others as the agency focuses on aligning strategic plan goals with agency resources.

The Behavior Analysts Advisory Board recommended approval of the penalty matrix at their meeting held January 29, 2020. The penalty matrix was presented to the Commission on February 18, 2020, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

Table 1 - Behavior Analysts Penalty Matrix

# Behavior Analyst
# (BHV)

**Texas Occupations Code Chapter 506**
**Texas Occupations Code Chapter 51**
**Texas Health and Safety Code, Chapter 181**
**16 Texas Administrative Code Chapter 121**
**16 Texas Administrative Code Chapter 60**

## Class A Violations:

| **Penalty Range:** |
|---|
| $500 up to $1,000 |

**Administrative Violations**

| | |
|---|---|
| Failed to report to the Department within 10 days of the event the expiration of the licensee's certification | 121.50(a)(1) |
| Failed to report to the Department within 10 days of the event the commencement of the licensee's inactive status of the licensee's certification by the certifying entity | 121.50(a)(10) |
| Failed to Report to the Department within 30 days of the event change in name, mailing address, phone number, or email contact | 121.50(b)(2) |
| Failed to notify each client or minor client's parent or authorized representative of the Department's name, website, email address, mailing address, and telephone number for the purpose of directing complaints to the Department | 121.70(b)(4) |

**Posting and Public Information Violations**

| | |
|---|---|
| Failed to display license in the primary location of the practice | 121.70(b)(12) |
| Displayed a photograph or otherwise reproduced image of a license | 121.70(b)(12) |

## Class B Violations:

| **Penalty Range:** |
|---|
| $750 up to $3,000 and/or up to 6-month full suspension |

**Recordkeeping Violations**

| | |
|---|---|
| Failed to provide a client or a minor client's parent or authorized representative with a written agreement for services prior the commencement of behavior analysis services | 121.70(b)(8) |
| Failed to maintain legible and accurate records of behavior analysis services | 121.70(b)(9) |
| Failed to maintain records of behavior analysis services rendered in an environment for the period of time required by the service setting or | 121.70(b)(9) |

| | |
|---|---|
| certifying entity, provided that those requirements are more stringent that those stated by the Department | |
| Failed to maintain records of behavior analysis services for the time required by Department rules | 121.70(b)(10) |

**Administrative Violations**

| | |
|---|---|
| Failed to report to the Department within ten days of the event the surrender or voluntary termination of the license holder's certification | 121.50(a)(2) |
| Failed to report to the Department within ten days of the event the settlement of a or judgment rendered in a civil lawsuit filed against the license holder and relating to the license holder's professional behavior analysis practice | 121.50(a)(7) |
| Failed to report within ten days of the event any complaints, investigations, or actions against the licensee by a governmental agency or by a licensing or certification body | 121.50(a)(8) |
| Failed to report within ten days of the event any other limitation on, or termination of, the license holder's certification | 121.50(a)(11) |
| Failed to report within thirty days of the event the initiation of disciplinary action against the license holder by a behavior analysis certifying entity | 121.50(b)(1) |
| Failed to report within the specified time the commencement of inactive status of the person's certification by the certifying entity | 121.50(b)(10) |
| Failed to promptly provide upon request by the Department any documents or information satisfactory to demonstrate the license holder's qualifications for certification by the certifying entity or for licensure by the Department | 121.70(a) |
| Failed to report the Department any fact that may affect the license holder's qualifications to hold a certification or license in accordance with §121.50 | 121.70(b)(3) |

**Unlicensed Activity**

| | |
|---|---|
| Practiced, attempted, offered to practice applied behavior analysis with an expired license | 506.251(a) |
| Used the title "licensed behavior analyst," "licensed assistant behavior analyst," or any facsimile of those titles with an expired license | 506.251(b); 121.26(e) |
| Practiced applied behavior analysis or engaged in any activity for which a license is required while license was on inactive status | 121.27(b)(1) and (2) |

**Advertising Violations**

| | |
|---|---|
| Used an advertisement or announcement that causes confusion or misunderstanding as to the credentials, education, or licensing of a professional | 121.75(c)(4) |

| | |
|---|---|
| Represented in the use of a professional name, a title or professional identification that is expressly or commonly reserved to or used by another profession or professional, unless the license holder is licensed or otherwise authorized to use the title or professional identification | 121.75(c)(6) |

## Class C Violations:

| **Penalty Range:** |
|---|
| $2,000 up to $5,000 and/or 1-year suspension up to revocation |

**Administrative Violations**

| | |
|---|---|
| Failed to report to the Department within the specified time the surrender or voluntary termination of the license holder's certification | 121.50(a)(2) |
| Failed to report within the specified time a violation by the license holder of the certifying entity's requirements, the Act or the rules | 121.50(a)(3) |
| Failed to report within the specified time the suspension, probation, reprimand, or any other discipline or revocation of the license holder's certification | 121.50(a)(4) |
| Failed to report within the specified time the license holder's arrest, deferred adjudication, or criminal conviction, other than a Class C misdemeanor traffic offense | 121.50(a)(5) |
| Failed to report within the specified time the filing of a criminal case against the licensee | 121.50(a)(6) |
| Failed to report within the specified time the settlement or judgement rendered in a civil lawsuit filed against the license holder and relating to the license holder's professional behavior analysis practice | 121.50(a)(7) |
| Failed to report within the specified time any complaints, investigations, or actions against the licensee by a governmental agency or by a licensing or certifying body | 121.50(a)(8); 121.50(b)(1) |
| Failed to report within the specified time the initiation of disciplinary action or other proceedings against the licensee by an employer or other entity that may result in civil liability or criminal charges or that may result in disqualification for certification by the certifying entity in accordance with the certifying entity's requirements | 121.50(a)(9) |
| Failed to report within the specified time the limitation of or termination of the licensee's certification | 121.50(11) |

**Recordkeeping and Confidentiality Violations**

| | |
|---|---|
| Failed to obtain written consent from a client or a client's parent or authorized representative in order to use a client's data or information for research or teaching activities | 121.75(b)(11) |
| Revealed confidential or personal information about a client without authorization other than as required by law, a certifying entity, compelled | 121.75(b)(12) |

| | |
|---|---|
| by a court, or as required to protect the welfare of the client or the community | |
| Failed to document any confidential or personal information disclosed, the person or entity to whom it was disclosed, and the justification for the disclosure in the client's record if the licensee reveals such information without authorization | 121.75(b)(13) |
| Failed to maintain confidentiality of records | Chapter 181, Texas Health and Safety Code |

**Standard of Care Violations – Related to Supervision**

| | |
|---|---|
| Participated in a supervision relationship with another licensee or unlicensed person while license was on inactive status | 121.27(b)(3) |
| Delegated services, functions, or responsibilities requiring professional competence to a person not competent or not properly credentialed | |

**Standard of Care Violations – Related to Treatment**

| | |
|---|---|
| Offered to perform or performed behavior analysis services for which the license holder was not qualified, or which were out of scope of the license holder's certification, license, or competence, considering level of education, training, and experience | 121.75(b)(3) |
| Failed to fully and accurately inform clients of the nature and possible outcomes of services rendered | 121.75(b)(5) |
| Failed to be knowledgeable of all available information relevant to the behavior analysis services being provided to the client | 121.75(b)(6) |
| Failed to take reasonable measures to ensure a safe environment for clients | 121.75(b)(7) |
| Failed to maintain objectivity in all matters concerning the welfare of the client | 121.75(b)(8) |
| Participated in inappropriate or exploitative multiple relationships | 121.75(b)(9) |
| Guaranteed, directly or by implication, the results of any behavior analysis services other than making a reasonable prognosis | 121.75(b)(10) |
| Overtreated a client persistently or flagrantly | 121.75(b)(20) |
| Failed to terminate a professional relationship when it is reasonably clear that the client is not benefitting from the services being provided or when it is reasonably clear that the client no longer needs the services | 121.75(b)(21) |
| Failed to attempt to identify competent, dependable referral sources for clients or failed to make a referral when requested or appropriate | 121.75(b)(22) |
| Used an advertisement that compares a professional's services with another professional's services unless the comparison can be factually substantiated | 121.75(c)(3) |

**Misrepresentation**

| | |
|---|---|
| Represented his or her education, training, credentials, or competence inaccurately or untruthfully | 121.75(b)(4) |
| Misled clients to expect results that cannot be predicted from reliable evidence | 121.75(b)(10) |
| Used false, misleading, inaccurate, incomplete, out of context, deceptive, or not readily verifiable information in an advertisement or announcement | 121.75(c) |
| Used advertising that makes a material representation of fact or omits a fact necessary to make the statement as a whole not materially misleading | 121.75(c)(1) |
| Used an advertisement likely to create an unjustified expectation about the results of a professional service | 121.75(c)(2) |
| Used an advertisement that causes confusion or misunderstanding as to the credentials, education, or licensing of a professional | 121.75(c)(4) |
| Used an advertisement designed to take advantage of the fears or emotions of a particularly susceptible type of client | 121.75(c)(5) |

**Unlicensed Activity**

| | |
|---|---|
| Engaged in the practice of applied behavior analysis without a license | 506.251(a) |
| Used the title 'licensed behavior analyst' without a license | 506.251(b) |
| Used the title 'behavior analyst' without a license | 506.251(c) |

**Unprofessional or Unethical Conduct – Billing Violations**

| | |
|---|---|
| Failed to provide in plain language a written explanation of the charges for behavior analysis services previously made on a bill or statement upon the written request of a client or client's parent or authorized representative | 121.75(b)(14) |
| Persistently or flagrantly overcharged a client or a third party | 121.75(b)(19) |
| Knowingly submitted a bill for treatment to a client or third-party payor a bill for services not provided or that were improper, unreasonable, or clinically unnecessary | Tex. Health & Safety Code § 311.0025(a) |

**Unprofessional or Unethical Conduct**

| | |
|---|---|
| Violated the BACB Professional and Ethical Compliance Code for Behavior Analysts | 121.75(a) |
| Discriminated in the provision of behavior analysis services on the basis of race, color, national origin, religion, gender, age, or disability | 121.75(b)(2) |
| Failed to accurately represent and describe any product created or recommended by the license holder | 121.75(b)(15) |
| Required the purchase by a client of any product created or produced by the license holder | 121.75(b)(16) |
| Used his or her professional relationship with a client to promote any product for personal gain or profit without disclosing to the client the nature of the licensee's personal gain or profit | 121.75(b)(17) |

## Class D Violations:

| **Penalty Range:** |
|---|
| $5,000 and/or revocation |

| | |
|---|---|
| Engaged in sexual contact or sexually exploitive behavior or therapeutic deception with a client | 121.75(b)(24) |
| Practiced behavior analysis when incapable of practicing with reasonable skill due to illness, use of alcohol, drugs, medications, narcotics, chemicals or other substances, or from mental or physical conditions | 121.75(b)(25) |
| Failed to surrender a license issued by the Department on demand | 121.70(a) |
| Obtained a license by fraud, misrepresentation, or concealment of a material fact | 506.351(2);<br>60.23(a)(1);<br>60.23(a)(2) |
| Violated an order of the Commission or Executive Director | 506.351(2);<br>51.353(a);<br>60.23(a)(2) |
| Sold, bartered, or offered to barter or sell a license | 506.351(3);<br>121.75(b)(23) |
| Used or provided unauthorized assistance in connection with an examination | 60.52(a) |
| Failed to pay the Department for a dishonored payment or processing fee | 60.82 |

TRD-202000932
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: February 28, 2020

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Public Notice - Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held December 20, 2019, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to include the penalty matrix for the Code Enforcement Officer program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which transferred regulatory authority of 13 programs, to include Code Enforcement Officers from the Texas Department of State Health Services to the Commission and Department. The Code Enforcement Officer penalty matrix provides for a single range of penalties for each class to eliminate confusion and allow the industry to fully understand the penalties assessed. The penalty matrix describes the specific ranges of penalties and license sanctions that apply to specific violations of the statutes and rules enforced by the Department. This penalty matrix may differ slightly from others as the agency focuses on aligning strategic plan goals with agency resources.

The Code Enforcement Officer Advisory Committee recommended approval of the penalty matrix at their meeting held November 8, 2019. The penalty matrix was presented to the Commission on December 20, 2019, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

Table 1 - Code Enforcement Officers Penalty Matrix

# CODE ENFORCEMENT OFFICERS
## (CEO)

**Texas Occupations Code, Chapter 1952**
**Texas Occupations Code, Chapter 51**
**16 Texas Administrative Code, Chapter 62**
**16 Texas Administrative Code, Chapter 60**

## CLASS A:

| **Penalty Range:** |
|---|
| $500 up to $1,000 |

**Administrative Violations**

| | |
|---|---|
| Failed to maintain certificates of completion for approved continuing education courses | 62.24(l) |

**Public Notice Violations**

| | |
|---|---|
| Failed to provide Department information on all written contracts, invoices and signs in place of business | 62.70(c) |

## CLASS B:

| **Penalty Range:** |
|---|
| $750 to $1,500 and/or up to one-year full suspension |

**Unlicensed Activity**

| | |
|---|---|
| Claimed or used the titles "code enforcement officer" or "code enforcement officer in training," while the registrant's registration was expired | 62.70(b)(8) |

**Improper Use of a License**

| | |
|---|---|
| Used a registration belonging to another person | 62.70(b)(9) |
| Registrant allowed another person to use their registration | 62.70(b)(9) |

**Supervisor Responsibilities**

| | |
|---|---|
| Supervised more than three code enforcement officers in training at one time | 62.71(b)(1) |
| Failed to submit a timely notification of termination of supervision to the Department and supervisee | 62.71(c) |
| Registrant failed to include required information in the notification of termination of supervision | 62.71(c)(1)-(4) |

**Supervisee Responsibilities**

| | |
|---|---|
| Failed to have a current, accurate verification of supervision form on file with the Department | 62.72(b) |
| Failed to include in the verification of supervision form the name of the applicant and each supervisor | 62.72(b)(1) |
| Failed to include in the verification of supervision form the registration number of each supervisor | 62.72(b)(2) |
| Failed to include in the verification of supervision form the primary location and address from which code enforcement services will be provided | 62.72(b)(3) |
| Failed to include in the verification of supervision form a description of code enforcement duties to be rendered by the supervisee | 62.72(b)(4) |
| Failed to file a new verification of supervision form as required | 62.72(c) |

## CLASS C:

| **Penalty Range:** |
|---|
| $1,500 to $3,000 plus one-year probated suspension up to revocation |

**Standards of Conduct**

| | |
|---|---|
| Engaged in acts that were grossly negligent, incompetent, or guilty of misconduct | 1952.151(b)(2); 62.70(b)(11) |
| Failed to exercise reasonable judgment and skill | 62.70(a)(1) |
| Engaged in acts or practices that constitute dishonesty, lack of trustworthiness or misrepresentation | 62.70(a)(2); 62.70(b)(3) |
| Engaged in acts or practices that constitute a threat, coercion or extortion | 62.70(a)(2) |

| | |
|---|---|
| Engaged in acts intending to evade the Act, rules, or standards adopted by the Commission | 62.70(b)(1) |
| Furnished inaccurate, deceitful, or misleading information to the Department, a consumer, or other person | 62.70(b)(2) |
| Performed duties while impaired due to consumption of alcohol or a controlled substance not prescribed by a physician | 62.70(b)(4) |
| Registrant verbally, physically, or sexually abused, or attempted to abuse, an individual while performing as a registrant | 62.70(b)(5) |
| Registrant accepted, or offered to accept, any form of compensation for not reporting a hazard as required, or for correcting a hazard which was found while performing as a registrant | 62.70(b)(6) |
| Failed to report a crime when the report is required by law | 62.70(b)(7) |
| Altered a registration | 62.70(b)(10) |

**Supervisor Responsibilities**

| | |
|---|---|
| Failed to register as a code enforcement officer | 62.71(a)(1) |
| Failed to have the required training, knowledge, and skill | 62.71(a)(2) |
| Failed to provide an alternate registered code enforcement officer for supervision when supervisor not available for more than four consecutive weeks | 62.71(a)(3) |
| Accepted payment or other consideration from a supervisee in exchange for supervision | 62.71(b)(2) |
| Agreed to perform services when significant financial or other interests would impair independent judgment in rendering services | 62.71(b)(3) |

**Supervisee Responsibilities**

| | |
|---|---|
| Failed to be supervised at all times | 62.72(a) |
| Counted time toward the experience requirement without supervision | 62.72(a) |
| Code enforcement officer in training paid for supervision | 62.72(d) |
| Engaged in a supervision arrangement where significant financial or other interests would impair independent judgment in rendering services | 62.72(e) |

**Unlicensed Activity**

| | |
|---|---|
| Claimed or used the title "code enforcement officer" before holding a valid registration. | 1952.101; 62.25(b) |

## CLASS D:

| **Penalty Range:** |
|---|
| $5,000 and/or Revocation |

| | |
|---|---|
| Obtained or attempted to obtain a registration by fraud or false representation. | 1952.151(b)(1); 60.23(a)(1) |
| Failed to comply with previous order of Commission/Executive Director | 51.353(a); 62.90 |
| Used or provided unauthorized assistance in connection with an examination | 60.52(a); 62.21(b) |
| Failed to pay the Department for a dishonored payment | 60.82; 62.80(g) |
| Cheated on an examination | 62.21(c) |

TRD-202000895
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: February 27, 2020

♦ ♦ ♦

## Public Notice - Enforcement Plan

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held February 18, 2020, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to include the penalty matrix for the Dyslexia program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which transferred regulatory authority of 13 programs, to include Dyslexia Therapists and Practitioners from the Texas Department of State Health Services to the Commission and Department. The Dyslexia Therapists and Practitioners penalty matrix provides for a single range of penalties for each class to eliminate confusion and allow the industry to fully understand the penalties assessed. The penalty matrix describes the specific ranges of penalties and license sanctions that apply to specific violations of the statutes and rules enforced by the Department. This penalty matrix may differ slightly from others as the agency focuses on aligning strategic plan goals with agency resources.

The Dyslexia Therapists and Practitioners Advisory Board recommended approval of the penalty matrix at their meeting held January 27, 2020. The penalty matrix was presented to the Commission on February 18, 2020, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

Table 1 - Dyslexia Therapists and Practitioners Penalty Matrix

# DYSLEXIA THERAPISTS
# (DYS)

**Texas Occupations Code Chapter 403**
**Texas Occupations Code Chapter 51**
**Texas Health and Safety Code, Chapter 181**
**16 Texas Administrative Code Chapter 120**
**16 Texas Administrative Code Chapter 60**

## Class A Violations:

| **Penalty Range:** |
|---|
| $500 up to $1,000 |

**Administrative Violations**

| | |
|---|---|
| Failed to report to the Department within 30 days of the event changes in name, mailing address, phone number, or email contact | 120.90(a) |
| Failed to notify each client or minor client's parent or authorized representative of the Department's name, website, email address, mailing address, and telephone number for the purpose of directing complaints to the Department | 120.90(c)(5) |

**Posting and Public Information Violations**

| | |
|---|---|
| Failed to display license in the primary location of the practice | 120.90(c)(6) |

## Class B Violations:

| **Penalty Range:** |
|---|
| $750 up to $3,000 and/or up to 6-month suspension |

**Administrative Violations**

| | |
|---|---|
| Failed to inform the Department of any violations of this chapter or the Act | 120.90(b)(29) |
| Failed to cooperate with the Department | 120.90(b)(32) |

**Advertising Violations**

| | |
|---|---|
| Misrepresented the use of a professional name, a title or professional identification that is expressly or commonly reserved to or used by another profession or professional | 120.90(d)(6) |

**Recordkeeping Violations**

| | |
|---|---|
| Failed to document the information disclosed, the person or entity to whom the disclosure was made, and the justification for the disclosure, in the event of disclosure of personal or professional information about a client | 120.90(b)(20) |

**Recordkeeping Violations Related to Private Practice**

| | |
|---|---|
| Failed to provide a client or a minor client's parent or authorized representative with a written agreement for services delivered in a private practice prior to the commencement of services | 120.90(c)(1) |
| Failed to maintain legible and accurate records of dyslexia therapy services | 120.90(c)(2) |
| Failed to maintain records of services rendered in a school or other learning center or clinic for the period of time required by the service setting | 120.90(c)(3) |
| Failed to maintain records of services for 5 years | 120.90(c)(3) |

**Standard of Care Violations – Related to Treatment**

| | |
|---|---|
| Provided professional services solely by written, telephone, electronic/video correspondence or communication | 120.90(b)(18) |
| Provided professional services to a client who was receiving dyslexia therapy services from another license holder without the prior knowledge and consent of the other license holder | 120.90(b)(19) |

## Class C Violations:

| **Penalty Range:** |
|---|
| $2,000 up to $5,000 and/or 1-year suspension up to revocation |

**Recordkeeping and Confidentiality Violations**

| | |
|---|---|
| Unauthorized release of client information | 120.90(b)(20) |
| Revealed confidential or personal information about a client without authorization other than as required by law, a certifying entity, compelled by a court, or as required to protect the welfare of the client or the community | 120.90(b)(20) |
| Failed to document any confidential or personal information disclosed, the person or entity to whom it was disclosed, and the justification for the disclosure in the client's record if the licensee reveals such information without authorization | 120.90(b)(20) |
| Failed to maintain confidentiality of records | Texas Health and Safety Code, Chapter 181 |

**Standard of Care Violations – Related to Treatment**

| | |
|---|---|
| Provided professional services that were not within the scope of the license holder's competence | 120.90(b)(1) |
| Failed to ensure a safe therapy or teaching environment | 120.90(b)(2) & (3) |
| Failed to maintain objectivity in all matters concerning the welfare of the client | 120.90(b)(4) |
| Failed to terminate a professional relationship when it is reasonably clear that the client is not benefitting from the services provided or when it is reasonably clear that the client no longer needs the services | 120.90(b)(5) |
| Failed to identify competent, dependable referral sources for clients or failed to make a referral when requested or appropriate | 120.90(b)(6) |
| Guaranteed directly or by implication the results of any therapeutic or teaching services | 120.90(b)(9) |
| Used his or her professional relationship with a client to promote any product created or produced by the license holder | 120.90(b)(12) |

**Misrepresentation**

| | |
|---|---|
| Used false, misleading, inaccurate, incomplete, out of context, deceptive, or not readily verifiable information in an advertisement or announcement | 120.90(d) |
| Used advertising that makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading | 120.90(d)(1) |
| Used an advertisement that makes a representation likely to create an unjustified expectation about the results of a professional service | 120.90(d)(2) |
| Used an advertisement that compares a professional's services with another professional's services unless the comparison can be factually substantiated | 120.90(d)(3) |
| Used an advertisement that causes confusion or misunderstanding as to the credentials, education, or licensing of a professional | 120.90(d)(4) |

**Unlicensed Activity**

| | |
|---|---|
| Used the title 'licensed dyslexia practitioner' or 'licensed dyslexia therapist' without a license | 403.101 |

**Unprofessional or Unethical Conduct – Billing Violations**

| | |
|---|---|
| Billed a client or third-party for services not rendered in the manner agreed to by the license holder and the client or the minor client's parent or guardian | 120.90(b)(17) |
| Failed to provide in plain language a written explanation of the charges for dyslexia therapy services previously made on a bill or statement upon the written request of a client or client's parent or authorized representative | 120.90(b)(21) |

| | |
|---|---|
| Knowingly submitted a bill for treatment to a client or third-party payor a bill for services not provided or that were improper, unreasonable, or clinically unnecessary | Texas Health and Safety Code, §311.0025(a) |

**Unprofessional or Unethical Conduct**

| | |
|---|---|
| Required the exclusive use or purchase by a client of any product created or produced by the license holder | 120.90(b)(11) |
| Falsified records | 120.90(b)(16) |
| Used alcohol or drugs not legally prescribed for the license holder when the use adversely affects or could adversely affect the provision of professional services | 403.202(3); 120.90(b)(24) |
| Offered to pay or agreed to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage | 120.90(b)(25) |
| Discriminated in the provision of dyslexia therapy services on the basis of race, color, national origin, religion, gender, age, or disability | 120.90(b)(33) |
| Made a representation designed to take advantage of the fears or emotions of a particularly susceptible type of client | 120.90(d)(5) |

## Class D Violations:

| **Penalty Range:** |
|---|
| $5,000 and/or revocation |

| | |
|---|---|
| Engaged in the medical diagnosis of clients | 403.202(3); 120.90(b)(22) |
| Engaged in sexual contact or sexually exploitive behavior or therapeutic deception with a client | 403.202(3); 120.90(b)(23) |
| Obtained a license by means of fraud, misrepresentation, or concealment of a material fact | 403.202(1); 120.90(b)(27); 60.23(a)(1); 60.23(a)(2) |
| Sold, offered to sell, or bartered a license | 403.202(2); 120.90(b)(28) |
| Failed to comply with any order issued by the department that relates to the licensee | 120.90(b)(30); 51.353(a); 60.23(a)(2) |
| Interfered in a department investigation or disciplinary proceeding by misrepresentation or omission of facts to the department or by use of threats or harassment against any person | 120.90(b)(31) |
| Used or provided unauthorized assistance in connection with an examination | 60.52(a) |
| Failed to pay the Department for a dishonored payment or processing fee | 60.82 |

TRD-202000931
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: February 28, 2020

♦ ♦ ♦

## Public Utility Commission of Texas

### Notice of Application for Relief of Designation as Provider of Last Resort

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 19, 2019, for relief of designation as a provider of last resort.

Docket Title and Number: Application of Grande Communications Networks, LLC for an Order Relieving it of its Designation as Provider of Last Resort, Docket Number 50379.

The Application: Grande Communications Networks, LLC requests approval for relief of its designation as the provider of last resort in 84 designated areas in Texas. Grande Communications does not seek to exit the areas and plans to continue providing service to existing customers in the areas. All of the areas for which Grande Communications seeks relief from being the designated provider of last resort are within the existing exchanges and service areas of Southwestern Bell Telephone Company dba AT&T Texas.

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 by April 13, 2020. 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 50379.

TRD-202000936
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: February 28, 2020

♦ ♦ ♦

### 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 February 20, 2020, for true-up of 2017 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Alenco Communications, Inc. for True Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 50567.

The Application: Alenco Communications, Inc. filed a true-up in accordance with Finding of Fact Nos. 17 and 18 of the final Order in Docket No. 48907. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Alenco Communications received in FUSF revenue by $444,840 for calendar year 2017. Based on the data, calculations, supporting documentation and affidavits included with the application, the actual impact in the FUSF revenue reductions to Alenco Communications for calendar year 2017 was $403,939. Therefore, Alenco Communications proposes to return to the TUSF a total amount of $40,901 that was over-recovered for calendar year 2017.

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 50567.

TRD-202000889
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: February 27, 2020

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### 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 February 20, 2020, for true-up of 2017 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. for True Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 50570.

The Application: Valley Telephone Cooperative, Inc. filed a true-up report in accordance with Findings of Fact Nos. 18 and 19 of the final Order in Docket No. 48923. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Valley Telephone Cooperative received in Federal Universal Service Fund (FUSF) revenue by $2,647,661 for calendar year 2017. The final Order required a true-up of the actual 2017 revenue reductions. As a result of that true-up, Valley Telephone Cooperative now asserts it is due to recover an additional $999,236 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 50570.

TRD-202000930
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: February 28, 2020

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## Region D Regional Water Planning Group

### Region D IPP Public Notice

Notice is hereby given that the North East Texas Regional Water Planning Group (NETRWPG) is taking comment on the adopted Initially Prepared Plan (IPP). The comments will be used in developing an approved regional water plan by NETRWPG. The NETRWPG area, also known as Region D, includes the following counties: Bowie, Camp, Cass, Delta, Franklin, Gregg, Harrison, Hopkins, Hunt, Lamar, Marion, Morris, Rains, Red River, Smith (partial), Titus, Upshur, Van Zandt, and Wood. The NETRWPG will accept written comments from the date of this notice through June 15, 2020, and will accept written and oral comments on the IPP at the public hearing. Prior to taking

action on the regional water plan based on the IPP, a public hearing will be held, and there will be a public comment period. The deadline for submission of public written comments is June 15, 2020.

*The date, time, and location of the public hearing is as follows:*

Notice is given that a public hearing on the IPP will be held on April 14, 2020, at 5:00 p.m. at the Mount Pleasant Civic Center in Titus County, located at 1800 North Jefferson Avenue, Mount Pleasant, Texas 75455.

*A summary of the proposed action to be taken is as follows:*

The proposed action is taking public comment on the adopted IPP and development of a regional water plan by the North East Texas Regional Water Planning Group (NETRWPG).

A copy of the IPP is available for viewing on the Northeast Texas Municipal Water District (NETMWD) website (www.netmwd.com).

A copy of the IPP will be available for viewing at the office of the County Clerk and Public Libraries for each county located within Region D by March 13, 2020.

*The name, telephone number, and address of the person to whom questions or requests for additional information may be submitted is as follows:*

Walt Sears, Jr., telephone number (903) 639-7538, Northeast Texas Municipal Water District, P.O. Box 955, Hughes Springs, Texas 75656. The NETMWD is the Administrator for the NETRWPG.

*How the public may submit comments is as follows:*

The NETRWPG will accept written and oral comments at the public hearing. The NETRWPG will accept written comments after the posting of this notice until the deadline. Written comments may be sent directly to the NETRWPG by delivery to the NETMWD, P.O. Box 955, 4180 Highway 250, Hughes Springs, Texas 75656. Comments may also be submitted through the Region D page at www.netmwd.com. Comments may be sent to regiond@netmwd.com. The deadline for submission of public written comments is June 15, 2020.

TRD-202000904
Walt Sears, Jr.
NETMWD Executive Director
Region D Regional Water Planning Group
Filed: February 28, 2020

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## Rio Grande Regional Water Planning Group (Region M)

Notice of Public Hearings

Regional Water Planning in the State of Texas is the local process that guides conservation and water projects. The Regional Water Plans, upon approval by the Texas Water Development Board (TWDB), are used to help develop the State Water Plan which guides state funding of water projects. For additional information on the regional water planning process, please call (512) 463-7847 or visit the TWDB website at:

http://www.twdb.texas.gov/waterplanning/rwp/index.asp.

The Rio Grande Regional Water Planning Group (RGRWPG) approved and adopted the Initially Prepared Plan (IPP) for the Rio Grande 2021 Regional Water Plan on February 5, 2020. The Lower Rio Grande Valley Development Council (LRGVDC), as the designated political subdivision approved by the RGRWPG, submitted the IPP to the TWDB for review on March 3, 2020. The Rio Grande Regional Water Planning area encompasses Cameron, Hidalgo, Jim Hogg, Maverick, Starr, Webb, Willacy, and Zapata Counties.

Notice is given that the RGRWPG will be conducting public hearings on the IPP as follows:

1st Public Hearing Date: April 8, 2020

Time: 2:00 p.m.

Location: Eagle Pass Water Works System, 2107 N. Veterans Blvd., Eagle Pass, Texas 78852

2nd Public Hearing Date: May 6, 2020

Time: 11:00 a.m.

Location: Lower Rio Grande Valley Development Council, 301 W. Railroad St., Weslaco, Texas 78596

The RGRWPG is accepting comments on the IPP at the Public Hearings or in writing until June 8, 2020. The RGRWPG will consider all submitted comments and documentation of submitted comments. The RGRWPG's responses will be provided to the Texas Water Development Board (TWDB). The public can submit written comments to:

Tomas Rodriguez, Chairman

RGRWPG

301 W. Railroad St.

Weslaco, Texas 78596

This notice will be published in newspapers on the week of February 24, 2020. The Initially Prepared Regional Water Plan can be found digitally on the Region M website at http://www.riograndewaterplan.org/ and the LRGVDC website at http://www.lrgvdc.org/water.html. Hard copies will be available for review by the general public at the following locations by March 9, 2020:

LRGVDC
301 W. Railroad St.
Weslaco, TX 78596
(956) 682-3481

Cameron Co. Clerk's Office
964 E. Harrison St.
Brownsville, TX 78520
(956) 544-0815

Brownsville Public Library
2600 Central Blvd.
Brownsville, TX 78520
(956) 548-1055

Hidalgo Co. Clerk's Office
100 N. Closner Blvd.
Edinburg, TX 78539
(956) 318-2100

McAllen Public Library
4001 N. 23rd St.
McAllen, TX 78504
(956) 681-3000

Jim Hogg Co. Clerk's Office
102 E. Tilley St.
Hebbronville, TX 78361
(512) 527-4031

Jim Hogg County Library
210 N. Smith Ave.
Hebbronville, TX 78361
(361) 527-3421

Eagle Pass Public Library
589 E. Main St.
Eagle Pass, TX 78852
(830) 773-7323

Maverick Co. Clerk's Office
500 Quarry St., Suite 2
Eagle Pass, TX 78852
(830) 773-2829

Rio Grande City Public Library
591 E. Canales St.
Rio Grande City, TX 78582
(956) 487-4389

Starr Co. Clerk's Office
401 N. Britton Ave., Rm 201
Rio Grande City, TX 78582
(956) 716-4800

Webb Co. Clerk's Office
1110 Victoria St., Suite 201
Laredo, TX 78040
(956) 523-4266

Laredo Public Library
1120 E. Calton Rd.
Laredo, TX 78041
(956) 795-2400

Reber Memorial Library
193 N. 4th St.
Raymondville, TX 78580
(956) 689-2930

Willacy Co. Clerk's Office
576 W. Main Ave.
Raymondville, TX 78580
(956) 689-2710

Zapata Co. Clerk's Office
200 E. 7th Ave., Suite 138
Zapata, TX 78076
(956) 765-9915

Zapata County Library
901 Kennedy St.
Zapata, TX 78076
(956) 765-5351

For further questions or additional information, please contact Tomas Rodriguez at (956) 682-3481.

TRD-202000947
Tomas Rodriguez
Chairman
Rio Grande Regional Water Planning Group (Region M)
Filed: March 2, 2020

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## Texas Department of Transportation

Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, April 7, 2020 at 10:00 a.m. at the department's Austin District Office, 7901 N. IH35, Bldg. 7, Hearing Room, in Austin, Texas. The purpose of the hearing is to receive public comments on the proposed updates to the 2020 Unified Transportation Program (UTP).

Transportation Code, §201.991 provides that the department shall develop a UTP covering a period of 10 years to guide the development and authorize construction of transportation projects. The Texas Transportation Commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to the adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2020 UTP will be available at each of the department's district offices or at the department's Transportation Planning and Programming Division office located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (800) 687-8108, and on the department's website at: *https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html.*

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division, at (800) 687-8108 no later than Monday, April 6, 2020, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to attend the hearing are encouraged to contact the Transportation Planning and Programming Division at (800) 687-8108. Requests should be

made at least three working days prior to the public meeting. Every reasonable effort will be made to accommodate these needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed updates to the 2020 UTP to Peter Smith, Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the proposed updates to the 2020 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, April 13, 2020.

TRD-202000966
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: March 4, 2020

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## Texas Water Development Board

Applications Received February 2020

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62887, a request from the City of Raymondville, 142 South 7th Street, Raymondville, Texas 78580-2591, received on February 3, 2020, for $2,100,000 in financial assistance from the Drinking Water State Revolving Fund for a water distribution system rehabilitation project.

Project ID #62888, a request from Westwood Shores Municipal Utility District, 75 Cottonwood Road, Trinity, Texas 75862-8843, received on February 4, 2020, for $1,395,000 in financial assistance from the Drinking Water State Revolving Fund for new groundwater wells, plant GST recoating, valves replacement and installation.

Project ID #62890, a request from the City of Roby, 205 West South 1st Street, Roby, Texas 79543, received on February 10, 2020, for $550,000 in financial assistance from the Drinking Water State Revolving Fund for the replacement of ground storage tank.

Project ID #62889, a request from San Antonio Water System, 2800 Highway 281 North, San Antonio, Texas 78298-2449, received on February 12, 2020, for $11,805,000 in financial assistance from the Drinking Water State Revolving Fund for the integration of two independent pressure zones and construction of an Elevated Storage Tank to meet the elevated storage capacity for Pressure Zone (PZ) 828.

Project ID #73886, a request from Mustang Special Utility District, 2 Farm-to-Market Road 2931, Aubrey, Texas 76227-3940, received on February 21, 2020, for $18,860,000 in financial assistance from the Clean Water State Revolving Fund for the purchase of a total of 1.06 MGD in additional wastewater treatment capacity from Upper Trinity Regional Water District.

Project ID #62891, a request from Bluff Dale Water Supply Corporation, 639 Farm-to-Market Road 2481, Bluff Dale, Texas 76433-0232, received on February 21, 2020, for $490,000 in financial assistance from the Drinking Water State Revolving Fund to drill a second well to comply with the 85 percent production capacity rule.

TRD-202000960
Joe Reynolds
Interim General Counsel
Texas Water Development Board
Filed: March 3, 2020

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## Workforce Solutions Deep East Texas

Request for Proposals Number 20-395

The **Deep East Texas Local Workforce Development Board dba Workforce Solutions Deep East Texas** is issuing a Request for Proposals for the operation and management of Workforce Solutions Deep East Texas Child Care Services (CCS) System.

A copy of the RFP #20-395 is available on the Board's website at www.detwork.org.

**Deadline for Submission of Proposals: 11:00 p.m. CST, Monday, April 6, 2020.**

Proposals will ONLY be accepted via email and must be submitted to kmoulder@detwork.org. Proposals submitted via private or public mail carrier, courier service, fax, or hand delivery will not be accepted.

Requests for copies of the RFP and questions regarding the RFP can be made to:

Kim Moulder, Staff Services Officer

Workforce Solutions - Deep East Texas

415 South First Street, Suite 110B

Lufkin, Texas 75901

Phone: (936) 639-8898

Fax: (936) 633-7491

Email: kmoulder@detwork.org

The Deep East Texas Local Workforce Development Board plans, oversees, and evaluates employment and training services to Angelina, Jasper, Newton, Nacogdoches, Houston, Trinity, Shelby, Polk, San Augustine, San Jacinto, Sabine, and Tyler Counties. Bidders will provide services throughout the entire region and will coordinate with other workforce service providers.

TRD-202000970
Kim Moulder
Staff Service Specialist
Workforce Solutions Deep East Texas
Filed: March 4, 2020

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TEXAS

## 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)*

# SALES AND CUSTOMER SUPPORT

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Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

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