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# TEXAS REGISTER

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# TEXAS REGISTER

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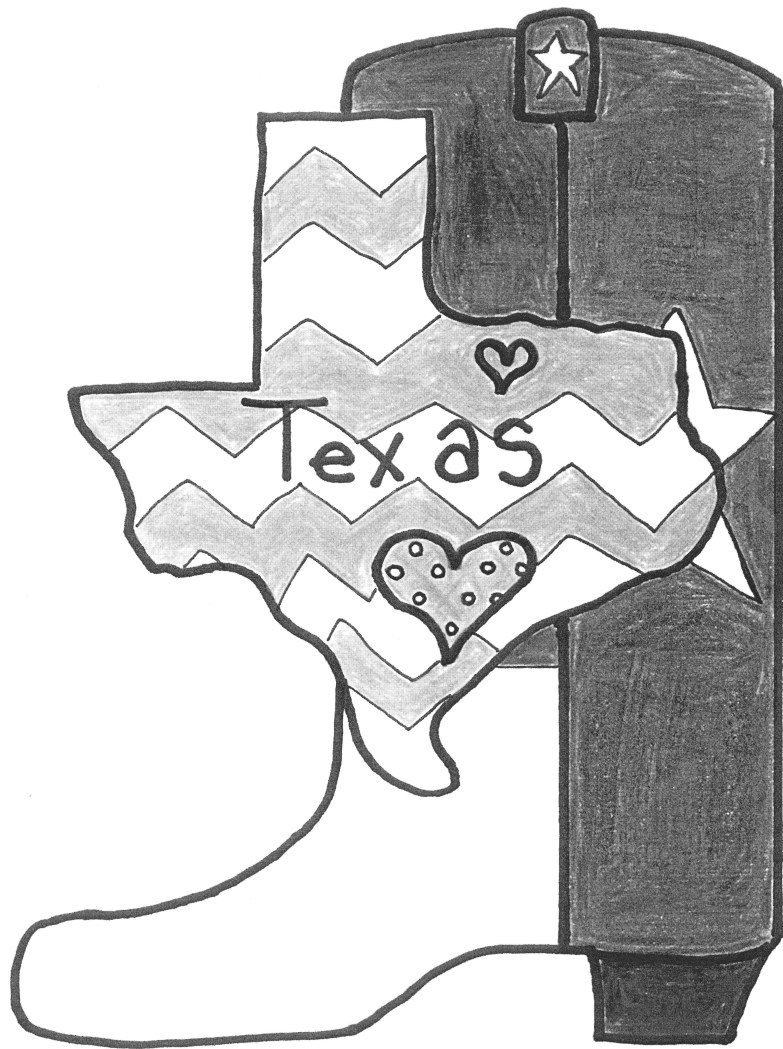
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# THE ATTORNEY GENERAL

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-0483-KP**

#### **Requestor:**

Mr. Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

1801 Congress Avenue, Suite 7.300

Austin, Texas 78701

Re: Authority of the Texas Behavioral Health Executive Council to amend 22 Texas Administrative Code section 465.38(d) regarding the title of an individual holding a specialist in school psychology license (RQ-0483-KP)

#### **Briefs requested by December 13, 2022**

### **RQ-0484-KP**

#### **Requestor:**

The Honorable Julie Renken

Washington County District Attorney

100 East Main, Box 303

Brenham, Texas 77833

Re: Authority of a magistrate to deny bail following a designation under Code of Criminal Procedure article 17.027(a)(1) (RQ-0484-KP)

#### **Briefs requested by December 13, 2022**

### **RQ-0485-KP**

#### **Requestor:**

The Honorable Thomas J. Selleck

## Brazoria County Criminal District Attorney

111 East Locust, Suite 408A

Angleton, Texas 77515

Re: Whether a municipality or local government entity may engage in a Trap, Neuter, Release program in compliance with Penal Code section 42.092 (RQ-0485-KP)

#### **Briefs requested by December 15, 2022**

### **RQ-0486-KP**

#### **Requestor:**

The Honorable Laurie K. English

112th Judicial District Attorney

Post Office Box 1187

Ozona, Texas 76943

Re: May the Fire Chief or Lieutenant of the Iraan Volunteer Fire and Rescue Department simultaneously serve on the Iraan City Council (RQ-0486-KP)

#### **Briefs requested by December 15, 2022**

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

TRD-202204571

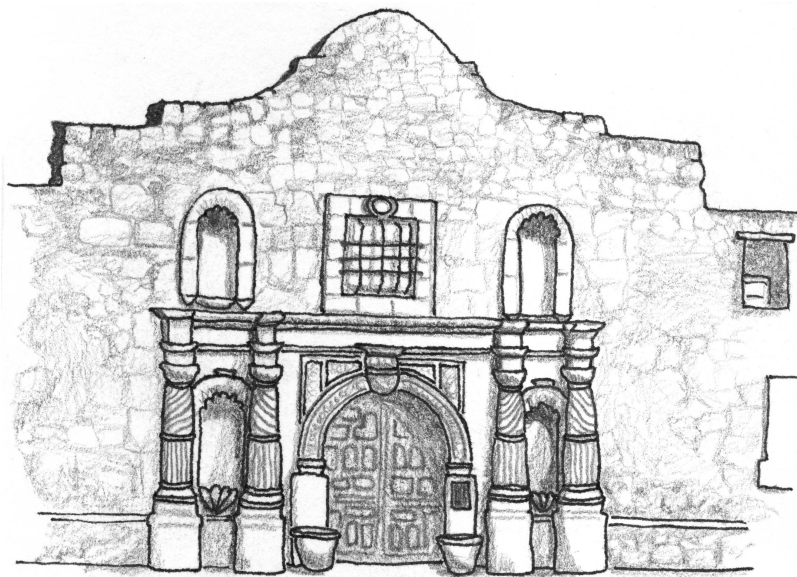
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: November 15, 2022





# PROPOSED RULES

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

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

## TITLE 10. COMMUNITY DEVELOPMENT

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

#### CHAPTER 7. HOMELESSNESS PROGRAMS

##### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

###### 10 TAC §7.8

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, §7.8 Records Retention. The purpose of the proposed repeal is to remove an outdated regulation citation 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 re-adoption making changes to an existing activity, the administration of the 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 re-adoption 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 Emergency Solutions Grants 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 November 25, 2022, to December 27, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

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.

§7.8. *Records Retention.*

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

Filed with the Office of the Secretary of State on November 14, 2022.

TRD-202204541

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: December 25, 2022

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



## 10 TAC §7.8

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC, Chapter 7, Homelessness Programs, Subchapter A, General Policies and Procedures, §7.8 Records Retention. The purpose of the proposed new section is to provide clarification and updates to requirements related to the adherence to updated State regulation.

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 rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to an existing administration of the Homeless Programs.
2. The proposed 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 proposed rule does not require additional future legislative appropriations.
4. The proposed 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 proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand, limit, or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 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 no small or micro-businesses subject to the proposed rule because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.

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 or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has 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 rule 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 subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has 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 subchapter because the processes described by the rule have already been in place through the rule found at this subchapter 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 subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program are included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 25, 2022, to December 27, 2022, to receive input on the new proposed subchapter. Written comments may be submitted to the Texas Department of Housing



and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

STATUTORY AUTHORITY. The new subchapter is 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.

§7.8. 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 TXGMS, 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 or TXGMS, as applicable, 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.

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

Filed with the Office of the Secretary of State on November 14, 2022.

TRD-202204542

Bobby Wilkinson  
Executive Director

Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: December 25, 2022  
For further information, please call: (512) 475-3959



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

### 10 TAC §7.25

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of Title 10, Chapter 7, Homelessness Programs, Subchapter B, Homeless Housing and Services Program (HHSP), §7.25 Program Income. The purpose of the proposed repeal is to remove an outdated definition 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 administration of the 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 the Emergency Solutions Grants 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 November 25, 2022, to December 27, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

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.

§7.25. *Program Income.*

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

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

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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



## 10 TAC §7.25

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC, Chapter 7, Homelessness Programs, Subchapter B, Homeless Housing and Services Program (HHSP), §7.25 Program Income. The purpose of the proposed new section is to update the definition of Program Income to align with State regulations.

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 rule does not create or eliminate a government program, but relates to the re-adoption of this rule which

makes changes to an existing administration of the Homeless Programs.

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

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

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

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

8. The proposed 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 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 no small or micro-businesses subject to the proposed rule because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.

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 or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has 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 rule 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..." Consid-

ering 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 subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has 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 subchapter because the processes described by the rule have already been in place through the rule found at this subchapter 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 subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program is included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 25, 2022, to December 27, 2022, to receive input on the new proposed subchapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

STATUTORY AUTHORITY. The new subchapter is 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.

§7.25. Program Income.

(a) Program income includes but is not limited to: income from fees for services performed, the use or rental of real or personal property acquired under this award, the sale of commodities or items fabricated under this award, and from payments of principal and interest on loans made with this award, 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.

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

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Bobby Wilkinson

Executive Director

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

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SUBCHAPTER C. EMERGENCY SOLUTIONS  
GRANTS (ESG)

**10 TAC §§7.34, 7.36, 7.39, 7.40**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC, Chapter 7, Homelessness Programs, Subchapter C, Emergency Solutions Grants (ESG), §7.34, Continuing Awards; 10 TAC §7.36, General Threshold Criteria; §7.39, Uniform Selection Criteria; and §7.40, Competitive Program Participant Services Selection Criteria. The purpose of the proposed repeal is to remove ambiguity in eligibility determination in the rule and streamlining the application requirements 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 administration of the Emergency Solutions Grants (ESG) 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 REG-

ULATORY 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 Emergency Solutions Grants 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 November 25, 2022, to December 27, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

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.

§7.34. *Continuing Awards.*

§7.36. *General Threshold Criteria.*

§7.39. *Uniform Selection Criteria.*

§7.40. *Competitive Program Participant Services Selection Criteria.*

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

Filed with the Office of the Secretary of State on November 14, 2022.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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



**10 TAC §§7.34, 7.36, 7.39, 7.40**

The Texas Department of Housing and Community Affairs (the Department) proposes new sections Chapter 7, Homelessness Programs, Subchapter C, Emergency Solutions Grants (ESG), §7.34, Continuing Awards, 10 TAC §7.36, General Threshold Criteria, §7.39 Uniform Selection Criteria, and 10 TAC §7.40 Competitive Program Participant Services Selection Criteria. The purpose of the proposed new sections is to provide clarifications and updates to requirements related to the award process for the ESG Program, including updating threshold requirements and updating scoring processes and award procedures for award cycles.

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 Emergency Solutions Grants or Emergency Solutions Grants CARES 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 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 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 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 no small or micro-businesses subject to the proposed rules because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.

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 these 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 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 subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has 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 subchapter because the processes described by the rules have already been in place through the rule found at this subchapter 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 subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program is included in eligible activities.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held November 25, 2022, to December 27, 2022, to receive input on the new proposed subchapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us). ALL COMMENTS

MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

**STATUTORY AUTHORITY.** The new subchapter is 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.

§7.34. Continuing Awards.

(a) TDHCA will withhold a portion of funds from the competition for funds to be used for continuing awards to prior Subrecipients of its ESG allocation, not including ESG CARES or Contracts for reallocated funds from prior years only, in accordance with §7.33 of this subchapter (related to Apportionment of ESG Funds).

(b) ESG funds withheld for continuing awards by the Department will be allocated in accordance with the Allocation Formula, and are not subject to the award process and requirements outlined in §7.38 of this subchapter (relating to Award and Funding Process for Allocated Funds).

(c) The subsequent years of allocation of ESG funds received by the Department will be offered to eligible Subrecipients of ESG funds (not including ESG CARES) that were awarded funds from at least three of the prior four allocations of ESG. An ESG Subrecipient is eligible for an offer of a continuing award of funds if the Subrecipient meets the following requirements:

(1) Submits an abbreviated Application for funding within 21 days of the request from the Department as promulgated by the Department;

(2) Resolves administrative deficiencies within the timeframe and in the manner outlined in §7.37 of this subchapter (relating to Application Review and Administrative Deficiency Process for Department NOFAs);

(3) Submitted four or fewer delinquent monthly reports for each of their active ESG Contracts (not including ESG CARES) for reports due in the six month period preceding the application submission deadline;

(4) Satisfies the requirements of the Previous Participation Review as provided for in §1.302 of this title (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter);

(5) Does not have unresolved monitoring findings in any TDHCA funded program after the corrective action period;

(6) Does not apply for funds within the same COC Region under the competitive Application process for Program Participant service(s) in which they are already funded for a Continuing Award;

(7) Expended a minimum of 95% of their contracted award amount, as amended in their most recently closed ESG Contract (not including ESG CARES);

(8) Did not voluntarily deobligate an amount that exceeds 5% of their contracted award amount, as amended for increases due to reallocated funds, on their most recently closed ESG Contract (not including ESG CARES); and

(9) Is approved by the Department's Governing Board.

(d) Any offer of ESG funds made under this section is contingent on retaining similar terms and conditions or agreeing to adjustments reflective of funding amount, including but not limited to performance and match requirements, in the active ESG annual Contract issued under a NOFA.

(e) Offers of funding will be based on the prior year's award, excluding Contracts comprised exclusively of reallocated funds, before amendments, and will be proportionally increased or decreased in proportion to the total amount of ESG funds available subject to the allocation formula.

(f) If additional funds are made available due to reduced continuing awards in the region, awards may be increased proportionate to the increased withheld funds. In any event, an increased award from funds made available from reduced awards may not exceed 115% of the award amount under the allocation or the maximum award amount established in the NOFA.

(g) Funds that remain available after all eligible continuing awards have been accepted will be transferred to the competition for funds for the regional competition in accordance with §7.38 of this subchapter.

(h) Percentages identified in this section will not be rounded up to the nearest whole number.

#### §7.36. General Threshold Criteria.

(a) Applications submitted to the Department 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, notification of a direct Subgrant, or notification of availability of a continuing award, 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, other geographic limitation, Subgrant, or offer of continuing award, 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) 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 the minimum award amount as described in the NOFA for Program Participant services 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) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(8) Evidence of a Unique Entity Identifier (UEI) number for Applicant.

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

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

(11) 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, or prior to execution of a Contract for Subrecipients subject to a direct Subgrant, or continuing award. Receipt of the local government approval is a condition prior to the Department obligating ESG funding.

(12) 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 Appeals Process).

#### §7.39. Uniform Selection Criteria.

An Application for funding allocated in accordance with §7.33(b) of this subchapter (relating to Apportionment of ESG Funds) and made to the Department may be awarded points under the following uniform selection criteria. The total of the score under this part will be the uniform Application score. The uniform Application score will be comprised of points awarded under each of the following criteria:

(1) Homeless participation. An Application may receive a maximum of three points for the participation of persons who are Homeless in the Applicant's program design. Points may be earned under subparagraphs (A) and (B) of this paragraph for a total of up to three points.

(A) An Application may receive a maximum of two points when at least one person who is Homeless or formerly Homeless is a member of or consults with the Applicant's policy-making entity for facilities, services, or assistance under ESG; and

(B) An Application may receive a maximum of one point when at least one person who is Homeless or formerly Homeless is employed in a paid position with duties that include constructing, renovating, maintaining, or operating the Applicant's ESG facilities, or providing services for occupants of its ESG facilities.

(2) Organizational or management experience. An Application may receive a maximum of eight points for an Applicant or its management staff's experience administering federal or State homeless programs.

(A) An Application may receive a maximum of three points for an Applicant or its management staff with at least two but less than four years of experience;

(B) An Application may receive a maximum of five points for an Applicant or its management staff with at least four but less than six years of experience; or

(C) An Application may receive a maximum of eight points for an Applicant or its management staff with six or more years of experience.

(3) Percentage of prior ESG awarded funds expended. An Application may receive a maximum of six points for the Applicant's past expenditure performance of ESG funds proportionate to the award of funds from TDHCA to the Applicant. This will apply to any and all ESG Contract(s), exclusive of ESG CARES Contracts, administered by the Applicant that were closed within 12 months prior to the date of the Application deadline established in the by the Department. Contract Expenditures will be averaged among all ESG Contracts that were closed within 12 months of the Application deadline, without requiring an amendment if the Applicant was awarded multiple Contracts. The percentage of ESG funds expended will be calculated utilizing the amount of the Contract as of its closing as stated in the Contract prior to amendments, except where the Applicant voluntarily return funds in accordance with this subchapter. Expenditure will be defined as the Applicant having reported the funds as expended. Applications may receive:

(A) Two points if the Applicant expended 91 - 94% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments;

(B) Three points if the Applicant expended 95% to less than 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments; or

(C) Six points if the Applicant expended 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments.

(4) Contract History on Reporting and percentage of Outcomes. An Applicant may receive a maximum of twelve points for its prior timeliness of reports and performance achieved for previously awarded ESG Contract(s), exclusive of ESG CARES Contracts, that closed within 12 months prior to the date of the Application deadline established by the Department. Points may be requested under subparagraphs (A) - (E) of this paragraph, not to exceed a total of ten points. The Outcome percentages will be averaged among all prior ESG Contracts, exclusive of ESG CARES Contracts, that closed within 12 months prior to the date of the Application deadline to determine the final percentage amount for this scoring criterion. Applications may receive points as follows:

(A) Two points if the Applicant submitted the last three reports on or before the Contract end date within the reports' respective reporting deadlines;

(B) Two points if the Applicant met 100% or more of their street outreach target of persons exiting to temporary or transitional or permanent housing destination;

(C) Two points if the Applicant met 100% or more of their emergency shelter exits to permanent housing;

(D) Two points if the Applicant met 100% or more of their Homeless prevention target for maintaining housing for three months or more;

(E) Two points if the Applicant met 100% or more of their rapid re-housing target for maintaining housing for three months or more; and

(F) Two points if the Applicant met 100% or more of their Match obligation.

(G) Twelve points if the Applicant has not previously been awarded an ESG Contract closed within 12 months prior to the date of the Application deadline.

(5) Monitoring history. Applications may receive a maximum of five points for the Applicant's previous ESG and ESG CARES monitoring history. The Department will consider the monitoring history for three years before the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered Findings for the purposes of this scoring criterion. Applications may be limited to a maximum of:

(A) Five points if the Applicant has not received any monitoring Findings, including Applicants with no previous monitoring history;

(B) Not more than three points if the monitoring history has a close-out letter that included Findings, but the Findings were not related to Household eligibility or violations of procurement requirements;

(C) Not more than two points if the monitoring history has a close-out letter that included Findings related to Household eligibility;

(D) Not more than one point if the monitoring history has a monitoring close-out letter that included Findings related to violations of procurement requirements; or

(E) Zero points may be requested under this criterion if the Applicant received a Finding resulting in disallowed costs in excess of \$5,000 which required repayment to the Department.

(6) Priority for certain communities. Applications may receive two points if at least one Colonia, as defined in Tex. Gov't Code §2306.083, is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of Attorney General's website.

(7) Previously unserved areas. Applications may receive a maximum of 10 points for provision of ESG services if at least one county in the Service Area included in the Application has not received ESG funds from the Department or directly from HUD within the previous federal funding year for services. Applications may receive a maximum (of ten points if at least one county within the Service Area as stated in the Application did not receive an award of ESG annual funds from the Department within the previous federal funding year.

(8) Percentages identified in this section will not be rounded up to the nearest whole number.

§7.40. Competitive Program Participant Services Selection Criteria.

(a) An Application for competitive funding allocated under §7.33(b) of this subchapter (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform Application score to determine a score for each of the Program Par-

participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

(1) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for street outreach.

(2) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this chapter (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Street outreach exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date who exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with street outreach who exited to positive housing destinations;

(B) Three points based on 35% of persons served with street outreach who exited to positive housing destinations;

(C) Four points based on 45% of persons served with street outreach who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with street outreach who exited to positive housing destinations.

(4) Street outreach staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Street outreach temporary/transitional/permanent housing target. An Application may receive a maximum of three points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with street outreach who will be placed in temporary housing;

(B) Two points based on a minimum target of 45% of persons served with street outreach who will be placed in temporary housing; or

(C) Three points based on a minimum target of 55% of persons served with street outreach who will be placed in temporary housing.

(6) Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(7) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the following criteria:

(1) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for emergency shelter.

(2) Emergency shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this chapter (relating to Definitions). An Applicant providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;



(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Emergency shelter exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with emergency shelter who exited to positive housing destinations;

(B) Three points based on 35% of persons served with emergency shelter who exited to positive housing destinations;

(C) Four points based on 45% of persons served with emergency shelter who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with emergency shelter who exited to positive housing destinations.

(4) Emergency shelter staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Emergency shelter permanent housing. An Applicant may receive a maximum of three points based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with emergency shelter who will be placed in permanent housing;

(B) Two points based on a minimum target of 45% of persons served with emergency shelter who will be placed in permanent housing; or

(C) Three points based on a minimum target of 55% of persons served with emergency shelter who will be placed in permanent housing.

(6) Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;

(B) Three points if the Applicant provides case management and three of the other services;

(C) Four points if the Applicant provides case management and four of the other services; or

(D) Five points if the Applicant provides case management and five of the other services.

(7) Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant's experience providing emergency shelter services.

(A) Two points if the Applicant has provided emergency shelter for up to two years;

(B) Four points if the Applicant has provided emergency shelter for up to four years;

(C) Six points if the Applicant has provided emergency shelter for up to six years;

(D) Eight points if the Applicant has provided emergency shelter for up to eight years; or

(E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homeless prevention. An Application proposing homeless prevention may receive points under the following criteria:

(1) Matching funds for homeless prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for homelessness prevention.

(2) Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this chapter (relating to Definitions). An Applicant providing homelessness prevention may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who have one or more special needs;

(B) Two points based on a minimum target of 80% of persons served who have one or more special needs;

(C) Three points based on a minimum target of 90% of persons served who have one or more special needs;

(D) Four points based on a minimum target of 95% of persons served who have one or more special needs; or

(E) Five points based on a minimum target of 100% of persons served who have one or more special needs.

(3) Homelessness prevention exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with homelessness prevention who exited to positive housing destinations;

(B) Three points based on 35% of persons served with homelessness prevention who exited to positive housing destinations;

(C) Four points based on 45% of persons served with homelessness prevention who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with homelessness prevention who exited to positive housing destinations.

(4) Homeless prevention staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the homeless prevention component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Homeless prevention maintaining housing. An Application may receive a maximum of three points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with homelessness prevention maintaining housing for three months;

(B) Two points based on a minimum target of 60% of persons served with homelessness prevention maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with homelessness prevention maintaining housing for three months.

(6) Homeless prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided through ESG or other funds. Homeless prevention services and rental assistance include rental application fees, security deposits and last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance;

(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance; or

(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance.

(7) Experience providing homeless prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided homeless prevention or tenant-based rental assistance services for 10 or more years.

(e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:

(1) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for rapid re-housing.

(2) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this chapter (relating to Definitions). Applicants providing rapid re-housing may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Rapid re-housing exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with rapid re-housing exited to positive housing destinations;

(B) Three points based on 35% of persons served with rapid re-housing who exited to positive housing destinations;

(C) Four points based on 45% of persons served with rapid re-housing who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with rapid re-housing who exited to positive housing destinations.

(4) Rapid re-housing staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the rapid re-housing component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Rapid re-housing maintaining housing. Applicants may receive a maximum of three points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with rapid re-housing maintaining housing for three months;

(B) Two points based on a minimum target of 60% of persons served with rapid re-housing maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with rapid re-housing maintaining housing for three months.

(6) Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

(7) Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

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

Filed with the Office of the Secretary of State on November 14, 2022.

TRD-202204546

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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



## **TITLE 13. CULTURAL RESOURCES**

### **PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

#### **CHAPTER 1. LIBRARY DEVELOPMENT**

#### **SUBCHAPTER A. LIBRARY SERVICES AND TECHNOLOGY ACT STATE PLAN**

##### **13 TAC §1.21**

The Texas State Library and Archives Commission (commission) proposes amendments to 13 Texas Administrative Code §1.21, State Plan for Library Services and Technology Act in Texas.

**BACKGROUND.** The Library Services and Technology Act (LSTA) provides funding to State Library Administrative Agencies through its Grants to States program administered by the Institute of Museum and Library Services (IMLS). State libraries may use the funding to support statewide initiatives and services and may distribute the funds through subgrants to public, academic, research, school, and special libraries in their states. Each state must have an IMLS-approved five-year plan outlining its programs in support of LSTA priorities.

Government Code, §441.009 authorizes the commission to adopt a state plan for improving library services consistent with federal goals. The statute further requires the agency to prepare the plan and administer the plan the commission adopts. The commission's most recent five-year plan covered federal fiscal year (FFY) 2018-2022.

The proposed amendment is necessary to update the rule to reflect the commission's June 3, 2022, adoption of the new five-year plan covering FFY 2023-2027. IMLS approved this plan on September 14, 2022. Language referencing the website link is proposed for deletion because it is unnecessary and will prevent the need for future rule amendments when links change. The plan will still be available on the commission's website.

**FISCAL IMPACT.** Sarah Jacobson, Director, Library Development and Networking, has determined that for each of the first five years the proposed amendment is in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the amended rule, as proposed.

**PUBLIC BENEFIT AND COSTS.** Ms. Jacobson has determined that for each of the first five years the proposed amendment is in effect, the anticipated public benefit will be continued support and strengthening of local libraries. There are no anticipated economic costs to persons required to comply with the proposed amendment.

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

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

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

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

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

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

**REQUEST FOR PUBLIC COMMENT.** Written comments on the proposed amendments and new rules may be submitted to Sarah Jacobson, Director, Library Development and Networking Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at [rules@tsl.texas.gov](mailto:rules@tsl.texas.gov). To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

**STATUTORY AUTHORITY.** The amendments are proposed under Government Code, §441.009, which authorizes the commission to adopt a state plan for improving library services consistent with federal goals, and, more generally, §441.006(b)(3), which authorizes the commission to accept, receive, and administer federal funds made available by grant or loan to improve the public libraries of this state.

**CROSS REFERENCE TO STATUTE.** Government Code, Chapter 441.

§1.21. *State Plan for the Library Services and Technology Act in Texas.*

The Texas State Library and Archives Commission adopts by reference the State Plan for the Library Services and Technology Act in Texas FFY 2023-2027 [~~FFY 2008-2012~~. Copies may be obtained from [www.tsl.state.tx.us/ld/pubs/1staplan/index.html](http://www.tsl.state.tx.us/ld/pubs/1staplan/index.html)].

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

Filed with the Office of the Secretary of State on November 10, 2022.

TRD-202204529

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Earliest possible date of adoption: December 25, 2022

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



### 13 TAC §1.22

The Texas State Library and Archives Commission (commission) proposes the repeal of 13 TAC §1.22, Circulation.

The proposed repeal of §1.22 is necessary because the rule, adopted in 1976, is no longer necessary. The commission invites public comment on its proposed plan in compliance with requirements of the Institute of Museum and Library Services (IMLS). Restatement of IMLS requirements in a commission rule would be duplicative and unnecessary.

**FISCAL NOTE.** Sarah Jacobson, Director, Library Development and Networking Division, has determined that for each of the first five years the proposed repeal is in effect, there will not be a fiscal impact on state or local government.

**PUBLIC BENEFIT/COST NOTE.** Ms. Jacobson has also determined that for the first five-year period the repeal is in effect, the public benefit will be consistency and clarity in the commission's rules related to archives and historical resources.

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

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

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

proposed repeal will be in effect, the proposed repeal will not positively or adversely affect the Texas economy.

**REQUEST FOR PUBLIC COMMENT.** Written comments on the proposed repeal may be directed to Sarah Jacobson, Director, Library Development and Networking Division, via email [rules@tsl.texas.gov](mailto:rules@tsl.texas.gov), or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

**STATUTORY AUTHORITY.** The repeal is proposed under Government Code, §441.009, which authorizes the commission to adopt a state plan for improving library services consistent with federal goals, and, more generally, §441.006(b)(3), which authorizes the commission to accept, receive, and administer federal funds made available by grant or loan to improve the public libraries of this state.

**CROSS REFERENCE TO STATUTE.** Government Code, Chapter 441.

*§1.22. Circulation.*

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

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Sarah Swanson  
General Counsel

Texas State Library and Archives Commission

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



## CHAPTER 2 GENERAL POLICIES AND PROCEDURES

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

#### 13 TAC §2.59

The Texas State Library and Archives Commission (Commission) proposes the repeal of 13 TAC §2.59, Loan and Exhibition of State Archives.

The proposed repeal of §2.59 is necessary because the commission is proposing to amend and move that rule to Chapter 10, Archives and Historical Resources, the chapter dedicated to rules regarding the state archives and other historical resources. The proposed repeal coincides with proposed amendments and new rules to 13 TAC Chapter 10, including proposed new §10.3, Loan and Exhibition of State Archives, also published in this edition of the *Texas Register*.

**FISCAL NOTE.** Jelain Chubb, State Archivist, has determined that for each of the first five years the proposed repeal is in effect, there will not be a fiscal impact on state or local government.

**PUBLIC BENEFIT/COST NOTE.** Ms. Chubb has also determined that for the first five-year period the repeal is in effect, the public benefit will be consistency and clarity in the commission's rules related to archives and historical resources.

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

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

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

**REQUEST FOR PUBLIC COMMENT.** Written comments on the proposed repeal may be directed to Jelain Chubb, State Archivist, via email [rules@tsl.texas.gov](mailto:rules@tsl.texas.gov), or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

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

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

*§2.59. Loan and Exhibition of State Archives.*

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

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Sarah Swanson  
General Counsel

Texas State Library and Archives Commission

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



## CHAPTER 10. ARCHIVES AND HISTORICAL RESOURCES

### 13 TAC §10.1

The Texas State Library and Archives Commission (Commission) proposes the repeal of 13 TAC §10.1, Definitions.

The proposed repeal of §10.1 is necessary because the commission is proposing four new definitions to replace the general reference to statute in existing §10.1. The proposed repeal coincides with proposed amendments and new rules to 13 TAC Chapter 10, also published in this edition of the *Texas Register*.

**FISCAL NOTE.** Jelain Chubb, State Archivist, has determined that for each of the first five years the proposed repeal is in effect, there will not be a fiscal impact on state or local government.

**PUBLIC BENEFIT/COST NOTE.** Ms. Chubb has also determined that for the first five-year period the repeal is in effect, the public benefit will be consistency and clarity in the commission's rules related to archives and historical resources.

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

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

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

**REQUEST FOR PUBLIC COMMENT.** Written comments on the proposed repeal may be directed to Jelain Chubb, State Archivist, via email [rules@tsl.texas.gov](mailto:rules@tsl.texas.gov), or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

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

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

§10.1. *Definitions.*

Filed with the Office of the Secretary of State on November 10, 2022.

TRD-202204526

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Earliest possible date of adoption: December 25, 2022

For further information, please call: (512) 463-5760



### 13 TAC §§10.1 - 10.4

The Texas State Library and Archives Commission (commission) proposes amendments to 13 Texas Administrative Code §10.2, Public Access to Archival State Records and Other Historical Resources; new §10.1, Definitions; new §10.3, Loan and Exhibition of State Archives; and new §10.4, Reappraisal and Deaccessioning of Items.

**BACKGROUND.** Government Code, §441.190 authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records. The statute further directs the commission to pay particular attention to the maintenance and storage of archival and vital state records and authorizes the commission to adopt rules as it considers necessary to protect those records. In addition, Government Code, §441.193 authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission.

The commission proposes these amendments and new rules under the above-cited authority to update and clarify the procedures and requirements for loans of items from the State Archives and to ensure an effective and transparent process for the care and management of its collections. The amendments and new rules are necessary to ensure potential borrowers are fully apprised of the process for requesting loans, to ensure that items loaned from the state archives are adequately protected while on loan, and to ensure the agency's process for the care and management of its collections, including the deaccessioning of items when necessary and appropriate, is consistent.

Proposed new §10.1 adds seven new definitions to Chapter 10, Archives and Historical Resources. When the commission originally adopted §10.1, Definitions in June 2022, the section was a placeholder for future definitions, providing that any terms used in the chapter had the meanings ascribed to them in Government Code, §441.180. The commission now proposes seven definitions for terms used in the chapter. Proposed subparagraphs (1) and (2) provide definitions for "agency" and "commission," to ensure the rules are clear when referring either to the Texas State Library and Archives Commission as an agency of the state of Texas or the seven-member governing body of the Texas State Library and Archives Commission. The commission also proposes definitions for "accession," "deaccession," "disposal," "item," and "reappraisal."

Proposed amendments to §10.2 change "commission" to "agency" as necessitated by the newly proposed definitions.

Proposed new §10.3, Loan and Exhibition of State Archives, is not technically a new rule. Rather, it is an update to an existing rule previously in Chapter 2 (13 TAC §2.59), which is being proposed for repeal in the same issue of the *Texas Register*. The commission adopted new Chapter 10, Archives and Historical Resources, in June 2022. Because proposed new §10.3 is an update to the commission's existing rule regarding loans and exhibitions of state archives, it is most appropriately placed in Chapter 10 as opposed to Chapter 2, General Policies and Pro-

cedures. Therefore, the commission proposes §10.3 as a new rule but points out that the bulk of the language previously existed in §2.59.

Proposed §10.3(a) establishes the purpose of the section, which is to specify the conditions under which items may be loaned to eligible borrowers for public exhibition if approved by the agency or the commission.

Proposed §10.3(b) defines eligible borrowers as a public or private cultural heritage or educational institution or organization. The rule establishes that the Texas State Preservation Board and its exhibit venues (the Bob Bullock Texas State History Museum and the Capitol Visitors Center) will have preference over other archives, museums, and similar public institutions in Texas. The reason for this preference is the shared mission of the agency and location in the Capitol Complex. The rule also specifies that Texas archives, museums, and similar public institutions will have preference over out-of-state and private entities, and that loans to institutions outside of Texas will generally only be approved for nationally significant exhibitions by major institutions. Examples of major institutions would include the National Archives and Records Administration, Library of Congress, or the Smithsonian Institution.

Proposed §10.3(c) provides that loan requests must be made at least 60 days in advance of the expected loan receipt date. Requests for loans by a non-Texas venue must be made at least 12 months in advance to ensure sufficient time for the substantial planning and preparation necessary to ensure appropriate preservation and protection. The rule authorizes the director and librarian to waive the 60-day requirement. Examples of when the 60-day requirement might be waived include a request from an entity that forgets to include an item on the request, but it is in good condition and can be provided without additional staff work, or special events on request of state officials.

Proposed §10.3(d) establishes that maximum loan period for any item is six months, unless the agency determines the loan is in the best interest of the state or will provide a benefit to the agency related to public education, outreach, publicity, or promotion of the agency's mission. The proposed rule also authorizes the director and librarian to recall a loaned item for good cause at any time and that the director and librarian will attempt to give reasonable notice of a recall. Examples of situations that may be deemed good cause to recall an item include, for example, the air conditioning at a museum fails and will not be fixed promptly or a theft of any item (not necessarily an item on loan from the State Archives) at the exhibit venue that raises general security concerns.

Proposed §10.3(e) establishes special circumstances applicable to certain loan requests and loan periods, including the maximum loan period for textiles, flags, artworks, photographic materials, documents with faded or vulnerable inks, or any other especially light sensitive or fragile items (three months) and additional requirements for items of particular historical significance, such as the original signed manuscript and the printed broadside copy of the Texas Declaration of Independence, the Constitution of Texas (including original drafts), treaties of the Republic of Texas, and the Travis Letter (requests must be made at least 12 months prior to expected loan receipt date and a maximum loan period of 30 days). The rule authorizes waiver of these additional requirements if recommended by the director and librarian and approved by the commission.

Proposed §10.3(f) provides that a borrower must sign a written loan agreement documenting the borrower's commitment to compliance with this rule and any additional conditions appropriate for the specific loan.

Proposed §10.3(g) establishes the required security and environmental conditions for the display and proposed §10.3(h) establishes the appropriate lighting conditions for the display. Proposed §10.3(i) prescribes the requirements for handling and installation. Proposed §10.3(j) provides that agency staff may inspect a proposed exhibition area before a loan is approved and, after approval, may inspect the loaned item at any time to ensure the requirements of the rule are being met. Proposed §10.3(k) establishes the packing and transportation requirements for a loaned item. Proposed §10.3(l) provides that a borrower must provide evidence of insurance adequate to cover the assigned values for all loaned items. Proposed §10.3(m) addresses publicity and credit requirements pertaining to loaned items.

Proposed new §10.4 outlines the process for the reappraisal and deaccessioning of items from the state archives. Subsection (a) establishes the purpose of the new section. Subsection (b) identifies the types of items that may be appropriate for deaccession. Subsection (c) provides that items may only be deaccessioned if a majority of the Deaccession Workgroup, a workgroup comprised of the agency archives supervisor, information services supervisor, Sam Houston Center manager, and conservator, votes to recommend deaccession and the state archivist approves. The subsection also provides that the state archivist will notify the director and librarian prior to final approval of a deaccession. Subsection (d) provides the methods by which a deaccessioned item may be disposed: transfer to another repository, destruction of the item, return to the donor, or sale, if approved by the commission. Subsection (e) provides that agency staff will follow the procedures in Property Code, Chapter 80 (relating to Ownership, Conservation, and Disposition of Property Loaned to Museum) for any item on loan or of unknown provenance. Subsection (f) provides that when an item is deaccessioned, the agency relinquishes title, except in the case of theft or loss.

**FISCAL IMPACT.** Jelain Chubb, State Archivist, 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. As discussed above, while §10.1 and §10.3 are proposed as new rules, they are the result of repeals and new proposals of existing rules. The commission already had a rule addressing loans and exhibitions of state archives. The proposed new rule on loans and exhibition of state archives represents an update to the previous rule.

**PUBLIC BENEFIT AND COSTS.** Ms. Chubb has determined that for each of the first five years the proposed amendments and new rules are in effect, the anticipated public benefit will be increased clarity and consistency regarding the process for loans and deaccessioning of items from the State Archives. The additional public benefit will be increased assurance that loaned items will remain secure and appropriately protected while on loan, to ensure continued preservation of items from the State Archives, many of which are priceless records of the state's history. There are no anticipated economic costs to persons required to comply with the proposed amendments and new rules as most of the requirements existed in the repealed rule. Finally, the proposed new rule on deaccessioning describes the commission's process for its own archives.

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Gov't Code §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed 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;
6. The proposed rules will not expand, limit, or repeal an existing regulation;
7. The proposed rules will not increase the number of individuals subject to the proposed rules' applicability; 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 and new rules may be submitted to Jelain Chubb, State Archivist, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at [rules@tsl.texas.gov](mailto:rules@tsl.texas.gov). To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments and new rules are proposed under Government Code, §441.190; which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records, paying particular attention to the maintenance, storage, and protection of archival and vital state records; §441.193, which authorizes the commission to adopt rules regarding public access to the archival state records and other historical re-

sources in the possession of the commission; and §441.186, which authorizes the state archivist to remove the designation of a state record as an archival state record and permit destruction of the record under rules adopted under Chapter 441, Subchapter L.

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

§10.1. Definitions.

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

(1) Accession--means the formal acceptance of an item or collection into the holdings of the State Archives and generally includes a transfer of title.

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

(3) Commission--means the seven-member governing body of the Texas State Library and Archives Commission.

(4) Deaccession--means the permanent removal of an item or collection of items from the holdings of the State Archives.

(5) Disposal--means the final disposition of an item or collection of items from the State Archives which may include transfer to another repository, sale, or destruction of the item or collection.

(6) Item--means archival material, historical item, artifact, or museum piece in the custody of the State Archives, including the Sam Houston Regional Library and Research Center.

(7) Reappraisal--means the review of items that have been previously appraised, which may result in the identification of materials that no longer merit permanent preservation and that are candidates for deaccessioning.

§10.2. Public Access to Archival State Records and Other Historical Resources.

(a) Public access to archival state records and other historical resources in the possession of the agency [e~~ommission~~] will be granted under the following conditions, subject to subsection (b) of this section.

(1) Access to archival state records and other historical resources maintained in Austin will be provided in the State Archives Reading Room of the Lorenzo de Zavala State Archives and Library Building.

(2) Access to archival state records and other historical resources maintained at the Sam Houston Regional Library and Research Center in Liberty, Texas will be provided in the Center's Reading Room.

(3) Registration and presentation of a current photo identification is required to use original archival state records and other resources.

(4) Researchers aged 17 and older may use original archival state records and other resources. Researchers between the ages of 13 and 16 are permitted to use original archival state records and other resources if supervised by an adult. One adult per researcher between the ages of 13 and 16 is required. Children aged 12 and under are not permitted to use original archival state records or historical resources.



(5) All researchers and supervising adults, if applicable, must agree to and comply with the Reading Room Policies and instructions as provided by staff members.

(6) Access will be granted during business hours for each location as posted on the agency's website or as may be amended from time to time by additional notice.

(7) Request for access to archival state records or other historical resources must be submitted on a material request form whether the request is a Research Request or a Public Information Act (PIA) Request.

(b) The agency [~~commission~~] may restrict access to any original archival state record or other historical resource in its possession and provide only copies if, in the opinion of the state archivist, such access would compromise the continued survival of the original item. The state archivist will consider the following factors in the consideration of requests for access to original archival state records or other historical resources:

(1) physical condition of the archival state record or resource;

(2) availability of a digital or other facsimile copy of the archival state record or resource;

(3) the intrinsic or monetary value of the item to the State; and

(4) any other factor that, in the opinion of the state archivist, may compromise the continued survival of the original item.

#### §10.3. Loan and Exhibition of State Archives.

(a) Purpose. The purpose of this section is to specify the conditions under which items may be loaned to eligible borrowers for public exhibition. Even if a prospective borrower meets all eligibility requirements for a loan, the decision regarding any and all loans is at the sole discretion of the agency or the commission, as appropriate.

(b) Eligible borrowers. Any public or private cultural heritage or educational institution or organization may request the loan of an item for public exhibition purposes. The Texas State Preservation Board and its exhibit venues will have preference over other archives, museums, and similar public institutions in Texas. Texas archives, museums, and similar public institutions will have preference over out-of-state and private entities. Loans to institutions outside of Texas will generally only be approved for nationally significant exhibitions by major institutions.

(c) Loan Request. Except as provided below and in subsection (e), requests for loans must be submitted to the director and librarian at least 60 days prior to the expected loan receipt date and include the exhibition title, dates of exhibition and loan period, a general description of the exhibition, and complete citations for each item requested. Exceptions to the 60-day requirement are as follows:

(1) Requests for loans of any item by a non-Texas venue must be submitted at least 12 months prior to expected loan receipt date; and

(2) Requests for loans of an item may be approved in less than 60 days if the director and librarian waives the 60-day requirement.

(d) Loan Period. Except as provided in subsection (e), the maximum loan period for any item is six months, unless the agency determines the loan is in the best interest of the state or will provide a benefit to the agency related to public education, outreach, publicity, or promotion of the agency's mission. The director and librarian may recall a loaned item for good cause at any time and will attempt to give reasonable notice thereof.

(e) Special circumstances. Loan requests and loan periods for certain items are subject to additional requirements and conditions as follows:

(1) The maximum loan period for textiles, flags, artworks, photographic materials, documents with faded or vulnerable inks, or any other especially light sensitive or fragile items is three months;

(2) Requests for loan of the original signed manuscript and the printed broadside copy of the Texas Declaration of Independence, the Constitution of Texas (including original drafts), treaties of the Republic of Texas, the Travis Letter, and other items of particular historical significance as determined by the state archivist must be submitted at least 12 months prior to expected loan receipt date and require formal approval of the commission in an open meeting, and:

(A) The maximum loan period is 30 days unless the commission determines the exhibition is of special state or national significance; and

(B) Requests may be approved in less than 12 months, but in no event less than six months, if the director and librarian recommends waiver of the 12-month requirement and the commission approves.

(f) Loan Agreement. A borrower must sign a written loan agreement documenting the borrower's commitment to compliance with this section and any additional conditions appropriate for the specific loan. Additional conditions may include, but are not limited to, the following:

(1) Borrower may not display items in a location or exhibition other than that cited on the loan agreement without prior written permission from the director and librarian;

(2) Borrower may not transfer physical custody of loaned items to another institution or third party without prior written permission from the director and librarian;

(3) Borrower may not alter, clean, or repair loaned items, perform any conservation treatment, or remove a document from a housing provided by the agency without prior written permission from the director and librarian; and

(4) Borrower will notify the agency promptly if any agreed upon conditions change during the course of exhibition of the item.

(g) Security and Environmental Conditions.

(1) Items must be displayed in a facility equipped with a networked fire monitoring and alarm system with an automatic aqueous or non-aqueous clean agent fire suppression system and fire protection equipment as described in National Fire Protection Association-Standard for the Protection of Cultural Resources Including Museums, Libraries, Places of Worship, and Historic Properties (NFPA909-2021).

(2) Items on loan must be secure at all times. Professional security guards or other trained personnel must regularly patrol exhibition areas during hours of public access. The borrower must have sufficient 24-hour guards or a 24-hour electronic security system to effectively monitor and protect the exhibition, storage, and preparation areas at all times. The commission may require continuous 24-hour onsite guard by a Licensed Texas Peace Officer, Texas Department of Public Safety officer, licensed Texas security guard, or an equivalent officer or guard within the borrower's jurisdiction if the borrower is located in a state other than Texas.

(3) Temperature and humidity levels must be monitored and controlled. A temperature of 70 degrees Fahrenheit, plus or minus 5 degrees, and a relative humidity of 50% plus or minus 5% without rapid fluctuations must be maintained in the storage, preparation, and

exhibition areas. Before approving a loan and while items are on loan, the director and librarian may request copies of temperature and humidity readings from the borrower to verify these requirements.

(4) Exhibit venue must be a stationary weather-tight structure with a permanent foundation. Display in portable or temporary buildings or in vehicles is prohibited.

(5) Exhibition cases must be clean, dust-proof, and secured with locks or security screws. Exhibit must be case set into or affixed to a permanent wall, anchored to the floor or foundation, or of such substantial construction as to be immovable without special equipment. Frames must also be clean, dust-proof, and secured to the wall with security screws or other hanging methods approved by the director and librarian. Glass or acrylic sheeting, such as plexiglass, lucite, or polycast must protect all materials displayed in frames or cases. The director and librarian may specify grades of acrylic sheeting that filter ultraviolet light for materials that are especially light sensitive.

(6) The exhibition must be monitored daily to ensure security and stability of documents within the cases and frames as well as adequate maintenance and cleaning of the exhibit area.

(7) Eating, drinking, and smoking must be prohibited in the storage, preparation, and exhibition areas.

(h) Lighting Conditions.

(1) Incandescent or LED lights are the preferred lighting types for exhibition lighting. All light sources must be filtered to remove the ultraviolet component.

(2) When lighting items exhibited in a case, exterior lights shall be used whenever possible. If interior case lights are used, fluorescent or LED lights with ultraviolet filters are preferable to ensure a minimal effect on temperature in the case.

(3) No items may be exhibited where they will be exposed to direct or unfiltered sunlight.

(4) The allowable light level for display of certain items of particular historical significance, as determined by the state archivist, is an illumination of no more than 5 foot-candles or 53.8 lux, measured near the surface of the exhibited item. Exhibits with adjustable fiber optic illumination are preferred. The allowable range of illumination for all other items is 5 - 7 foot-candles or 53.8 - 75.3 lux, where a smaller numerical reading is preferred.

(i) Handling and Installation.

(1) Items may be handled and installed only by a curator, archivist, registrar, exhibit technician, or conservator under contract to or on the staff of the borrower.

(2) The agency may encapsulate or mat documents for loan to minimize dangers associated with handling and exhibition. No item borrowed for exhibition may be altered, cleaned, repaired, or removed from housing provided by the agency without first obtaining written permission from the director and librarian.

(3) The agency may directly supervise the installation of its items.

(4) All items must be handled, supported, and conveyed by means that will prevent damage during transport to and from the borrowing institution and within it.

(5) All items must be given sufficient physical support to prevent damage during exhibition.

(j) Inspections.

(1) An agency staff member may inspect the exhibition area before the loan is approved. If, after an agency staff inspection, in the opinion of the director and librarian any loan requirement cannot be met, the loan will not be made.

(2) Agency staff members or personnel designated by the director and librarian may inspect loaned items at any time during the period of the loan. If agency staff identify any requirement of this section not being met and the borrower is unable to correct the deficiency in a reasonable period of time, the loan will be terminated and the agency will recall the item.

(k) Packing and Transportation.

(1) Unless the agency specifies otherwise, agency staff will pack items going out on loan. The borrower is responsible for packing loan items to return to the agency. All items must be given sufficient support and protection to prevent damage during transit.

(2) The borrower will pay all costs associated with shipping or transporting the items on loan from the agency. Shipping arrangements will be made in consultation with the agency.

(3) Transportation for certain items of particular historical significance, as determined by the state archivist, to and from the borrower location will generally require the services of a DPS escort, armored security contractor, or bonded security courier. The borrower will be responsible for costs associated with transportation and security. The location of the venue and distance from the agency, as well as mode of transportation required to deliver the loan item, will be considered in evaluating the request.

(l) Insurance. Prior to loaning an item, a borrower must provide evidence of all-risk insurance coverage adequate to cover the assigned monetary values for all loaned items from the time the items leave the agency until the time of return. The agency may assign insurance values for loan items at its discretion, based on a new, previous, or similar appraisals or estimates, adjusted if necessary. If an appraised or estimated insurance value is not available, the borrower may be required to pay for an appraisal by a qualified, reputable, and mutually agreed upon appraiser.

(m) Publicity and Credit.

(1) The director and librarian must approve any plans to reproduce loaned items for exhibition-related publications, other publications, and publicity purposes.

(2) Agency materials on exhibition may be photographed by the general public without the use of flash or tripod.

(3) In the exhibition and related publicity, the agency must receive clear and prominent credit. The following credit line shall be used: Archives and Information Services Division, Texas State Library and Archives Commission.

§10.4. Reappraisal and Deaccessioning of Items.

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

(b) Deaccession may be appropriate for items:

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

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

(3) That are duplicates of other items in the State Archives;

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

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

(6) The agency cannot properly access or store;

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

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

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

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

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

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

(2) Items that are state records will be destroyed by the agency;

(3) For any other non-government records, the agency will make a reasonable effort to locate the original donor to return the deaccessioned item, unless the donor claimed a charitable donation tax deduction. To return a donated item to the original donor:

(A) Donor(s) must sign a written acknowledgment attesting to the fact that a tax deduction was not claimed;

(B) If the donor is deceased, any claimant requesting return in lieu of the donor must present a notarized statement that he/she is either the sole party at interest or authorized to represent all parties at interest, along with providing supporting proof; and

(C) If the original donor cannot be located, these items may be offered to another repository or destroyed;

(4) Any item whose condition could endanger individuals or other items will be destroyed; and

(5) The sale of any deaccessioned materials will be approved by the Commission and the funds will be used to preserve state archival records and other historical resources and to make the records and resources available for research.

(e) If an item or collection of items approved for deaccession has been logged in the accession log as "on loan" to the agency or has unknown provenance, staff will follow the procedures in Property Code, Chapter 80 (relating to Ownership, Conservation, and Disposition of Property Loaned to Museum) regarding ultimate disposition of the item or items.

(f) Upon deaccession, the agency relinquishes title to the object or collection, except in the case of theft or loss. If deaccessioning is due to theft or loss, the agency will retain title to the item for the state in case it is ever recovered.

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

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TRD-202204530

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Earliest possible date of adoption: December 25, 2022

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



## TITLE 22. EXAMINING BOARDS

### PART 14. TEXAS OPTOMETRY BOARD

#### CHAPTER 279. INTERPRETATIONS

##### 22 TAC §279.1

The Texas Optometry Board proposes amendments to 22 TAC Chapter 279, §279.1 - Contact Lens Examination.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.1 as currently in effect are necessary.

The amendment requires the optometrist or therapeutic optometrist to personally "examine" instead of personally "make" certain findings during an initial visit. It states that the findings must be made unless prohibited by the patient's unique condition instead of "if possible." It requires the optometrist or therapeutic optometrist to personally notate why it is not possible to record the required findings.

It clarifies that for discipline purposes, the charges must state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule.

Finally, the amendment makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is patient protection to ensure the examination is done accurately and completely.

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

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES: There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that

the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the amended rule may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.1 - Contact Lens Examination are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.353.

No other sections are affected by the amendments.

#### §279.1. Contact Lens Examination.

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom contact lenses are prescribed:

(1) Personally examine ~~[make]~~ and record, unless prohibited by the patient's unique condition ~~[if possible]~~, the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings: [ ] far point and near point;

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry; and

(G) angle of vision: [ ] to right and to left; [ ]

(3) The optometrist or therapeutic optometrist shall personally ~~[Personally]~~ notate in the patient's record the reasons why it is not possible to make and record the findings required in subsection (a) of this section;

(4) When a follow-up visit is medically indicated, schedule the follow-up visit within 30 days of the contact lens fitting, and inform the patient on the initial visit regarding the necessity for the follow-up care; and

(5) Personally or authorize an assistant to instruct the patient in the proper care of lenses.

(b) The optometrist or therapeutic optometrist and assistants shall observe proper hygiene in the handling and dispensing of the contact lenses and in the conduct of the examination. Proper hygiene includes sanitary office conditions, running water in the office where contact lenses are dispensed, and proper sterilization of diagnostic lenses and instruments.

(c) The fitting of contact lenses may be performed only by a licensed physician, optometrist, or therapeutic optometrist. Ophthalmic dispensers may make mechanical adjustments to contact lenses and dispense contact lenses only after receipt of a fully written contact lens prescription from a licensed optometrist, therapeutic optometrist, or a licensed physician. An ophthalmic dispenser shall make no measurement of the eye or the cornea or evaluate the physical fit of the contact lenses, by any means whatever, subject solely and only to the exception contained in the §351.005 of the Act.

(d) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the Board ~~[board]~~ to constitute prima facie evidence that the licensee is unfit or incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule ~~[was not complied with]~~. After the Board ~~[board]~~ has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

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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Janice McCoy  
Executive Director  
Texas Optometry Board  
Earliest possible date of adoption: December 25, 2022  
For further information, please call: (512) 305-8500



## 22 TAC §279.2

The Texas Optometry Board proposes amendments to 22 TAC Chapter 279, §279.2 - Contact Lens Prescriptions.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.2 as currently in effect are necessary.

The amendment deletes the word "manually" when describing the signature on a prescription as many prescriptions are digitally written or transmitted. It deletes the section related to faxing prescriptions.

It prohibits an optometrist or therapeutic optometrist from signing or causing to be signed an ophthalmic lens prescription without first personally examining the eyes for whom the prescription is made pursuant to Section 351.435 of the Optometry Act. It specifies that an optometrist or therapeutic optometrist is responsible for the prescriptions signed under the practitioner's name even if they are produced by non-clinical staff. And it requires a licensee to report to the Board within seven business days if the licensee discovers a prescription for lenses was issued without his knowledge or permission.

Finally, it makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is patient protection to ensure prescriptions for contact lenses are accurate and complete.

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

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES:** There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environ-

ment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the amended rule may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.2 - Contact Lens Prescriptions are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.357.

No other sections are affected by the amendments.

### §279.2. *Contact Lens Prescriptions.*

(a) **Prescription.** A prescription for contact lenses is defined as a written order [~~manually~~] signed by the examining optometrist, therapeutic optometrist, or physician, or a written order [~~manually~~] signed by an optometrist, therapeutic optometrist, or physician authorized by the examining doctor to issue the prescription.

(1) If the prescription is signed by the examining optometrist or therapeutic optometrist, the prescription may be signed electronically, provided that:

(A) the prescription is electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription; and

(B) the security features of the system require the practitioner to authorize each use.

(2) If the prescription is signed by a doctor other than the examining optometrist, therapeutic optometrist, or physician, the prescription must contain:

(A) the name of the examining doctor; and

(B) the license number of both the examining doctor and the doctor signing the prescription.

(b) **Applicable Law.** A contact lens prescription must comply with the requirements of the Texas Optometry Act, Sections 351.005, 351.356, 351.357, 351.359, and 351.607, and the Contact Lens Prescription Act, Sections 353.152, 353.153 and 353.158 and federal law, 15 U.S.C. Sections 7601 - 7610 (Public Law 108-164).

(c) **Contents of Prescription.** A fully written contact lens prescription must contain all information required to accurately dispense the contact lens, including:

- (1) patient's name;
- (2) the name, postal address, telephone number, and facsimile telephone number of the prescribing optometrist or therapeutic optometrist (required by federal law);
- (3) the date of examination (not including date of follow-up examinations) (required by federal law);
- (4) date the prescription is issued;
- (5) an expiration date of not less than one year, unless a shorter period is medically indicated;
- (6) examining optometrist's signature or authorized signature;
- (7) name of the lens manufacturer, if required to accurately dispense the lens;
- (8) lens brand name, including:

(A) a statement that brand substitution is permitted if the optometrist intends to authorize a contact lens dispenser to substitute the brand name; [5] and

(B) name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name when the prescribed brand name is not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated;

- (9) lens power;
- (10) lens diameter, unless set by the manufacturer;
- (11) base curve, unless set by the manufacturer; and
- (12) number of lenses and recommended replacement interval.

(d) Release of Prescription, Timing. Regardless of whether the release is requested by the patient, the optometrist or therapeutic optometrist shall release a prescription once the parameters of the prescription are determined. An exception to this requirement exists if the optometrist or therapeutic optometrist determines that because of a medical indication further monitoring is required, and the optometrist or therapeutic optometrist gives the patient a verbal explanation of the reason the prescription is not released and documents in the patient's records a written explanation of the reason.

(e) Release of Prescription, Method. An optometrist or therapeutic optometrist shall issue a prescription by giving or delivering an original signed copy of the prescription to the patient or to another person in accordance with subsection (d) of this section [above].

~~(f) Faxing Prescription. When directed by a dispenser designated to act on behalf of the patient, an optometrist or therapeutic optometrist shall fax an original signed prescription to the dispenser. When faxing a prescription, the optometrist or therapeutic optometrist shall write "by fax" or similar wording on the original prescription prior to faxing.~~

(f) [(g)] Verification of Prescription. An optometrist or therapeutic optometrist shall verify a prescription when a dispenser designated to act on behalf of the patient requests a verification by telephone, facsimile, or electronic mail.

(g) [(h)] Verification Procedure. A dispenser designated to act on behalf of the patient is required to provide the optometrist or therapeutic optometrist with the following information when seeking a verification of a prescription:

- (1) the patient's full name and address;

- (2) contact lens power, manufacturer, base curve or appropriate designation, and diameter, as appropriate;
- (3) quantity of lenses ordered;
- (4) the date on which the patient requests lenses to be ordered or dispensed;
- (5) the date and time of the verification request; and
- (6) the name, telephone number, and facsimile number of a person at the contact lens dispenser's company with whom to discuss the verification.

(h) [(i)] Verification Requirements. If the format of the verification request allows, the optometrist or therapeutic optometrist, when verifying a prescription, should provide the contact lens dispenser with all of the information required in subsection (c) of this section [title]. An optometrist or therapeutic optometrist who did not perform the examination, may verify a prescription according to subsection (a) of this section [title], providing to the dispenser the name and license number of the examining doctor if the format of the verification request so allows. Each request for a prescription verification should be recorded in the patient record, including the name of the dispenser, the date verification is requested, number of lenses requested, and response of the optometrist or therapeutic optometrist.

(i) [(j)] Inaccurate or Invalid Verification. A contact lens dispenser seeking a contact lens prescription verification shall not fill the prescription if an optometrist or therapeutic optometrist informs a dispenser that the contact lens prescription is inaccurate, expired, or otherwise invalid. An optometrist or therapeutic optometrist is required to communicate the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the dispenser to the optometrist or therapeutic optometrist is inaccurate or invalid, the optometrist or therapeutic optometrist is required to provide the correct information to the dispenser. A dispenser may dispense lenses without verification if an optometrist or therapeutic optometrist fails to communicate with the dispenser within 8 business hours, or a similar time as defined by the Federal Trade Commission.

(j) [(k)] Number of Lenses. An optometrist or therapeutic optometrist dispensing contact lenses shall record on the prescription the number of lenses dispensed and return the prescription to the person. If all the contact lenses authorized by the prescription are dispensed by an optometrist or therapeutic optometrist, the following procedure complies with state law and should not be in conflict with federal law: the optometrist or therapeutic optometrist writes on the prescription "All Lenses Dispensed," makes a copy of the prescription to retain in the licensee's records, and returns the original to the person presenting the prescription.

(k) [(l)] Extension. The Contact Lens Prescription Act requires an optometrist or therapeutic optometrist to authorize, upon request of the patient, a one-time [one time], two-month [two month] extension of the contact lens prescription.

(l) [(m)] Private Labels. The prescribing optometrist or therapeutic optometrist has the authority to specify any and all parameters of an optical prescription for the therapeutic and visual health and welfare of a patient, but the prescription shall not contain restrictions limiting the parameters to private labels not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated. The specifications of the prescription may not be altered without the consent of the prescribing doctor.

(m) [(n)] Fee. The Contact Lens Prescription Act prohibits an optometrist or therapeutic optometrist from charging the patient a fee in addition to the examination fee and the fitting fee as a condition for

giving a contact lens prescription to the patient or verifying a prescription according to subsections ~~(g)~~ and (h) and (i) of this section. An optometrist or therapeutic optometrist may not refuse to release a prescription solely because charges assigned or presented for payment to an insurance carrier, health maintenance organization, managed care entity, or similar entity have not been paid by that entity.

(n) ~~(n)~~ Fitting Process. An optometrist or therapeutic optometrist may charge a fitting fee that includes fees for lenses required to be used in the fitting process. The fitting process may include the initial eye examination, an examination to determine the specifications of the contact lenses, and follow-up examinations that are medically necessary. Unless medically necessary, the optometrist or therapeutic optometrist may not require the patient to purchase a quantity of lenses in excess of the lenses the optometrist or therapeutic optometrist was required to purchase to complete the fitting process.

(o) An optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes for whom the prescription is made pursuant to Section 351.435 of the Optometry Act. An optometrist or therapeutic optometrist is responsible for the prescriptions signed under the practitioner's name even if they are produced by non-clinical staff. Should a licensee discover a prescription for lenses was issued without his knowledge or permission, the licensee shall report it to the Board within seven business days.

(p) The Executive Commissioner ~~[executive commissioner]~~ of the Health and Human Services Commission and the Executive Director ~~[executive director]~~ of the Texas Optometry Board may enter into interagency agreements as necessary to implement and enforce this chapter.

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

Filed with the Office of the Secretary of State on November 7, 2022.

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Janice McCoy  
Executive Director  
Texas Optometry Board

Earliest possible date of adoption: December 25, 2022  
For further information, please call: (512) 305-8500



## 22 TAC §279.3

The Texas Optometry Board proposes amendments to 22 TAC Chapter 279, §279.3 - Spectacle Examination.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.3 as currently in effect are necessary.

The amendment requires the optometrist or therapeutic optometrist to personally examine instead of personally make certain findings during an initial visit. It states that the findings must be made unless prohibited by the patient's unique condition instead of "if possible." It requires the optometrist

or therapeutic optometrist to personally notate why it is not possible to record the required findings.

It clarifies that for discipline purposes, the charges must state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule.

Finally, the amendment makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is patient protection to ensure the examination is done accurately and completely.

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

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES:** There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the amended rule may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.3 - Spectacle Examination are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.353.

No other sections are affected by the amendments.

§279.3. *Spectacle Examination.*

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom ophthalmic lenses are prescribed:

(1) Personally examine ~~[make]~~ and record, unless prohibited by the patient's unique condition ~~[if possible]~~, the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings: [-] far point and near point; [-]

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry; and

(G) angle of vision: [-] to right and to left; and [-]

(3) Personally notate in the patient's record the reasons why it is not possible to make and record the findings required in this section.

(b) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the Board ~~[board]~~ to constitute prima facie evidence that the licensee is unfit or incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule ~~[was not complied with]~~. After the Board ~~[board]~~ has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

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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Janice McCoy  
Executive Director  
Texas Optometry Board

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For further information, please call: (512) 305-8500



**22 TAC §279.4**

The Texas Optometry Board proposes amendments to 22 TAC Chapter 279, §279.4 - Spectacle and Ophthalmic Devices Prescriptions.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.4 as currently in effect are necessary.

The amendment deletes the word "manually" when describing the signature on a prescription as many prescriptions are digitally written or transmitted. It deletes instructions related to faxing prescriptions.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is patient protection to ensure prescriptions for contact lenses are accurate and complete.

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

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES:** There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing em-



ployee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the amended rule may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.4 - Spectacle and Ophthalmic Devices Prescriptions are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.356.

No other sections are affected by the amendments.

*§279.4. Spectacle and Ophthalmic Devices Prescriptions.*

(a) A prescription for spectacles or ophthalmic devices is defined as a written order [~~manually~~] signed by the examining optometrist, therapeutic optometrist or physician, or a written order [~~manually~~] signed by an optometrist, therapeutic optometrist or physician authorized by the examining doctor to issue the prescription. If the prescription is signed by the examining optometrist or therapeutic optometrist, the prescription may be signed electronically, provided that:

(1) the prescription is electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription; and

(2) the security features of the system require the practitioner to authorize each use.

(b) An optometrist or therapeutic optometrist may issue a duplicate prescription in the following manner:

(1) giving or delivering an original signed copy of the prescription to the patient or to another person when requested by the patient;

(2) faxing an original signed prescription to a person authorized to fill the prescription[- ~~When faxing a prescription, the optometrist or therapeutic optometrist shall write "by fax" or similar wording on the original prescription prior to faxing~~];

(3) transmitting a complete prescription as defined in this section, to a person authorized to fill the prescription, by email or other computerized electronic means. When transmitting a prescription by computerized electronic means, including e-mail, the optometrist or therapeutic optometrist shall attach a digital signature in a commonly recognized format. The computerized electronic transmission shall also include the office address and license number of the optometrist or therapeutic optometrist; or

(4) if the optometrist or therapeutic optometrist determines that the patient needs an emergency refill of the spectacle prescription, the prescription may be telephoned to a person authorized to fill the prescription.

(c) If the prescription is signed by a doctor other than the examining optometrist, therapeutic optometrist or physician, the prescription must contain:

(1) the name of the examining doctor; and

(2) the license number of both the examining doctor and the doctor signing the prescription.

(d) The prescribing optometrist or therapeutic optometrist has the authority to specify any and all parameters of an optical prescription for the therapeutic and visual health and welfare of a patient, but the prescription shall not contain restrictions limiting the parameters to private labels not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated. The specifications of the prescription may not be altered without the consent of the prescribing doctor.

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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Janice McCoy

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



**22 TAC §279.11, §279.12**

The Texas Optometry Board proposes amendments to 22 TAC Chapter 279, Interpretations.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487).

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to certain rules as currently in effect are necessary. The changes outlined in this proposal are non-substantive in that they update capitalization in order for the language across the entirety of Chapter 279 to be consistent.

The specific rules being amended for capitalization include: §279.11 - Relationship with Dispensing Optician - Books and Records and §279.12 - Relationship with Dispensing Optician - Separation of Offices. The amendments include changing the reference from "legislature" to "Texas Legislature" and "board" to "Board."

Additionally, §279.11 is amended to add "or therapeutic optometry" in subsections (a) and (b) when describing the "practice of optometry." This amendment is consistent across the Chapter in that references to the practice of use both "optometry" and "therapeutic optometry."

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of proposing these amendments.

Janice McCoy, Executive Director, has determined that for each of the first five years the amended rule is in effect, the public benefit is consistency in language across the agency's rules.

Legal counsel for the Board has reviewed the amended rules and has found them to be within the Board's authority to propose.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES:** There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amended rules. Since the agency has determined that the amended rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendments do 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.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the proposed rule may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.11 - Relationship with Dispensing Optician - Books and Records and §279.12 - Relationship with Dispensing Optician - Separation of Offices are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.459, and §351.460.

No other sections are affected by the amendments.

*§279.11. Relationship with Dispensing Optician - Books and Records.*

(a) Texas Optometry Act, §351.364, relating to relationships with dispensing opticians, states: The purpose of this section is to insure that the practice of optometry or therapeutic optometry shall be carried out in such a manner that it is completely and totally separated from the business of any dispensing optician, with no control of one by the other and no solicitation for one by the other.

(b) It is therefore the interpretation of this Board [board] that an optometrist or therapeutic optometrist practicing under his own name and dispensing, repairing, or duplicating lenses and/or frames in his own office as part of his optometric practice would not be required to keep separate records or books by virtue of the fact that it is all part of his practice of optometry and not a separate dispensing business.

*§279.12. Relationship with Dispensing Optician - Separation of Offices.*

(a) The Texas Optometry Act, §351.364(a), requires that the space occupied by the optometrist or therapeutic optometrist shall be separated from the space occupied by the dispensing optician by solid partitions or walls from floor to ceiling. The intent of the Texas Legislature [legislature] in passing §351.364 is specifically spelled out in §351.364(d) and is to insure that the practices of optometry and therapeutic optometry shall be carried out in such a manner that they are completely and totally separated from the business of any dispensing optician.

(b) In light of the overriding legislative intent in passing §351.364 that the practices of optometry and therapeutic optometry be completely and totally separate from the business of any dispensing optician, it is the interpretation of the Board [board] that §351.364(a), set forth in subsection (a) of this section, prohibits the space occupied by an optometrist or therapeutic optometrist and space occupied by a dispensing optician from being joined by a wall in which there is a door, either locked or unlocked.

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204451

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: December 25, 2022

For further information, please call: (512) 305-8500



## **22 TAC §279.13**

The Texas Optometry Board proposes to amend 22 TAC §279.13, concerning Board Interpretation Number Thirteen.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

Rule 279.13 was first adopted in 1992 and amended in 1993 and 1999. The rule references §5.04(5) of Vernon's Civil Statutes - which was codified as §351.455 of the Texas Occupations Code in 1999. The Board has interpreted the statute to prohibit licensees from unsolicited house-to-house business and continues to support that prohibition. This amendment would update the statutory reference and allow that follow-up care can be accomplished through telehealth services.

Additionally, the amendment would update the rule title to provide better clarity of the rule's content.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of repealing this rule.

Janice McCoy, Executive Director, has determined that the public benefit of amending the rule is that the location of the place of practice being specifically within 100 miles of the off-site examination is no longer necessary as the Board has instituted other rules that safeguard the visual welfare of the public.

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

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES:** There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendment. Since the agency has determined that the proposed amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the proposed amendment may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.13, is being proposed under Texas Occupations Code §351.151 and §351.455. No other sections are affected by the amendments.

§279.13. Professional Responsibility for Off-Site Examinations: Improper Solicitation of Patients [Board Interpretation Number Thirteen].

(a) The Texas Optometry Act was enacted in part to safeguard the visual welfare of the public and the optometrist-patient relationship and to fix professional responsibility with respect to the patient.

(b) In order to comply with these objectives and to assure patients will have adequate follow-up care, this rule applies to licensed optometrists or therapeutic optometrists who practice optometry or therapeutic optometry, including the examination and prescribing or supplying of lenses to patients away from their place of practice such as[; at]:

- (1) a nursing home or other abode to patients confined therein,
- (2) an industrial site, when requested to do so, or
- (3) a school site when requested to do so by the school administration.[;]

(c) The optometrist or therapeutic optometrist must have an office location or place of practice within reasonable traveling distance [100 miles] of such examination site, or, in the alternative must have made arrangements, confirmed in writing prior to offering or providing services, for continued care with a qualified eye health professional with an office location or place of practice within reasonable traveling distance [100 miles] of such examination site, or assured telehealth access for continued care.

(d) Failure to comply with this rule shall be deemed as practicing from house-to-house and the improper solicitation of patients in violation of the Act, §351.455 [§ 5.04(5)]. In addition, the optometrist must comply with the requirements of §351.351 [§ 5.02] to maintain current information regarding practice locations with the board office.

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

Filed with the Office of the Secretary of State on November 7, 2022.

TRD-202204449

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: December 25, 2022

For further information, please call: (512) 305-8500



## 22 TAC §279.15

The Texas Optometry Board proposes amendments to 22 TAC Chapter 279, §279.15 - Board Interpretation Number Fifteen.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code Section 2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.15 as currently in effect are necessary.

Section 279.15 was first adopted in 1995 and amended in 1998. The rule references §5.08(a) of Vernon's Civil Statutes - which was codified as §351.454 of the Texas Occupations Code in 1999.

This amendment updates the title to better reflect the rule's purpose of prohibiting practice when the licensee knowingly suffering from a contagious or infectious disease and it updates the reference to the current statutory authority.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is clarifying the prohibition on practicing when the licensee knowingly is suffering from a contagious or infectious disease.

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

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES:** There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment 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.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the amended rule may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.15 - Board Interpretation Number Fifteen are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.454.

No other sections are affected by the amendments.

*§279.15. Practice with Contagious or Infectious Disease. [Board Interpretation Number Fifteen.]*

(a) The Texas Optometry Act, §351.454 [~~§5.08(a)~~], requires that no licensed optometrist or therapeutic optometrist practice optometry or therapeutic optometry while knowingly suffering from a contagious or infectious disease, if the disease is one that could reasonably be transmitted in the normal performance of optometry or therapeutic optometry.

(b) For purposes of interpretation, a "contagious or infectious disease" is defined as a "disease capable of being transmitted from one person to another by contact or close proximity." Infectious agents transmitted from one person to another by contact or close proximity would include bacteria and viruses.

(c) A licensee shall be deemed practicing while knowingly suffering from an infectious or contagious disease when a medical diagnosis of that disease has been made.

(d) The following include but are not limited to infectious diseases or diseases that can be transmitted:

(1) Infectious agents which may be transmitted by direct contact or by respiratory route include: chickenpox, common cold, infectious mononucleosis, influenza, mycoplasma pneumonia, measles, meningococcal disease, mumps, pertussis, rubella and tuberculosis.

(2) Diseases that could be transmitted by direct contact include: chlamydia trachomatous infections, herpes simplex viruses, staphylococcal infections, streptococcal infections, and bacterial and viral conjunctivitis.

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Janice McCoy

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8500



## PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 535. GENERAL PROVISIONS

#### SUBCHAPTER R. REAL ESTATE

#### INSPECTORS

#### 22 TAC §535.223

The Texas Real Estate Commission (TREC) proposes amendments to §535.223, Standard Inspection Report Form, in Subchapter R of Chapter 535, General Provisions.

The proposed amendments to §535.223 clarify that when multiple boxes are checked for a particular item on the report form, the inspector must also explain the reason for checking multiple boxes. The proposed amendments also remove single-system inspections from the list of exemptions--meaning the requirements in §535.223 would apply to those inspections.

The Texas Real Estate Inspector Committee recommends the proposed amendments.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed is in effect, the public benefit anticipated as a result of the change is improved clarity for license holders and greater consumer protection when engaging a licensed inspector.

For each year of the first five years the proposed amendments are in effect, the amendment 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;
- limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov), or through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.223. *Standard Inspection Report Form.*

The Commission adopts by reference Property Inspection Report Form REI 7-6, approved by the Commission for use in reporting inspections results. This document is published by and available from the Commission website: [www.trec.texas.gov](http://www.trec.texas.gov), or by writing to the Commission at Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of substantially complete one-to-four family residential property shall be reported on Form REI 7-6 adopted by the Commission ("the standard form").

(2) If an inspector uses computer software or other means to produce an inspection report, the inspector must reproduce the text of the standard form verbatim and the spacing, borders and placement of text must be identical to the standard form.

(3) An inspector may make the following changes to the standard form:

- (A) delete the line for name and license number, of the sponsoring inspector, if the inspection was performed solely by a professional inspector;
- (B) change the typeface; provided that it is no smaller than a 10 point font;
- (C) change the color of the typeface and checkboxes;
- (D) use legal sized (8-1/2" by 14") paper;
- (E) add a cover page to the report form;

(F) add footers to each page of the report except the first page and may add headers to each page of the report;

(G) place the property identification and page number at either the top or bottom of the page;

(H) add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(I) list other items in the corresponding appropriate section of the report form and additional captions, letters, and check boxes for those items;

(J) delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;

(K) delete "Other" subsections of Section I. through Section VI.;

(L) as the inspector deems necessary:

(i) allocate such space for comments in:

(I) the "Additional Information Provided by the Inspector" section; and

(II) each section provided for comments for each inspected item;

(ii) attach additional pages of comments; or

(iii) both;

(M) include a service agreement/inspection contract or contractual terms between the inspector and a client with the standard form under the "Additional Information Provided by the Inspector" section or as an attachment to the standard form;

(N) attach additional pages to the form if:

(i) it is necessary to report the inspection of a component, or system not contained in the standard form; or

(ii) the space provided on the form is inadequate for a complete reporting of the inspection;

(O) attach additional reporting information produced by computer software so long as the standard report form is provided before that information; and

(P) Remove the Commission's logo or substitute the inspector's logo in place of the Commission's logo.

(4) The inspector shall renumber the pages of the standard form to correspond with any changes made necessary due to adjusting the space for comments or adding additional items and shall number all pages of the report, including any addenda.

(5) The inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present, or deficient and explain the findings in the corresponding section in the body of the report form. If multiple boxes are checked, the inspector must also include an explanation as to the reason for checking multiple boxes in the applicable section of the report form.

(6) This section does not apply to the following:

(A) re-inspections of a property performed for the same client;

(B) inspections performed for or required by a lender or governmental agency;

(C) inspections for which federal or state law requires use of a different report;

(D) quality control construction inspections of new homes performed for builders, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder or other entity requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or other entity in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a license holder and reported on Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector; or

(E) an inspection of a building or addition that is not substantially complete. [; or]

~~{(F) inspections of a single system or component as outlined in clause (ii) of this subparagraph, provided that the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a buyer or seller in accordance with the client's requirements. The report addresses a single system or component and is not intended as a substitute for a complete standard inspection of the property. Standard inspections performed by a license holder and reported on a Commission promulgated report form may contain additional information a buyer should consider in making a decision to purchase."}~~

~~{(i) If the client requires the use of a report form that does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.}~~

~~{(ii) An inspection is considered to be of a single system or component if the inspection only addresses one of the following or a portion thereof:}~~

~~{(I) foundation;}~~

~~{(II) framing/structure, as outlined in §535.213(e)(2) of this title;}~~

~~{(III) building enclosure;}~~

~~{(IV) roof system;}~~

~~{(V) plumbing system;}~~

~~{(VI) electrical system;}~~

~~{(VII) HVAC system;}~~

~~{(VIII) a single appliance; or}~~

~~{(IX) a single optional system as stated in the Standards of Practice.}~~

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

Filed with the Office of the Secretary of State on November 8, 2022.

TRD-202204509

Abby Lee

Deputy General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: December 25, 2022

For further information, please call: (512) 936-3057

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## CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

### 22 TAC §537.1, §537.11

The Texas Real Estate Commission (TREC) proposes new rule 22 TAC, §537.1, Definitions, and amendments to §537.11, Use of Standard Contract Forms, in Chapter 537, Professional Agreements and Standard Contracts.

The proposed new rule adds a definitions section for ease of reading and for consistency with other Commission rule chapters. This includes a definition for the new term "informational items," which is intended to better describe the type of information that a license holder can add to a contract form.

The proposed amendments to §537.11 reorganize and consolidate the rule for clarity, and simplify the language regarding when a license holder is required to use a Commission-approved contract form and what is considered the unauthorized practice of law. Specifically, the proposed changes in subsection (a) align the rule language more closely with the applicable statutory language and simplify the list of exceptions related to contract form use by license holders. Importantly, the exception found in subsection (a)(4) is amended to eliminate the ability of license holders to use contract forms prepared by an attorney for a brokerage when no Commission-approved contract form for mandatory use exists.

Subsections (b) - (d) provide further guidance to license holders and members of the public on what the Commission considers to be the unauthorized practice of law. Of note, subsection (d)(2) provides that it is not the practice of law to add language to or strike language from a contract form, if specifically instructed in writing by a principal, as long as any change is made conspicuous, including underlining additions, striking through deletions, or employing some other method which clearly indicates the change being made.

Finally, the proposed changes to subsection (h) update the language regarding reproduction of Commission-approved contract forms to better account for changes in technology.

The Commission's Unauthorized Practice of Law Working Group recommends the proposed amendments.

Abby Lee, Deputy 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 for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed 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. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits

anticipated as a result of adopting the sections as proposed will be improved clarity and greater transparency for members of the public and license holders.

Except as noted below, for each year of the first five years the proposed amendments and new rule are in effect, the amendments will not:

- create or eliminate a government program;
  - require the creation of new employee positions or the elimination of existing employee positions;
  - require an increase or decrease in future legislative appropriations to the agency;
  - require an increase or decrease in fees paid to the agency;
  - create a new regulation;
  - expand, limit or repeal an existing regulation;
  - increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

The proposed changes to subsection (a)(4) of §537.11 limit an existing regulation in two ways: (i) by reducing the requirements for a contract form when there is no Commission-approved contract form and a license holder uses a form prepared by a trade association; and (ii) by removing the ability of license holders to use brokerage-prepared forms under this exception.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments and new rules is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments and new rules.

#### §537.1. Definitions.

The following terms and phrases, when used in this chapter, have the following meanings:

- (1) Commission--The Texas Real Estate Commission.
- (2) Contract forms--Contracts and related addenda, including notices, amendments, and other documents, used in the sale, exchange, option, or lease of any interest in real property.
- (3) Informational item--A statement that completes a blank in a contract form, discloses factual information, or provides instructions.
- (4) License holder--A real estate broker or sales agent licensed under Chapter 1101, Texas Occupations Code.
- (5) Mandatory use--Unless an exception applies under subsection (a) of section 537.11 (relating to Use of Standard Contract

Forms; Unauthorized Practice of Law), use of the contract form is required by a license holder.

(6) Voluntary use--A license holder may, but is not required to, use the contract form.

#### §537.11. Use of Standard Contract Forms; Unauthorized Practice of Law.

(a) When negotiating contracts binding the sale, exchange, option, or lease ~~or rental~~ of any interest in real property, a ~~real estate~~ license holder shall use only those contract forms approved for mandatory use by the ~~[Texas Real Estate] Commission [(the Commission)]~~ for that type of transaction with the following exceptions:

(1) transactions in which the license holder is functioning solely as a principal, not as an agent;

(2) transactions in which an agency of the United States government requires a different form to be used;

(3) transactions for which a contract form ~~;~~ ~~or addendum to a contract form;~~ has been prepared by the [a] property owner or prepared by an attorney [a lawyer] and required by a property owner; or

(4) transactions for which no ~~[mandatory]~~ contract form ~~[or addendum]~~ has been approved for mandatory use by the Commission, and the license holder uses a form:

(A) prepared by [a lawyer licensed by this state, or] a trade association in consultation with an attorney [one or more lawyers] licensed by this state [; for the particular type of transactions involved] that contains:

(i) the name of the ~~[lawyer or]~~ trade association who prepared the form;

~~[(ii)]~~ the name of the broker or trade association for whom the form was prepared;]

~~[(iii)]~~ [(iii)] a statement indicating the type of transaction for which the [lawyer or] trade association has approved the use of the form; and

~~[(iv)] any restrictions on the use of the form; and]~~

~~[(v)]~~ [(v)] if applicable, an explanation of how the form [it is an addendum that] changes the rights, obligations, or remedies of a party under a contract [or addendum] form approved for mandatory use by the Commission and [for mandatory use, the form must also include:]

~~[(f)] a statement about how the addendum changes the rights, obligations or remedies of a party, with a reference to the relevant paragraph number in the mandatory use form;]~~

~~[(H)] a statement that the form is not a mandatory Texas Real Estate Commission form; and]~~

~~[(H)]~~ a statement that ~~[Commission rules prohibit real estate] license holders may not practice law or give [from giving] legal advice; or~~

(B) prepared by the Texas Real Estate Broker-Lawyer Committee ~~[(the committee)]~~ and approved by the Commission for voluntary use by license holders.

(b) A license holder may not:

(1) practice law;

(2) directly or indirectly offer, give or attempt to give legal advice;

(3) give advice or opinions as to the legal effect of any contract forms [~~contracts~~] or other such instruments which may affect the title to real estate;

(4) give opinions concerning the status or validity of title to real estate;

(5) draft or recommend language to be included in a contract form defining or affecting the rights, obligations, or remedies of the principals of a real estate transaction, including escalation, appraisal, or ~~other~~ contingency clauses;

(6) add informational items [~~factual statements or business details~~] to a form approved by the Commission if the Commission has approved a form [~~or addendum~~] for mandatory use for that purpose;

(7) attempt to prevent or in any manner whatsoever discourage any principal to a real estate transaction from employing an attorney [~~a lawyer~~]; or

(8) obtain legal advice from an attorney [~~employ or pay for the services of a lawyer~~], directly or indirectly, for [~~to represent~~] a principal in [~~to~~] a real estate transaction in which the license holder is acting as an agent.

(c) This section does not:

(1) limit a license holder's fiduciary obligation to disclose to the license holder's principals all pertinent facts that are within the knowledge of the license holder, including such facts which might affect the status of or title to real estate;

(2) prevent the license holder from explaining to the license holder's principals the meaning of informational items or choices in a contract form, as long as the license holder does not practice law or give legal advice;

(3) limit a license holder from employing and paying for the services of an attorney to represent only the license holder in a real estate transaction; or

(4) limit a license holder from reimbursing a principal for attorney's fees incurred.

(d) It is not the practice of law for a license holder to:

(1) add informational items to [~~fill in the blanks in~~] a contract form authorized for use by this section; or [-]

(2) if specifically instructed in writing by a principal, add language to or strike language from a contract form, as long as any change is made conspicuous, including underlining additions, striking through deletions, or employing some other method which clearly indicates the change being made. [~~A license holder shall only add factual statements and business details or shall strike text as directed in writing by the principals.~~]

[(e) This section does not prevent the license holder from explaining to the principals the meaning of the alternative choices, factual statements, and business details contained in an instrument so long as the license holder does not offer or give legal advice.]

(c) [(f)] When a transaction involves unusual matters that should be reviewed by an attorney [~~a lawyer~~] before an instrument is executed, or if the instrument must be acknowledged and filed of record, the license holder shall advise the license holder's principals to [~~that each should~~] consult an attorney [~~a lawyer of the principal's choice~~] before executing the instrument.

[(g) A license holder may employ and pay for the services of a lawyer to represent only the license holder in a real estate transaction.]

(f) [(h)] A license holder shall advise the license holder's principals that the instrument they are about to execute is binding on them.

(g) Contract forms approved by the Commission are published by and available from the Commission at [www.trec.texas.gov](http://www.trec.texas.gov).

[(i) Forms approved by the Commission may be reproduced only from the following sources:]

[(1) electronically reproduced from the files available on the Commission's website;]

[(2) printed copies made from copies obtained from the Commission;]

[(3) legible photocopies made from such copies; or]

[(4) computer-driven printers following these guidelines:]

[(A) The computer file or program containing the form text must not allow the end user direct access to the text of the form and may only permit the user to insert language in blanks in the forms. Blanks may be sealable to accommodate the inserted language. The Commission may approve the use of a computer file or program that permits a principal of a license holder to strike through language of the form text. The program must be:]

[(i) limited to use only by a principal of a transaction; and]

[(ii) in a format and authenticated in manner acceptable to the Commission.]

[(B) Typefaces or fonts must appear to be identical to those used by the Commission in printed copies of the particular form.]

[(C) The text and order of the text must be identical to that used by the Commission in printed copies of the particular form.]

[(D) The name and address of the person or firm responsible for developing the software program must be legibly printed below the border at the bottom of each page in no less than six point type and in no larger than 10 point type.]

(h) [(j)] Contract forms [~~Forms~~] approved [~~or promulgated~~] by the Commission may be reproduced, including through use of a software application, provided that the text and format of the form, including the sizing, spacing, and pagination, is identical to the Commission's published version, except that [~~must be reproduced on the same size of paper used by the Commission with the following changes or additions only~~]:

(1) the [~~The~~] business name or logo of a broker, trade association, or other organization [~~or printer~~] may appear [~~at the top of a form~~] outside the form's border; and

(2) a form may be scaled to accommodate viewing on smaller screens, including mobile devices, as long as the final executed copy of the form otherwise complies with this subsection [~~The broker's name may be inserted in any blank provided for that purpose~~].

[(k) Standard Contract Forms adopted by the Commission are published by and available from the Commission at P.O. Box 12188, Austin, Texas 78711-2188 or [www.trec.texas.gov](http://www.trec.texas.gov).]

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

Filed with the Office of the Secretary of State on November 8, 2022.

TRD-202204508





## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

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

##### SUBCHAPTER RR. VALUATION MANUAL

###### 28 TAC §3.9901

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving and related requirements. Section 3.9901 implements Insurance Code §425.073.

**EXPLANATION.** The amendment to §3.9901 is necessary to comply with Insurance Code §425.073, which requires the Commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC).

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

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

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 13, 2022, the NAIC voted to adopt changes to the valuation manual. Forty-six jurisdictions, representing jurisdictions totaling 93.8% of the relevant direct written premiums, voted in favor of adopting the amendments to the valuation manual. The vote adopting changes to the NAIC valuation manual meets the requirements of Insurance Code §425.073(c).

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

changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

In addition to clarifying existing provisions, the 2023 valuation manual includes changes that:

- require a hedging strategy be a Clearly Defined Hedging Strategy if modeling future hedging reduces the reserves under Valuation Manual Chapter 20 (VM-20) or Total Asset Recovery under Valuation Manual Chapter 21 (VM-21);

- add guidance and requirements for general assumptions and expense assumptions in VM-21;

- update prescribed swap spreads guidance in VM-20 to facilitate the London Interbank Offered Rate transition to the Secured Overnight Financing Rate; and

- add fields to experience reporting to reflect dividend plan code and COVID-19 indicator and the change field identifier.

The NAIC's adopted changes to the valuation manual can be viewed at [content.naic.org/sites/default/files/pbr\\_data\\_valuation\\_manual\\_future\\_edition\\_redline.pdf](https://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_redline.pdf). The proposed amendment to the section is described in the following paragraph.

Section 3.9901. TDI amends §3.9901 by striking the date on which the NAIC adopted its previous valuation manual and inserting the date on which the NAIC adopted its current valuation manual, changing it from August 17, 2021, to August 13, 2022.

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

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

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

Ms. Walker expects that the amendment as proposed will not increase the cost of compliance with Insurance Code §425.073 because the amendment does not impose requirements beyond those in the statute. Insurance Code §425.073 requires that changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, any cost associated with adopting the changes to the valuation manual is a direct result of Insurance Code §425.073 and not the proposed amendment.

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

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons and no additional rule amendments are required. However, even if there was a cost, no additional rule amendments are required under Texas Government Code §2001.0045 because the proposed amendment is necessary to implement legislation. Specifically, the proposal implements Insurance Code §425.073, as added by Senate Bill 1654, 84th Legislature, 2015.

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

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

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 26, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the TDI no later than 5:00 p.m., central time, on December 26, 2022. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

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

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

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state

CROSS-REFERENCE TO STATUTE. Section 3.9901 implements Insurance Code §425.073.

§3.9901. *Valuation Manual.*

(a) The Commissioner adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 13, 2022 [August 17, 2021], as required by Insurance Code §425.073.

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

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

Filed with the Office of the Secretary of State on November 14, 2022.

TRD-202204552

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 25, 2022

For further information, please call: (512) 676-6555



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 5. TEXAS BOARD OF PARDONS AND PAROLES

#### CHAPTER 145. PAROLE

##### SUBCHAPTER A. PAROLE PROCESS

###### 37 TAC §§145.1, 145.2, 145.6, 145.7, 145.13, 145.14

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 145, Subchapter A, §§145.1, 145.2, 145.6, 145.7, 145.13, and 145.14 concerning parole process. The amendments are proposed to provide edits for uniformity and consistency throughout the rules and to correct grammatical errors.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the parole process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments 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; does not create a new regulation; does not expand, limit, or repeal an existing regulation; 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.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie L. Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Texas Government Code Sections 508.036, 508.0441, 508.045, 508.141, and 508.149. Section 508.036 requires the Board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and Section 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the Board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

#### §145.1. Parole Decision-Maker.

(a) Unless otherwise provided, parole decisions shall be made by two-thirds vote of a parole panel. The Board is the parole release decision-maker of persons convicted of a capital felony offense, who are eligible for parole, or an offense under Sections 20A.03, 21.02, 21.11(a)(1), and 22.021, Penal Code, or who are [is] required under Section 508.145(c), Government Code to serve 35 calendar years before becoming eligible for parole review. In these cases, the Board may grant parole only upon a two-thirds vote. The Board is not required to meet as a body to perform this duty.

(b) In all other matters of parole and mandatory supervision and revocation of parole and mandatory supervision, three-member parole panels are parole decision makers. A parole panel may consider any eligible offender for release and, upon a majority vote of the panel, may approve or deny release to supervision. If a majority of the panel does not concur, the case is forwarded to a panel, designated by the Presiding Officer (Chair), [Chair] to revoke. The members of a parole panel are not required to meet as a body to perform these decision-making duties.

#### §145.2. Standard Parole Guidelines.

(a) Parole [The parole] panels are vested with complete discretion in making parole decisions to accomplish the mandatory duties found in Chapter 508, Government Code.

(b) Parole guidelines have been adopted by the Board to assist parole panels in the selection of possible candidates for release. Parole guidelines are applied as a basis, but not as the exclusive criteria, upon which parole panels base release decisions.

(1) The parole guidelines consist of a risk assessment instrument and an offense severity scale. Combined, these components serve as an instrument to guide parole release decisions.

(2) The risk assessment instrument includes two sets of components, static and dynamic factors.

(A) Static factors include:

(i) Age at first admission to a juvenile or adult correctional facility;

(ii) History of supervisory release revocations for felony offenses;

(iii) Prior incarcerations;

(iv) Employment history; and

(v) The commitment offense.

(B) Dynamic factors include:

(i) The offender's current age;

(ii) Whether the offender is a confirmed security threat group (gang) member;

(iii) Education, vocational and certified on-the-job training programs completed during the present incarceration;

(iv) Prison disciplinary conduct; and

(v) Current prison custody level.

(3) Scores from the risk assessment instrument are combined with an offense severity rating for the sentenced offense of record to determine a parole candidate's guidelines level.

(c) The adoption and use of the parole guidelines do [does] not imply the creation of any parole release formula, or a right or expectation by an offender to parole based upon the guidelines. The risk assessment instrument and the offense severity scale, while utilized for research and reporting, are not to be construed so as to mandate either a favorable or unfavorable parole decision. The parole guidelines serve as an aid in the parole decision process and the parole decision shall be at the discretion of the Board and the voting parole panel.

(d) The Board is authorized to revise the parole guidelines as warranted.

#### §145.6. Notification of Parole Panel Decision.

(a) An offender considered for parole or mandatory supervision shall be notified of the parole panel's decision in writing.

(b) Consideration and notification of the parole panel's decision includes any cumulative, pre-final consecutive sentence.

(c) Upon considering a case for parole or mandatory supervision, the parole panel shall make a record of its decision and the reasons for its decision on the minute sheet of the offender's file.

(d) Reasons for the parole panel's decision include but are not limited to the following:

(1) criminal history;

(2) nature of offense;

(3) drug or alcohol involvement;

(4) institutional adjustment;

(5) adjustment during periods of supervision;

(6) participation in the TDCJ-CID proposed or specialized programs;

(7) time served;

(8) felony offense committed while incarcerated;

- (9) discretionary mandatory supervision;
- (10) gang affiliation;
- (11) other.

(e) Parole approval will be indicated by "A" and denial will be indicated by "D."

§145.7. *Initial Review.*

(a) The Board shall conduct an initial review of an offender, who is eligible to be released on parole, no [not] later than the 180th day of the offender's admission to the TDCJ CID.

(b) The Board shall identify the classes or programs listed in the Individual Treatment Plans as the classes or programs that the Board intends to require the offender to complete before releasing the offender on parole. TDCJ shall provide the offender with a copy of the Individual Treatment Plan, which includes a list of classes or programs.

(c) Before the offender is approved for release on parole, the offender must agree to participate in the classes or programs described by the Individual Treatment Plan. Refusal to participate in the classes or programs described by the Individual Treatment Plan shall be considered by the Board when reviewing the offender for parole.

(d) The identification of any classes or programs under subsection (b) shall have no effect on any discretionary decision made by the Board regarding any offender and does not imply a right or expectation by an offender to parole based upon the completion of the classes or programs.

§145.13. *Action upon Review; Consecutive (Cumulative) Felony Sentencing.*

(a) This section applies only to an offender sentenced to serve consecutive sentences if each sentence in the series is for an offense committed on or after September 1, 1987.

(b) A parole panel shall review for parole consideration consecutive felony sentencing cases as determined and in the sequence submitted by the TDCJ.

(c) If the case under parole consideration is a pre-final consecutive felony sentencing case, the parole panel may:

- (1) defer for request and receipt of further information;
- (2) vote CU/FI (Month/Year Cause Number), designate the date on which the offender would have been eligible for release on parole if the offender had been sentenced to serve a single sentence. This date shall be within a three-year incarceration period following the panel decision;
- (3) vote CU/NR (Month/Year Cause Number), deny favorable parole action and set the next review date at one year from the panel decision date. If the offender is serving an offense under Section 508.149(a), Government Code, or second or third degree under Section 22.04, Penal Code; the next review date (month/year) may be set at any date in the five-year incarceration period following the panel decision date, but in no event shall it be less than one (1) calendar year from the panel decision date; or
- (4) vote CU/SA (Month/Year Cause Number): If the offender is serving an offense under Section 508.149(a), Government Code, or second or third degree under Section 22.04, Penal Code; deny release and order serve-all, but in no event shall this be utilized if the offender's maximum expiration date is over five (5) years from the date of the panel decision. If the offender is not serving an offense under Section 508.149(a), Government Code, deny release and order serve-all, but in no event shall this be utilized if the offender's maximum expiration date is over one (1) year from the date of the panel decision.

(d) If the case under parole consideration is the last and final in a series of consecutive felony sentencing cases, the case shall be reviewed under Section 145.12 [~~§145.12~~] of this title (relating to Action upon Review).

(e) When a parole panel reviews for parole consideration a consecutive felony sentencing case, the parole panel shall indicate the Cause Number of the consecutive felony sentencing case it is considering.

§145.14. *Action upon Review; Release to Mandatory Supervision.*

(a) This section applies only to an offender eligible for release to mandatory supervision if the sentence is for an offense committed on or after September 1, 1996.

(b) If the TDCJ-CID determines that release of the offender will occur because the offender will reach the projected release date, the case will be processed as follows:

(1) the offender shall be provided written notice of the discretionary mandatory review and shall have 30 days from the receipt of the notice to submit, in writing, information to the Board; and

(2) after the expiration of the 30 day time period, the case shall be referred to a parole panel who will consider the case for release to mandatory supervision no earlier than 60 days of the offender's projected release date.

(c) Upon considering a case for release to mandatory supervision, a parole panel may:

- (1) defer for request and receipt of further information;
- (2) vote DMS Month/Year, deny release to mandatory supervision and set the next mandatory supervision review date one year from the panel decision date; or
- (3) vote RMS, release to mandatory supervision.

(d) Subsection (c) of this section applies to all subsequent reconsiderations for release to mandatory supervision.

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

Filed with the Office of the Secretary of State on November 10, 2022.

TRD-202204535  
 Bettie Wells  
 General Counsel  
 Texas Board of Pardons and Paroles  
 Earliest possible date of adoption: December 25, 2022  
 For further information, please call: (512) 406-5478



**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 15. TEXAS VETERANS COMMISSION**

**CHAPTER 457. PROTESTS OF AGENCY PURCHASES**

**40 TAC §457.1**

The Texas Veterans Commission (commission) proposes amendment to Chapter 457, Protest of Agency Purchases.

#### PART I. PURPOSE AND BACKGROUND

The proposed amendment is made to eliminate language that is no longer applicable.

#### PART II. EXPLANATION OF SECTIONS 457.1. Protests

In Subsections (b), (c), (e), (f), and (g) the title "Director of Finance" is deleted and the title "Chief Financial Officer" is substituted. In Subsection (b), "Finance Director's" is deleted and "Chief Financial Officer's" is substituted.

#### PART III. IMPACT STATEMENTS

##### FISCAL NOTE

TBD, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

##### COSTS TO REGULATED PERSONS

TBD, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

##### LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

##### SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

##### PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the amended rule will reduce the need for formal disputes and settle disputes at the lowest level possible.

##### GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

- (1) The proposed rule amendments will not create or eliminate a government program.
- (2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.
- (3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.

(4) No fees will be created by the proposed rule amendments.

(5) The proposed rule amendments will not require new regulations.

(6) The proposed rule amendments have no effect on existing regulations.

(7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments have no effect on this state's economy.

#### PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov). For comments submitted electronically, please include "Chapter 457 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### PART V. STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration. No other statutes, articles, or codes are affected by this proposal.

##### §457.1 Advisory Committees.

(a) (No change.)

(b) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Chief Financial Officer [~~Director of Finance~~]. Such protests must be in writing and received in the Chief Financial Officer's [~~finance director's~~] office within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsections (d) and (e) of this section. Copies of the protest must be mailed or delivered by the protesting party to the agency and other interested parties.

(c) In the event of a timely protest or appeal under this section, the agency shall not proceed further with the solicitation or with the award of the contract unless the Executive Director, after consultation with the Chief Financial Officer [~~Director of Finance~~], makes a written determination that the award of contract without delay is necessary to protect the best interests of the state.

(d) (No change.)

(e) The Chief Financial Officer [~~Director of Finance~~] shall have the authority, prior to appeal to the Executive Director of the commission, to settle and resolve the dispute concerning the solicitation or award of a contract. The Chief Financial Officer [~~Director of Finance~~] may solicit written responses to the protest from other interested parties.

(f) If the protest is not resolved by mutual agreement, the Chief Financial Officer [~~Director of Finance~~] will issue a written determination on the protest.

(1) If the Chief Financial Officer [~~Director of Finance~~] determines that no violation of rules or statutes has occurred, he/she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.

(2) If the Chief Financial Officer [Director of Finance] determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he/she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the Chief Financial Officer [Director of Finance] determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he/she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

(g) The Chief Financial Officer's [Director of Finance's] determination on a protest may be appealed by the protesting party to the Executive Director of the agency. An appeal of the Chief Financial Officer's [Director of Finance's] determination must be in writing and must be received in the Executive Director's office no later than 10 working days after the date of the Chief Financial Officer's [Director of Finance's] determination. Copies of the appeal must be mailed or delivered by the protesting party and other interested parties. The appeal

must include a certified statement that such copies have been provided. The appeal shall be limited to review of the Chief Financial Officer's [Director of Finance's] determination.

(h) - (k) (No change.)

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

Filed with the Office of the Secretary of State on November 8, 2022.

TRD-202204507

Cory Scanlon

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: December 25, 2022

For further information, please call: (737) 320-4167

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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. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 255. FINANCE

##### 1 TAC §255.3

The Commission on State Emergency Communications (CSEC) adopts amendments to §255.3, concerning requests by an Emergency Communication District (ECD) for equalization surcharge (surcharge) funding, without changes to the proposed text as published for comment in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6525). The adopted rule will not be republished.

##### REASONED JUSTIFICATION

CSEC adopts amendments to §255.3 (Title 1, Part 12, Chapter 255 of the Texas Administrative Code) relating to an ECD's requests for surcharge. The primary purposes of the amendments are to (1) clarify the process for an ECD to request surcharge by submitting an administratively complete request; (2) direct CSEC staff to provide a surcharge funding request form and make a recommendation to CSEC regarding an ECD's surcharge request; and (3) clarify that CSEC will consider an ECD's surcharge request during open meeting as a standalone agenda item.

##### PUBLIC COMMENT AND AGENCY RESPONSE

CSEC received comments on proposed amended §255.3 from the Texas 9-1-1 Alliance (the Alliance). The Alliance's comments do not propose changes to the text of the amended rule as published, but rather note that the amendments do not substantively change the existing rule. The Commission agrees with the Alliance. As amended, the rule specifies the requirements for an administratively complete ECD request for surcharge, and retains the requirement that the Commission's consideration of an ECD's request includes "the impact of the request on funding of RPC regional plans and the surcharge account balance, and the Commission's 9-1-1 service funding priorities."

The Alliance also answered the two questions for comment included in the Preamble:

No, the subsection (d) limitation of "not more than 40 percent" of the revenues does not apply to a District. Throughout Chapter 771 there are clear differences between a regional planning commission and an emergency communications district, and it would be contrary to the statute for the Commission to conflate the two in interpreting subsection (d). Moreover, subsection (f) by referring to "other 9-1-1 jurisdictions" separately makes clear that neither the subsection (d) not more than 40 percent maximum revenue limit for regional planning commissions nor the

subsection (e) not more than 60 percent maximum revenue limit for regional poison control centers applies to a District.

No, throughout Chapter 771 there are clear differences between a regional planning commission and an emergency communications district, and it would be contrary to the statute for the Commission to conflate the two in interpreting subsection (d). Moreover, subsection (f) by referring to "other 9-1-1 jurisdictions" separately makes clear that neither the subsection (d) not more than 40 percent maximum revenue limit for regional planning commissions nor the subsection (e) not more than 60 percent maximum revenue limit for regional poison control centers applies to a District.

For the reasons stated by the Alliance, the Commission concurs with the interpretation that the "no more than 40 percent" limitation in statute does not apply to an ECD's request for surcharge.

##### STATEMENT OF AUTHORITY

This amendment is authorized by Texas Health and Safety Code §771.072(d), which authorizes CSEC to allocate surcharge to an ECD; and §771.051, CSEC's powers and duties including the authority to administer statewide 9-1-1 service.

The adopted amendment provides a process for implementing Texas Health and Safety Code §771.072(d). Except as described herein the proposed amendment affects no other statute, code, or article.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2022.

TRD-202204537

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: December 4, 2022

Proposal publication date: October 7, 2022

For further information, please call: (512) 305-6915



## TITLE 10. COMMUNITY DEVELOPMENT

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

#### CHAPTER 10. UNIFORM MULTIFAMILY RULES

## SUBCHAPTER F. COMPLIANCE MONITORING

### 10 TAC §10.622

The Texas Department of Housing and Community Affairs (the Department) adopts the amendment to 10 TAC §10.622, Special Rules Regarding Rents and Rent Limit Violations, with changes to the proposed text as published in the July 29, 2022, issue of the *Texas Register* (47 TexReg 4400). The rule will be republished.

The purpose of this amendment is to include HOME-ARP rent requirements, clarify that rent refunds may include a "rent credit" to low-income households, and that owners may set up a single trust account. In addition, the rule clarifies that transfers to a unit with additional bedrooms is not considered a rental increase during a 12-month period.

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 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 amendment will be in effect, the amended rule does not create or eliminate a government program, but relates to changes to an existing activity, compliance monitoring.

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

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

4. The amended rule does not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.

5. The amended rule is not creating a new regulation.

6. The amended rule will not repeal an existing regulation.

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

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

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

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

2. This rule relates to the procedures for the handling of compliance monitoring activities of multifamily developments awarded funds through various Department programs. Other than the possible instance of a small or micro-business that is an owner or a party to one of the Department's properties, no small or mi-

cro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the proposed rule provides for more clear, transparent processes and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the amended rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amended rule action 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 amended rule action as to its possible effects on local economies and has determined that for the first five years the proposed actions are in effect, there will be no economic effect on local employment, therefore, no local employment impact statement is required to be prepared for the rule.

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

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

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

This rule amendment has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE: The Department accepted public comment between July 29, 2022, and August 29, 2022. Comments regarding the proposed amendments were accepted in writing and by e-mail with comments received from 10 individuals.

Commenters 2 and 6 did not provide comments on 10 TAC §10.622; however, they did comment on other sections of the rules that were adopted during the October 13, 2022 board meeting.

§10.622 Special Rules Regarding Rents and Rent Limit Violations

COMMENT SUMMARY: Commenter 1 disagrees with the proposed requirement to provide 120-day notice if increasing rent more than \$75. She feels that the 60-day notice required by



most leases is sufficient, and to meet the requirements of both the rule and her lease, she would need to issue two separate notices.

Commenter 3 believes this to be a financial burden to owners and believes the 35-day notice required by their leases is sufficient.

Commenter 4 proposes a clarification to language about the rent limit for HOME-ARP. Instead of saying that the population must pay "rent specified in 24 CFR", she proposes the rule state, "rent not greater than the rent specified in 24 CFR."

Commenter 5 proposes a change of language to make the notification period for an increase of \$75 or more be 90 days instead of 120. Their policies already require a 90-day notice of renewal, and this would be easily incorporated with the rule.

Commenter 7 opposes this requirement and feels it to be overly burdensome in a time when owners are facing financial uncertainties. They believe this would, in effect, set a rent control for 120 days. Commenter 7 goes on to say that State statute prohibits municipalities in Texas from setting rent controls, and as long as rents are restricted under HUD limits, that should be sufficient.

Commenter 8 agrees with Commenter 7 and provides an analysis of how this rule could affect one of their properties:

Figure: 10 TAC Chapter 10 - Preamble

Commenter 9 agrees with Commenters 7 and 8 and also provided a similar analysis of the potential impact for one of their properties. However, the analysis used three different utility allowances amounts for each unit size and the Department staff could not reasonably determine financial impact.

Commenter 10 feels the \$75 amount of increase and 120-day notification requirements are arbitrary. Furthermore, they feel that not being able to raise rent for 120 days is overly burdensome and jeopardizes developments' economic viability in a time of increasing costs.

Commenter 10 appreciates the changes that allow tenants to elect overpaid rents be credited to their accounts instead of refunded. They suggest a revised structure to the rule, but not to the content.

Commenters 9 and 10 also support the removal of violations of rent due to application deposits not promptly converted into a security deposit under the HTC program.

#### STAFF RESPONSE:

In response to Commenters 1, 3, and 5 regarding notification requirements of the lease, staff does not conclude it is overly burdensome to revise a lease addendum to change the notification requirements. In order to solicit feedback on potential revisions to the Compliance Rules, TDHCA hosted a roundtable on April 8, 2022, during which a 120-day notification period was proposed for rental increases exceeding \$100. Our housing partners were very vocal in support of this proposal and actually suggested the amount be reduced to \$75 in recognition of how rising costs affect low-income households. However, since commenters spoke against this revision at the Board meeting of October 13, 2022, staff subsequently has withdrawn this specific change from the rule (previously proposed as subsection (l)) at this time.

Staff agrees with Commenter 4 regarding HOME-ARP rents and proposes Commenter's language be adopted. Staff appreciates the support from Commenters 9 and 10 on application deposits

and rental refunds, but does not feel a revision to the structure of the rule is necessary. No further changes are recommended.

STATUTORY AUTHORITY. The adopted rule action is made pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

#### §10.622. *Special Rules Regarding Rents and Rent Limit Violations.*

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

(c) Rent Violations of the maximum allowable limit due to application fees. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out-of-pocket costs for processing an application without providing documentation. Example 622(2): A Development's out-of-pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during monitoring reviews or upon request. The Department will review application fee documentation during monitoring reviews. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected back in compliance

on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on MFDL programs, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees and any rental assistance (unless otherwise described in the LURA) cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(e) Rent or Utility Allowance Violations on HTC Developments after the Compliance Period, HTC properties for three years after the LURA is released as a result of a foreclosure or deed in lieu of foreclosure (as applicable), BOND, and THTF the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

(f) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the household. If the violation affects multiple households, the Owner may set up a single account with all of the unclaimed funds. The account must remain open for the shorter of a four year period, until all funds are claimed, or the expiration of the Extended Use Agreement. If funds are not claimed after the required period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes. All unclaimed property remissions to the Comptroller must be broken out by individuals and particular amounts.

(g) Rent Adjustments for HOME, TCAP RF, and HOME-ARP Developments:

(1) 100% HOME/TCAP-RF/HOME-ARP assisted Developments. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF/HOME-ARP Developments with any Market Rate Units. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF/HOME-ARP Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program.

(h) Rent Adjustments for HOME-ARP Qualified Populations:

(1) Units restricted for occupancy by Qualifying Populations with incomes equal to or less than 50% will have rents of 30% of the adjusted income of the household, with adjustments for number of bedrooms in the unit.

(2) Units restricted for occupancy by Qualifying Populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent not greater than the rent specified in 24 CFR §92.252(a), high HOME rent.

(3) Units restricted for occupancy by Qualifying Populations with incomes greater than 80% of median income will follow the rent adjustments of subsection (g) of this section.

(i) Employee Occupied Units (HTC and THTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(j) Owners of HOME, NSP, TCAP-RF, NHTF, and HOME-ARP must comply with §10.403 of this chapter (relating to Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents) which requires annual rent review and approval by the Department's Asset Management Division or Department-procured vendor. Failure to do so will result in an Event of Noncompliance.

(k) Owners are not permitted to increase the household portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or the household transfers to a Unit with additional Bedrooms. If it is determined that the Development increases rent more than once in a 12-month period, the Department will require the Owner to refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2022.

TRD-202204540  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: December 4, 2022  
Proposal publication date: July 29, 2022  
For further information, please call: (512) 475-3959



## CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

### 10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifam-

ily Housing Revenue Bond Rules (the Bond Rules), §§12.1 - 12.10, without changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5552). The purpose of the repeal is to eliminate outdated rules while adopting new updated rules under separate action. The rules will not be republished.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the issuance of PABs.

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

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043.

The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

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

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed sections would be an updated and more germane rule for administering the issuance of PAB. There will not be economic costs to individuals required to comply with the repealed sections.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 16, 2022, and October 14, 2022. No comments were received on the repeal.

The Board adopted the final order adopting the repeal on November 10, 2022.

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2022.

TRD-202204538

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: December 4, 2022

Proposal publication date: September 16, 2022

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



**10 TAC §§12.1 - 12.10**

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes to the proposed text as published in the September 16, 2022, issue of the *Texas Register* (47 TexReg 5553), new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). The rule will be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.359 and to update the rule to make changes to the scoring criteria to reflect the competitive nature of the Private Activity Bond program. Moreover, the changes reflect minor administrative revisions, and to ensure that it is reflective of changes made in the Department's Qualified Allocation Plan where applicable.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this rule pursuant to item (9), which excepts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

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

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

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

1. The rule does not create or eliminate a government program, but relates to the reoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").
2. The rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule does not require additional future legislative appropriations.
4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.
5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between \$50,000 and \$60,000; which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of \$11,000 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applica-

tions to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The fee for submitting an Application for PAB layered with LIHTC is based on \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units.

These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are approximately 1,300 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, often involve a total input of, typically at a minimum, \$5 million in capital, but often an input of \$10 million - \$30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between September 16, 2022 and October 14, 2022. Three comments were received.

The Board adopted the final order adopting the new rule on November 10, 2022.

#### SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 16, 2022 and October 14, 2022, with comments received from: (1) National Church Residences, (2) Structure Development, and (3) Lincoln Avenue Capital (3).

#### §12.4(d) - Pre-Application Process and Evaluation (1)

##### COMMENT SUMMARY:

Commenter (1) would like the rule to retain the 2022 language regarding scoring and ranking pre-applications because it prioritizes those developments that target serving lower income households rather than giving preference to those that have been on the Department's waiting list the longest.

##### STAFF RESPONSE:

Staff proposed the deletion of §12.4(d), related to scoring and ranking pre-applications, based upon the score within each priority defined by Tex. Gov't Code, §1372.0321. Staff believes that the prioritization of lower-income targeting developments already exists within the scoring process under §12.6(1), Income and Rent Levels of the Tenants. Under the Income and Rent Levels of the Tenants scoring item, pre-applications with a Priority

1 designation may qualify for up to ten points, Priority 2 designations may receive up to seven points, and Priority 3 designations may receive up to five points. The Priority 1 designation requires a higher percentage of Units with rents capped at 30% AMGI than the Priority 2 and 3 designations. Staff recommends no change based on this comment.

#### §12.6(2) - Pre-Application Scoring Criteria - Cost of Development per Square Foot (3)

##### COMMENT SUMMARY:

Commenter (3) appreciates that the threshold to achieve the point has been increased from \$95 per square foot to \$125 per square foot, however, recommends that the threshold be increased to \$145 per square foot to reflect the approximately 50% year-over-year increases experienced nationwide in projected development costs for affordable housing construction.

##### STAFF RESPONSE:

Staff appreciates the challenges presented by rising construction costs and interest rates. The proposed increase in the threshold to \$125 cost per square foot was to better align the scoring item with comments received relative to the Competitive Housing Tax Credit Program. Staff believes that costs will continue to vary across the board until there is some normalcy and that it hard to identify what exactly this number should be. Staff recommends no change based on this comment.

#### §12.6(12) - Pre-Application Scoring Criteria - Waiting List (3)

##### COMMENT SUMMARY:

Commenter (3) expressed support for the tiered scoring approach to this item that prioritizes applications that have been on the waiting list longer than other applications.

##### STAFF RESPONSE:

Staff appreciates the support.

#### §12.6(14) - Pre-Application Scoring Criteria; Assisting Households with Children (1)

##### COMMENT SUMMARY:

Commenter (1) suggested allowing any Rehabilitation Development and Elderly Development to automatically receive one point for the new scoring item.

##### STAFF RESPONSE:

Staff agrees that consideration should be given to Rehabilitation developments and those that propose to serve the Elderly population as the point item may be disproportionately awarded to New Construction projects serving the General population. It is worth noting that new criteria relating to eligibility of applications has been proposed under 10 TAC §11.101(b)(1)(vii) of the 2023 Draft QAP. Under this eligibility item, any New Construction, Reconstruction, or Adaptive Reuse Development that proposes more than 30% efficiency and/or one-Bedroom Units would be considered ineligible. The requirement will not apply to Elderly or Supportive Housing Developments. Staff suggests the following modification to address the comment.

(14) Assisting Households with Children. (42(m)(1)(C)(vii)) A pre-application may receive one point under this item if at least 15% of the Units in the Development contain three or more bedrooms. The specific number of three or more bedrooms may change from pre-application to full Application, but the minimum percentage must still be met. Applications proposing Rehabili-

tation (excluding Reconstruction) and Elderly developments will automatically receive this point.

#### §12.10(c) - Fees (2)

#### COMMENT SUMMARY:

Commenter (2) requested clarification regarding the basis points stated for the Closing Fees. The closing fee for Bonds is stated as being equal to 50 basis points of the issued principal amount of the Bonds and the administration fee is stated as being 20 basis points of the issued principal amount of the Bonds. The basis points are also expressed as decimals within parentheses that the commenter believed to be incorrect.

#### STAFF RESPONSE:

Staff agrees and has removed the parentheses where noted throughout §12.10 to avoid confusion.

**STATUTORY AUTHORITY.** The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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

#### §12.1. General.

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds (Bonds) by the Texas Department of Housing and Community Affairs (Department). The Department is authorized to issue Bonds pursuant to Tex. Gov't Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (Code), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this part (relating to the Housing Tax Credit Program Qualified Allocation Plan) for the current program year. In general, the Applicant will be required to satisfy the eligibility and threshold requirements of the Qualified Allocation Plan (QAP) in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board (TBRB). If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter except in an instance of a conflicting statutory requirement, which shall always take precedence. To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs related to the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any point during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis. Taxable bonds will not be eligible for an allocation of tax credits.

(e) Waivers and Appeals. Requests for any permitted waivers of program rules must be made in accordance with §11.207 of this part (relating to Waiver of Rules). The process for appeals and grounds for appeals may be found under §1.7 of this part (relating to Appeals Process).

#### §12.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

#### §12.3. Bond Rating and Investment Letter.

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.

(b) Investment Letters. Bonds rated less than "A" or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds must also be qualified as Institutional Buyers and must execute and deliver to the Department an investor letter in a form satisfactory to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and must carry a legend requiring any purchasers of the Bonds to be Institutional Buyers and sign and deliver to the Department an investor letter in a form acceptable to the Department.

#### §12.4. Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and

policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) **Neighborhood Risk Factors.** If the Development Site has any of the characteristics described in §11.101(a)(3)(B) of this part (relating to Neighborhood Risk Factors), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §11.101(a)(3)(B) of this part (relating to Neighborhood Risk Factors) and the Applicant failed to disclose.

(c) **Pre-Application Process.**

(1) An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria). The selection criteria, as further described in §12.6 of this chapter, reflects a structure that gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359, as well as other important criteria.

(2) **Tie Breakers.** Should two or more pre-applications receive the same score, the Department will utilize the factors in this section, which will be considered in the order they are presented herein, to determine which pre-application will receive preference in consideration of a Certificate of Reservation:

(A) To the pre-application that was on the waiting list with the TBRB but did not have an active Certificate of Reservation at the time of the TBRB lottery and achieved the maximum number of points under §12.6(12) of this chapter (relating to Waiting List); and

(B) To the pre-application with the highest number of points achieved under §12.6(13) of this chapter (relating to Tax-Exempt Bond 50% Test).

(d) **Inducement Resolution.** After the pre-applications have been scored and ranked, the pre-application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the

Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Notwithstanding the foregoing, Department staff may, but is not required to, recommend that an inducement resolution be approved despite the presence of neighborhood risk factors, undesirable site features, or requirements that may necessitate a waiver, that have not fully been evaluated by staff at pre-application. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

*§12.5. Pre-Application Threshold Requirements.*

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11, Subchapter D of this part (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application. The threshold requirements of a pre-application include:

(1) Submission of the required tabs of the Uniform Application as prescribed by the Department in the Multifamily Bond Pre-Application Procedures Manual;

(2) Submission of the completed Bond Pre-Application Supplement in the form prescribed by the Department;

(3) Completed Bond Review Board Residential Rental Attachment for the current program year;

(4) Site Control, evidenced by the documentation required under §11.204(10) of this part (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of both the Board meeting at which the inducement resolution is considered and subsequent submission of the application to the TBRB. For Lottery applications, Site Control must meet the requirements of 34 TAC §190.3(b)(13).

(5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(6) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, and completed List of Organizations form, as provided in the pre-application. The List of Organizations form must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State; and

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this part (relating to Public Notifications (§2306.6705(9))). In general, notifications should not be older than three months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official holding any position or role described in §11.203 of this part change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

§12.6. *Pre-Application Scoring Criteria.*

This section identifies the scoring criteria used in evaluating and ranking pre-applications. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site, unless staff determines that one pre-application is more appropriate based on the specifics of the transaction. Each individual pre-application will be scored on its own merits and the final score will be determined based on an average of all of the individual scores. Ongoing requirements, as selected in the pre-application, will be reflected in the Bond Regulatory and Land Use Restriction Agreement and must be maintained throughout the State Restrictive Period, unless otherwise stated or required in such Agreement.

(1) **Income and Rent Levels of the Tenants.** Pre-applications may qualify for up to ten (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) set aside 50% of Units rent capped at 50% AMGI and the remaining 50% of Units rent capped at 60% AMGI; or

(ii) set aside 15% of Units rent capped at 30% AMGI and the remaining 85% of Units rent capped at 60% AMGI; or

(iii) set aside 100% of Units rent capped at 60% AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA, or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80% of the Units rent capped at 60% AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) **Cost of Development per Square Foot.** (1 point) For this item, costs shall be defined as the Building Cost as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs or site work. Pre-applications that do not exceed \$125 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation Developments will automatically receive one (1) point.

(3) **Unit Sizes.** (6 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) Five-hundred (500) square feet for an Efficiency Unit;

(B) Six-hundred (600) square feet for a one Bedroom Unit;

(C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) **Extended Affordability.** A pre-application may qualify for up to three (3) points under this item.

(A) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 40 years (3 points).

(B) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 35 years (2 points).

(5) **Unit and Development Construction Features.** A pre-application may qualify for nine (9) points, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this part (relating to Unit, Development Construction, and Energy and Water Efficiency Features), which includes a minimum number of points that must come from Energy and Water Efficiency Features. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (5 points).

(6) **Common Amenities.** All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. An Applicant may choose to exceed the minimum number of points necessary based on Development size; however, the maximum number of points under this item which a Development may be awarded under this section shall not exceed 22 points. The common amenities include those listed in §11.101(b)(5) of this part and must meet the requirements as stated therein. The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same.

(A) Developments with 16 to 40 Units must qualify for (2 points);

(B) Developments with 41 to 76 Units must qualify for (4 points);

(C) Developments with 77 to 99 Units must qualify for (7 points);

(D) Developments with 100 to 149 Units must qualify for (10 points);

(E) Developments with 150 to 199 Units must qualify for (14 points); or

(F) Developments with 200 or more Units must qualify for (18 points).

(7) **Resident Supportive Services.** A pre-application may qualify for up to ten (10) points for this item. By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this part, appropriate for the residents and that there will be adequate space for the intended services. The Owner may change, from time to time, the services offered; however, the overall points as selected at pre-application must remain the same. Should the QAP in subsequent years provide different services than those listed in §11.101(b)(7)(A) - (E), the Development Owner may be allowed to select services as listed therein upon written consent from the Department and any services selected must be of similar value to the service it is intending to replace. The Development Owner will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience



and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(A) The Development Owner shall provide resident services sufficient to substantiate ten (10) points; or

(B) The Development Owner shall provide resident services sufficient to substantiate eight (8) points.

(8) Underserved Area. An Application may qualify to receive up to two (2) points if the Development Site meets the criteria described in §11.9(c)(6)(A) - (H) of this title. The pre-application must include evidence that the Development Site meets this requirement. Regardless of the varying point options listed under §11.9(c)(6), the number of points attributed to this scoring item shall be two (2) points.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and must be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter.

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(D) Presiding officer of the Governing Body of the county in which the Development Site is located;

(E) All elected members of the Governing Body of the county in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and

(G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (3 points) Preservation Developments, including Rehabilitation proposals on Properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area de-

clared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

(12) Waiting List. (5 points) A pre-application that is on the Department's waiting list with the TBRB and does not have an active Certificate of Reservation at the time of the Private Activity Bond Lottery may receive points under this item if participating in the Lottery for the upcoming program year. These points will be added by staff once all of the scores for Lottery applications have been finalized.

(A) For pre-applications that participated in the prior year Private Activity Bond Lottery (5 points); or

(B) For pre-applications that had an Inducement Resolution adoption date of November of the prior calendar year through March of the current calendar year (3 points); or

(C) For pre-applications that had an Inducement Resolution adoption date of April through July of the current calendar year (1 point).

(13) Tax-Exempt Bond 50% Test. (5 points) A pre-application may receive points under this item based on the amount of the Development financed with Tax-Exempt Bond proceeds relative to the amount necessary to meet the 50% Test. The 50% Test is calculated by dividing the Tax-Exempt Bond proceeds by the aggregate basis of the Development and shall be based on such amounts as reflected in the pre-application once staff's review is complete and all Administrative Deficiencies have been resolved. Normal rounding shall apply. Should there be changes to this federal requirement, the percentage ranges noted below shall be modified accordingly by the same range.

(A) The pre-application reflects a 50% Test amount that is greater than or equal to 55.0% and less than 60% (5 points); or

(B) The pre-application reflects a 50% Test amount that is greater than or equal to 60% and less than or equal to 64% (3 points).

(14) Assisting Households with Children. (42(m)(1)(C)(vii)) A pre-application may receive one point under this item if at least 15% of the Units in the Development contain three or more bedrooms. The specific number of three or more bedrooms may change from pre-application to full Application, but the minimum percentage must still be met. Applications proposing Rehabilitation (excluding Reconstruction) and Elderly Developments will automatically receive this point.

#### §12.7. Full Application Process.

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §11.201 of this part (relating to Procedural Requirements for Application Submission). While a Certificate of Reservation is required under §11.201 of this part (relating to Procedural Requirements for Application Submission) prior to submission of the complete tax credit Application, staff may allow the Application to be submitted prior to the issuance of a Certificate of Reservation depending on circumstances associated with the Development Site, structure of the transaction, volume cap environment, or other factors in the Department's sole discretion.

(b) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan). If there are changes to the Application at any point prior to closing that have an adverse effect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department

may terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 11 of this part in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

(c) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. The Department will hold a public hearing to receive comments pertaining to the Development and the issuance of the Bonds. A representative of the Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should include at minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, the presentation should include the proposed scope of work that is planned for the Development. The handouts must be submitted to the Department for review at least two days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits, if applicable.

(e) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, financial feasibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board will consider the approval of the final Bond resolution relating to the issuance, substantially final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. For Applications that include local funding, Department staff may choose to delay Board consideration of the Bond issuance until such time it has been confirmed that the amount or terms associated with such local funding will not change and remain consistent with what was represented in the Department's underwriting analysis.

(f) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees. In instances where such permits will be not received prior to bond closing, the Department may, on a limited and case-by-case basis allow for the closing to occur, subject to receipt of confirmation, acceptable to the Department, by the lender and/or equity investor that they are comfortable proceeding with closing.

#### *§12.8. Refunding Application Process.*

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required.

Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the applicable requirements pursuant to Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan). At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §11.101 of this part (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

#### *§12.9. Occupancy Requirements.*

(a) Filing and Term of Regulatory Agreement. A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. Such Regulatory and Land Use Restriction Agreement shall include provisions relating to the Qualified Project Period, the State Restrictive Period, along with points claimed for other provisions that will be required to be monitored throughout the State Restrictive Period, and shall also include provisions relating to Persons with Special Needs. The minimum term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

(1) 30 years, or such longer period as elected under §12.6(4) of this chapter (relating to Extended Affordability), from the date the Development Owner takes legal possession of the Development;

(2) The end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or

(3) The period required by the Code.

(b) Federal Set Aside Requirements.

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph. Regardless of an election that may be made under Section 42 of the Code relating to income averaging, a Development will be required under the Bond Regulatory and Land Use Restriction Agreement to meet one of the two minimum set-asides described in subparagraphs (A) and (B) of this paragraph. Any proposed market rate Units shall be limited to 140% of the area median income and be considered restricted units under the Bond Regulatory and Land Use Restriction Agreement for purposes of using Bond proceeds to construct such Units.

(A) At least 20% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50% of the area median income; or

(B) At least 40% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60% of the area median income.

(2) The Development Owner must, at the time of Application, indicate which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit. However, should a tenant's income, as of the most recent determination thereof, exceed 140% of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

#### §12.10. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, a pre-application fee of \$1,000, along with the fees noted on the Schedule of Fees posted on the Department's website specific to the Department's bond counsel and the Texas Bond Review Board (TBRB) pursuant to Tex. Gov't Code, §1372.006(a). These fees cover the costs of pre-application review by the Department and its bond counsel and filing fees associated with application submission for the Certificate of Reservation to the TBRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of \$30 per Unit based on the total number of Units and a bond application fee of \$20 per Unit based on the total number of Units, unless otherwise modified by a specific program NOFA. Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as a portfolio the bond application fees may be reduced on a case by case basis at the discretion of Department staff.

(c) Closing Fees. The closing fee for Bonds, other than refunding Bonds, is equal to 50 basis points of the issued principal amount of the Bonds, unless otherwise modified by a program NOFA. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to \$25/Unit (excludes market rate Units). Such compliance fee shall be applied to the third year following closing.

(d) Application and Issuance Fees for Refunding Applications. For refunding an Application the application fee will be \$10,000 unless the refunding is not required to have a public hearing, in which case the fee will be \$5,000. The closing fee for refunding Bonds is equal to 25 basis points of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual. Transactions previously issued that involved a financing structure that would constitute a re-issuance under state law, but do not fit under §12.8, will be required to pay a closing fee that shall not exceed 25 basis points of the re-issued principal amount of the bonds which may be reduced in the sole determination of the Department as commensurate with the review by staff in obtaining Board approval at the time of conversion.

(e) Administration Fee. The annual administration fee is equal to 10 basis points of the outstanding bond amount at the inception of each payment period and is paid as long as the Bonds are outstanding, unless otherwise modified by a specific program NOFA.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to \$25/Unit (excludes market rate Units), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement, regardless of whether the Bonds have been paid off and are no longer outstanding. For Developments for which (1) the Department's Bonds are no longer outstanding and (2) new bonds or notes have been issued and delivered, the bond compliance monitoring fee may be reduced on a case by case basis upon a written request to, and at the discretion, of Department staff.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 19 TAC §§2.1 - 2.11

The Texas Higher Education Coordinating Board (Coordinating Board) adopts in Title 19, Part 1, new Chapter 2, Academic and Workforce Education, and new Subchapter A, General Provisions, §§2.1 - 2.11, with changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4220). The rules will be republished.

The Board rules governing program approval are currently located in multiple chapters of the Texas Administrative Code. While, over time, the Board has reviewed and updated the program approval process on an ad hoc basis, the Board has not conducted a comprehensive, holistic review of these rules and policies in recent years. As a result, it may be challenging for an institution to determine which rules and processes it must follow to obtain approval for each program. Through the adoption of Chapter 2, the Board creates an efficient, streamlined, coherent, and transparent process for an institution to quickly identify the steps necessary to obtain approval and maintain compliance.

Chapter 2 rules become effective for proposals with required Planning Notifications submitted on or after June 1, 2023. For programs not requiring a Planning Notification submission, the rules are effective for a proposal when submitted by the insti-

tution on or after September 1, 2023. All other rules, including rules not related to program approval, will take effect September 1, 2023. The Board will later repeal the existing, superseded rules.

Adopted new rules in Subchapter A set out the policies and procedures institutions must follow to make administrative requests related to academic planning, policy, and programs. Specifically, this new section contains definitions that apply to the entire chapter, explain the Board's approval endpoints for various request types, outline general broadly applicable quality criteria all academic programs must meet, and similar matters.

The General Provisions subchapter contains critical criteria applying uniformly to all administrative and program request types. The provisions in this subchapter provide an important foundational basis for the Board to carry out the responsibilities to regulate higher education assigned by the legislature. This rule structure enables the Board to carry out these duties with uniformity and consistency and gives institutions predictable processes and timelines.

Texas Education Code §61.051 tasks the Board with coordinating the efficient and effective use of higher education resources and avoiding unnecessary duplication, and also with implementing the state's long-range master plan for higher education. Texas Education Code §61.0512 states that a public institution of higher education may not offer any new degree program without Board approval. The Board maintains the list of degrees and certificates with official approval under this statute in the institution's Program Inventory. Texas Education Code §61.035 gives the Board authority to conduct compliance monitoring to ensure the accuracy of information reported by institutions of higher education and used for policymaking decisions. Texas Education Code §61.003 contains definitions commonly used in higher education regulation.

Rule 2.1, Purpose, sets out the purpose of the chapter as a whole, to establish governance processes for academic and workforce program planning, approval, and implementation.

Rule 2.2, Authority, lists the sections of the Texas Education Code that grant the Board authority over academic planning and program approvals.

Rule 2.3, Definitions, lists definitions broadly applicable to all subchapters of chapter 2. This rule uses Texas Education Code §61.003 to define categories of institutions.

Rule 2.4, Types of Approval Required, lays out four approval pathways at the agency for institutions submitting administrative and program requests. The first, Notification Only, is for minor requests, and states that approval is obtained after the institution submits a notification and obtains confirmation from Board Staff. The second, Assistant Commissioner Approval, requires Assistant Commissioner approval for requests and has two subcomponents, Regular Review and Expedited Review. The third, Commissioner Approval, requires approval by the Commissioner of Higher Education. The fourth, Board Approval, requires approval by the Higher Education Coordinating Board's governing body.

Rule 2.5, General Criteria for Program Approval, contains a list of nine general criteria broadly applicable to all new program requests. These general criteria align with several statutory provisions: Texas Education Code §61.0512, which requires the Board to consider program need, financing, faculty and other resources, and academic standards when reviewing programs;

and Texas Education Code §61.051, which tasks the Board with developing the state's long-range master plan for higher education and pursuing its strategic implementation through policy-making.

Rule 2.6, Administrative Completeness, lists the required criteria for a submission or request from an institution to be deemed "administratively complete." This rule allows the Board to carry out the requirement in Texas Education Code §61.0512(a) that the Board must specify by rule the elements that constitute a completed application for a new program and make a determination of administrative completeness.

Rule 2.7, Informal Notice and Comment on Proposed Local Programs, creates an opportunity for other institutions of higher education to submit a comment related to program proposals submitted by nearby institutions. This notice and comment period provides a mechanism for the Board to collect information related to whether the program is needed by the state and local community and whether it unnecessarily duplicates existing offerings. The legislature has made program need a mandatory evaluation criterion for new programs under Texas Education Code §61.0512(c).

Rule 2.8, Time Limit on Implementing Approved New Programs or Administrative Changes, establishes a time limit on the effectiveness of Board approvals. This provision ensures that the information used to grant the approval, including program need, remains current before a program is implemented.

Rule 2.9, Revisions and Modifications to an Approved Program, describes the process institutions must follow to notify the Board about substantive and non-substantive revisions and modifications to approved programs and administrative structure. The Board maintains the list of degrees and certificates with official approval under Texas Education Code §61.0512 in each institution's Program Inventory. This rule allows institutions to make notifications necessary to ensure that their official Program Inventories reflect accurate and up-to-date information about their offerings. In addition, this rule allows the Board to process information related to institutions' administrative units, necessary for those institutions with a statutory obligation to submit this information (see, for example, Texas Education Code §109A.002(b), stating that Angelo State University cannot institute a new department or school without prior approval of the Board).

Rule 2.10, Audit and Non-Compliance, establishes authority for Board Staff to audit institutions for compliance with the terms of its approval. Texas Education Code §61.035 gives the Board authority to conduct compliance monitoring to ensure the accuracy of information reported by institutions of higher education and used for policymaking decisions. This rule creates a mechanism limited to that within the agency's authority to ensure that each program is operating within the bounds of the law and its approval.

Rule 2.11, Effective Date of Rules, states that the rules become effective for proposals with required Planning Notifications submitted on or after June 1, 2023. For programs not requiring a Planning Notification submission, the rules become effective for a proposal submitted on or after September 1, 2023. Rules not related to program approval will take effect September 1, 2023.

The following comments were received regarding the adoption of the new Chapter 2 rules generally.

Comment: Several institutions thanked the Coordinating Board for its intent to streamline the process, align the review require-

ments with Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) standards and statute, and support innovation.

One comment expressed appreciation for consolidating program approval requirements from three separate Texas Administrative Code chapters in one single point of information in Chapter 2.

Four comments expressed appreciation for the revised certificate approval process, emphasizing that the notification-only process will allow institutions to respond quickly to changing regional needs and keep their Program Inventories up to date.

Multiple institutions expressed appreciation for shortening the approval process for engineering programs of all levels and programs costing more than \$2 million. This change will allow institutions to meet growing need and demand for more specialized engineering programs across the state. In addition, comments characterized the \$2 million threshold as arbitrary, outdated, too subject to gaming, and out of step with actual costs of modern academic programs. One comment stated that even the inclusion of these programs on the Consent Agenda of the Board's quarterly meetings would significantly delay implementation of these programs.

Response: The Coordinating Board thanks the institutions for these comments.

Comment (Procedure): Four comment submissions expressed concerns about the level of procedure included in the proposed rule packet. Several institutions recommended placing procedural detail in separate documents, rather than including these details in administrative code, to increase staff's latitude to make changes in the future.

Response: The Coordinating Board has adopted a detailed approach to drafting for several reasons. First, because the rules are binding, the regulatory details are most properly placed in rules. In addition, these rules provide transparency into otherwise opaque agency processes, and establish the agency's commitment to keep certain promises, like providing institutions with Labor Market Information or adhering to specific approval timelines. The agency seeks to codify roles and criteria, and establish a more uniform and less variable treatment of institutions.

Comment (Approval Levels and Timeline): Institutions submitted comments reflecting some confusion and concern regarding the new approval endpoints, anticipating a significant increase in complexity and staff workload. Several comments expressed that the proposed rules would change many program proposals from requiring only Board staff approval to now requiring Assistant Commissioner approval or Commissioner approval. Some comments expressed concern that the timelines for approval levels listed in rule 2.4 would increase the overall length of time for program approval, or even extend it over a year.

Response: The comments suggest that the Coordinating Board should clarify several aspects of the new rules. The proposed rule packet represents a less significant departure from existing rules, processes, and practices than the text may suggest.

First, under the *current* processes, it is not the case that Board staff below the level of the Assistant Commissioner approve administrative requests and new certificate or degree program proposals. Current rules and practice generally delegate authority to apply rules regarding program approval to the Assistant Commissioner level for program proposals that do not receive Board-level approval (see, for example, 19 TAC §§5.44(a)(4); (b)(6), 19 TAC §§9.93(b)(2); (c); (h), and 19 TAC §9.184(a)(3). Current

rules also delegate approval authority in certain circumstances to the Commissioner (e.g., 19 TAC §§5.50; 9.93(c); 9.184(a)(3)).

The proposed rules therefore do not significantly change the existing role of the Assistant Commissioner, who is already responsible for approving the large majority of administrative requests. The establishment of the Commissioner level of review for certain programs applies to a limited subset of all submitted programs that may require additional review due to the implementation of discretionary decision making under the agency's policies and rules.

Second, the timelines for each level of approval outlined in proposed Rule 2.4 represent increased transparency and predictability over existing rules and processes. Current rules contain no timelines on program approvals aside from the one-year deadline for program approval from the date of administrative completeness, as required by Texas Education Code §61.0512(a). The proposed rules maintain the one-year timeline, but establish clearer expectations for the approval endpoints within that time span. This sets the Assistant Commissioner approval to occur within six months from the determination of administrative completeness and Commissioner approval to occur within nine months of the determination of administrative completeness. In no circumstance will the program approval process last longer than one year from the date of the administratively complete proposal; statute operates automatically to approve the program if the board does not act in that timeframe (Tex. Educ. Code §61.0512(a)).

Comment (Governance): Three comments expressed concern that the proposed rules represent an overstep by the Coordinating Board, stating that the changes position the agency to act as a governance body of an institution of higher education rather than as a coordinating agency. Several comments cautioned that institutional governing boards are subject to accreditation requirements, and that the Coordinating Board would become subject to the authority of the institutional accreditor if it acts as a governing board.

Response: The proposed rules are rooted firmly in the Coordinating Board's statutory authority and carry out only the duties assigned to the Board by law.

State authorization of educational programs is entirely distinct from the activities carried out by a governing board. Both federal regulations and SACSCOC accreditation standards require institutions to demonstrate state authorization of their educational programs (34 CFR §600.9: State Authorization; Standard 3.1.a., SACSCOC, Resource Manual for the Principles of Accreditation: Foundations for Quality Enhancement, Third Edition, 2020, p. 19). The proposed rules outline procedures for institutions to seek approval for new educational programs from the Coordinating Board, which is a necessary exercise of state authority. The proposed rules also aim to assist institutions in producing documentary evidence of compliance with Standard 3.1.a. by ensuring institutions' approved Program Inventories are both comprehensive and up to date.

Nor do the proposed rules qualify the Coordinating Board as a governing board under the SACSCOC standards. The SACSCOC Resource Manual characterizes an institution's governing board as a "legal body with specific authority over the institution" that "exercises fiduciary oversight of the institution" (SACSCOC, Resource Manual for the Principles of Accreditation, p. 20). Nowhere in the proposed rules does the Coordinating Board claim to exercise that type of authority over Texas public institu-

tions; the primary authority claimed is over approving new programs and similar administrative requests, in accordance with state law. Nor do the proposed rules position the Coordinating Board to exercise fiduciary oversight over institutions: while state law requires the agency to safeguard the state's investment by ensuring adequate financing for new programs, this is not equivalent to the board conducting fiduciary oversight of a specific institution.

The proposed rules reflect the obligations and authority outlined in state statute. The Texas Education Code entrusts the Coordinating Board with the responsibility to approve new degrees and certificates and outlines specific requirements for this approval process. The revised rules seek to bring agency policy and processes into closer adherence with the statutes enacted by the Texas Legislature.

The following comments were received regarding the new Subchapter A rules specifically.

Comment: Five institutions submitted a comment noting that some definitions use the term "course of study" (for example, Rule 2.3(8): Certificate Program and 2.3(34): (Transcriptable Minor) while other definitions use the term "program of study" (Rule 2.3(17): (Embedded Credential)). Institutions asked for clarification on these terms and for uniformity in terminology.

Response: Coordinating Board staff thanks the commenters for observing the discrepancy between the two terms and proposes amending the definitions section to only use the term "course of study." The term "course of study" comes from the statutory definition of "certificate program": "Certificate program" means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle [them] to a certificate, associate degree from a technical or junior college, or documentary evidence, other than a degree, of completion of a course of study at the postsecondary level." Tex. Educ. Code §61.003(12).

Comment: Six institutions requested clarification on the term "new content," as baccalaureate and master's degrees with less than 50% new content are subject to Assistant Commissioner approval and more than 50% new content are subject to Commissioner approval. One institution asked who determines new content. Another comment asked whether the term included clinical or skills requirements part of a clerkship or clinical training experience. Other institutions asked whether new content meant new courses, or new content.

Response: The "new content" definition is intended to align Coordinating Board processes with SACSCOC processes. For most institutions, SACSCOC requires notification only for programs with less than 50% new content and approval for programs with 50% or more new content.

The definition is intended to mirror the SACSCOC definition as closely as possible. SACSCOC guidance states, "Content is new if it is not currently offered by the institution at the new program's instructional level[.]" (SACSCOC, Substantive Change Policy and Procedures, Mar. 2022, p. 39). Coordinating Board staff sought to establish a definition closely following this description ("...content that the institution does not currently offer at the same instructional level..."). Under SACSCOC guidance, new courses may not constitute "new content" if they repackage existing instructional content already offered at the institution. Institutions should follow the same analysis for that process.

Similar to the SACSCOC process, the determination of new content is made by the institution. Coordinating Board staff has clar-

ified this in an amendment to the definition in 2.3(20) as follows: "New Content--As determined by the institution, content that the institution does not currently offer at the same instructional level as the proposed program. A program with sufficient new content to constitute a 'significant departure' from existing offerings under 34 CFR §602.22(a)(1)(ii)(C) meets the 50% new content threshold."

Comment: Several institutions submitted comments requesting that the Coordinating Board add a definition of the term "micro-credential."

Response: The term "micro-credential" does not exist in statute, and the higher education community has not come to a unified consensus on a single definition for this term, which is currently used to mean many different things. However, the definition of the term "certificate" in the proposed rules is likely broad enough to encompass many of these types of credentials: "[C]ertificate means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle the student to a certificate or documentary evidence, other than a degree, of completion of a course of study at the postsecondary level." (Proposed Rule 2.3(8); see also Tex. Educ. Code §61.003(12)). As the term "micro-credential" does not appear anywhere else in the rule packet, staff has concluded it would be superfluous to include a definition at this time. Future cycles of rule revision may address short-term credentials in greater detail.

Comment: One institution requested that this definition cross-reference the definition in the General Appropriations Act rather than "medical or dental unit" as defined in the Texas Education Code. The definition of "medical and dental unit" in Texas Education Code §61.003(5) also encompasses sub-institutional units, including the nursing units of the University of Texas and Texas A&M Systems. The institution noted that the Coordinating Board's intent appears to be to have the rules apply on the level of the institution, rather than apply to sub-institution units.

Response: Coordinating Board staff agrees with the comment and has developed a proposed amendment to Rule 2.3(25) intended to align more closely with the list of institutions (not sub-institutional units) in the General Appropriations Act as follows: "Public Health-Related Institution--Public health-related institutions that are supported by state funds."

Comment: Four institutions submitted comments regarding the definition of "academic program." Two comments sought clarification on the distinction between the "academic program" and the "degree program" definitions. Two institutions submitted comments noting that the definition would seem to exclude academic associate degrees.

Response: The term "academic program" is intended to designate programs that prepare students for higher academic study at the bachelor's degree level or higher. This category contrasts with the "Career Technical/Workforce" category, which is generally intended to prepare students for immediate entry into the workforce.

The category has particular relevance for the two-year institution sector. For example, two-year institutions may offer an academic associate degree, which is designed to prepare students for transfer to a four-year institution, or an applied associate degree, which is designed to allow direct entry into the workforce.

Certificates and associate degrees offered by any institution may fall within the academic category or the career technical/work-

force category. Bachelor's degrees and graduate degrees are considered academic programs.

Staff agrees that the proposed definition should more clearly encompass associate degrees and certificates and propose to amend Rule 2.3(3) as follows: "Academic Program or Programs--A type of credential primarily consisting of course content intended to prepare students for study at the bachelor's degree or higher."

Comment: One institution submitted a comment stating that the definition of Board adopted in the rules differs from the definition in statute. The institution also claimed that this definition contradicts Texas Education Code §61.002(d), which states that the governance of an institution of higher education is "reserved to and shall be performed by the governing board of the institution, the applicable system administration, or the institution of higher education."

Response: Staff purposely adopted a definition of "Board" in the rules to clarify use of the term that refers to the governing body of the agency that is also known as the Higher Education Coordinating Board. The use of two definitions provides greater clarity around who has authority to take actions.

The Texas Education Code uses the single term "Board" to refer to at least three distinct concepts: the state agency as a whole; the nine-member board appointed by the Governor to govern the agency; and staff of the agency. For purposes of increasing clarity in agency rules, the proposed rules have separated these concepts in distinct definitions:

2.3(5) ("Board") refers to the nine-member board responsible for governing the activities of the THECB as a state agency.

2.3(6) ("Board Staff") refers to the staff of the state agency who perform the administrative functions and services.

The proposed definitions section also defines the Commissioner, who is the chief executive officer of the agency. Providing separate definitions for these concepts improves the overall readability and specificity of THECB rules.

The definition of "Board" states that it is the "governing body of the agency." As such, this definition makes no claim on the governance of the institutions themselves. Texas Education Code §61.003(9) defines the "governing board" of each institution, while §61.003(1) defines the Board to mean Texas Higher Education Coordinating Board.

Comment: One institution requested a definition of "administratively complete."

Response: The concept of administrative completeness is defined under Rule 2.6: Administrative Completeness.

Comment: Two institutions submitted comments on the definition of certificate. One institution stated that the definition did not appear to include undergraduate certificates.

Response: The definition of certificate program in the proposed rule packet is closely based on the definition in statute: "'Certificate program' means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle [them] to a certificate [...] or documentary evidence, other than a degree, of completion of a course of study at the postsecondary level." This definition is purposely broad, and encompasses both undergraduate and graduate certificates, as they are both groupings of subject-matter courses that entitle the student to a certificate.

Comment: Seven institutions raised concerns regarding the types of approval.

There were concerns that this would extend the timeline beyond one year that is included in the statute (Tex. Educ. Code §61.0512(a)). Further, the institutions stated that the procedural details within these proposed rules will decrease the efficiency and efficacy in efforts to streamline the planning and approval processes and increases the workload for all involved.

Response: The Coordinating Board proposed rules are intended to provide clarity and predictability in the timeline for program approval. The approval levels were crafted to ensure that institutions do not have an unnecessarily extended review period for proposed programs. Different proposals and request types receive different levels of scrutiny depending on the extent of the request. While the Notification Only, Assistant Commissioner Approval, and Board Approval endpoints exist with the current rules, the proposed program approval rules formalize Commissioner Approval. Proposed degree programs containing 50% new content, will have the Commissioner Approval endpoint.

Subchapter A contains the characteristics of the different approval endpoints (Notification, Assistant Commissioner Approval, Commissioner Approval, Board Approval). Readers can determine how each endpoint applies for each program type by reading the specific subchapter for the program type (for example, approval endpoints for certificates are described in Subchapter B, which is dedicated to certificates).

Under both statute and rule, the program approval process *cannot* take longer than one year (see Tex. Educ. Code §61.0512(a); Rule 2.4(4)(C) of the proposed rule packet). In addition, for the first time, the rules explicitly state timeline expectations for each approval endpoint *within* the year, starting from the point when the proposal is deemed administratively complete (six months for Assistant Commissioner approval, nine months for Commissioner Approval, in addition to the existing one-year deadline for Board approval). The Coordinating Board has committed to these timelines in rule to better serve the higher education community.

As required by the law, the Board may designate authority to the Commissioner, to approve programs on its behalf using a discretionary standard of review (Tex. Educ. Code §61.311).

Comment: The comments also indicated concern that the added approvals would increase the workload of the Coordinating Board Staff, Assistant Commissioner, Commissioner and institutions' personnel. The institutions shared that the layers of approval decrease the institutions' agility and nimbleness to offer relevant and timely degree programs that will meet the student demands and the workforce needs. Some institutions expressed concerns about increasing complexity.

Response: The proposed rule packet preserves many elements of the existing program approval process, often simply reorganizing or renaming elements of the current process. For example, current rules already delegate approval authority in certain circumstances to the Assistant Commissioner and Commissioner (see, for example, 19 TAC §§5.44 and 5.50). The proposed rule packet similarly contains approval endpoints at the Assistant Commissioner and Commissioner levels, but also tightens the language delegating authority to those officers.

To give another example, nearly all of the program criteria in the proposed rules are identical to criteria in existing administrative code, but they have been reorganized to draw a tighter

link to statutory criteria listed under Texas Education Code §61.0512(c).

For aspects of the proposed rule packet that constitute a genuine change of existing processes, drafters weighed several competing considerations: a desire to streamline the approval process for institutions; the agency's legitimate interest and obligation to tailor the level of scrutiny to the type of program; and the administrative burden on staff. While some elements of the proposed rules increase administrative burden, other elements simplify administration of this process.

During the implementation phase, the Coordinating Board intends to develop explanatory materials to clarify the rules and the apparent complexity for the field.

Comment: The concern was raised that the rules do not provide a mechanism for an institution to be notified before a proposal is elevated from the Commissioner to the Board. An institution requested the ability to withdraw a program if the Assistant Commissioner recommends denial.

Response: The proposed rules do provide a mechanism for the institution to be notified of the Commissioner's recommendation to the Board before the proposal is elevated (see Rule 2.4(4)(B)(i)). In addition, throughout the program approval review process there is always an opportunity for an institution to withdraw the proposal.

Comment: There was also a request for a procedural document that would provide clarity for the proposed rules under "notification," "regular review," and "expedited review." Some institutions requested to know how the Coordinating Board intends to send notifications regarding decisions.

Response: Coordinating Board staff will develop new forms and procedure documents that clarify the various levels of review and when each type of approval is required after the rules are adopted. As part of this work, staff will also review notification letters submitted to institutions when programs are approved for addition to the Program Inventory. Staff will conduct this work during the implementation phase.

Comment: One institution questioned why it was necessary to wait one year before resubmitting a full proposal.

Response: The Board denials are incredibly rare. If a proposal is denied, it is appropriate for there to be sufficient time and revision to the proposal before it is resubmitted for consideration. Institutions also have the opportunity to withdraw their proposals at any point prior to the final decision.

Comment: One institution asked whether this criterion could be revised as the program meeting "state and/or local need" rather than "state and local" need.

Response: The language of this criterion mirrors statutory language, which requires the Coordinating Board to evaluate whether programs are "needed by the state and local community." (Tex. Educ. Code §61.0512(c)(1)).

Comment: One institution asked for greater definition of unnecessary duplication and specific criteria. Another comment asked when the Board would notify other institutions of comments received regarding unnecessary duplication.

Response: This criterion represents continuity with existing practices. The Coordinating Board currently evaluates programs for unnecessary duplication. Staff has agreed to the following amendment to Rule 2.5(a)(2) that specifies how this

analysis is done in greater detail: "Whether the program unnecessarily duplicates programs offered by other institutions of higher education or private or independent institutions of higher education, as demonstrated by capacity of existing programs and need for additional graduates in the field,"

In addition, Rule 2.7 describes the informal notice and comment period, allowing institutions to submit comments regarding program duplication in greater detail.

Comment: Several institutions submitted comments requesting elaboration on 2.5(a)(4) (adequate financing).

Response: The proposed rule envisions continuity with existing processes, as no changes were made to this language. The rule mirrors the language of the statutory criterion (Tex. Educ. Code §61.0512(c)(2)). Under current processes, Coordinating Board staff evaluate the budget submitted by the institution to determine whether the costs of the program will be covered by the identified funding sources, including appropriations, Board-allocated funds, or funds from other sources.

Comment: Seven institutions raised questions about how the Coordinating Board intends to operationalize this criterion, which requires that "the program's cost is reasonable and provides a value to students and the state when considering the cost of tuition, source(s) of funding, availability of other similar programs, and the earnings of students or graduates of similar credential programs in the state to ensure the efficient and effective use of higher education resources." Several institutions requested a definition of the term "reasonable." Institutions noted that the reasonableness of cost might depend on the discipline and location of the program. One institution asked whether the Coordinating Board would provide workforce data to allow institutions to determine cost/benefit.

Response: The Legislature has tasked the Coordinating Board with ensuring higher education produces value for students and the citizens of Texas (Tex. Educ. Code §61.002(b)). The cost of higher education to students and the state is a vital piece of determining the value of the credential. All credentials at Texas public institutions should ideally set students up for success in later life.

Some datasets already exist to track graduates' post-completion outcomes relative to the costs of the program (see, for example, Texas CREWS at [txcrews.org](http://txcrews.org)). Coordinating Board staff are currently in the process of developing even more finely tuned datasets that track students' outcomes in the workforce relative to program costs.

The Coordinating Board recognizes that the analysis of the reasonableness of a program's cost may depend on the specific characteristics of the program. For example, some programs with higher tuition costs may unlock much higher earning potential for graduates. Some innovative and cutting-edge programs may not have obvious comparator in-state programs. As such, a one-size-fits-all definition of "reasonable" may not work for every single program type.

During the implementation phase, Coordinating Board staff intends to take a thoughtful approach to evaluating the unique cost profiles of different programs that are consistent with the Board's Master Plan for Higher Education. This approach may also evolve as new and better data becomes available.

Comment: Several institutions submitted comments raising concern about a new criterion requiring alignment with the master plan for higher education, stating that it is not realistic to expect



that each proposed program or modification to align perfectly with the statewide strategic plan. Some institutions stated that proposed programs should align with the institution's strategic plan, not the state's.

Response: Texas Education Code §61.051(a-1) requires the Coordinating Board to adopt a statewide strategic plan to establish long-term measurable goals, strategies to implement the goals, and assess regional needs for higher education. The current iteration of this plan is *Building a Talent Strong Texas*, which promotes broad attainment of certificates and degrees by Texans, the development of postsecondary credentials of value aligned with workforce needs, and the growth of research and development in the state.

The goals in the statewide strategic plan are necessarily broad and high-level; it would not be possible to implement overly prescriptive and specific goals for a sector as diverse as Texas higher education. As such, Coordinating Board staff does not expect to implement this criterion in an overly prescriptive manner.

Asking institutions to show how their programs align with the strategic plan is not new. Existing program approval forms ask for institutions to describe how a proposed program aligns with the state's former strategic plan, *60x30TX*, and requests that institutions identify marketable skills in alignment with that plan. During the implementation phase, program staff will review and revise proposal forms to include an opportunity for the institution to flexibly address this criterion.

While an institution's strategic plan may be more tailored and contain more particulars, guidelines exist to ensure that it does not fundamentally conflict with the statewide strategic plan for higher education. For example, SACSCOC requires individual institutions to demonstrate "ongoing, comprehensive, and integrated research-based planning" (Standard 7.1, SACSCOC Resource Manual); institutions generally comply with this standard by providing evidence of alignment of the institution's strategic plan with system- or state-level strategic plans.

Comment: Four institutions raised objections to the use of past compliance history and program quality of the same or similar programs as an evaluation criterion. One institution stated that the Coordinating Board did not have statutory authority to use this criterion. Other institutions raised questions about how the criterion would be applied if the institution had never offered a similar program before.

Response: The Coordinating Board respectfully disagrees with the comment that the agency does not have statutory authority to use this criterion. Texas Education Code §61.0512 expressly requires the Board to consider whether a proposed program meets academic standards prescribed by Board rule and whether a program has adequate resources to ensure student success. An institution's prior history in implementing similar programs is clearly germane to whether the institution's proposed program is likely to meet the necessary requirements under Board rule and whether the institution has demonstrated an ability and willingness to dedicate requisite resources to its programs to ensure student success. This criterion includes the phrase "where applicable" - if insufficient information exists to determine whether the standard is met, it will not apply.

Comment: Current processes only require institutions to submit the Full Request Form, which can run hundreds of pages, for programs that will require board approval. Otherwise, current processes allow four-year institutions to submit a very short

three-page Certification Form for degree proposals that do not require Board approval. Several institutions raised objections regarding the requirement to submit a "fully completed application" in proposed rule 2.6, interpreting this to mean the Coordinating Board would require the Full Proposal Form for every single degree type. Several institutions noted that, if this were the case, it would very substantially increase the amount of work required for a large number of degree programs.

Response: As part of the implementation phase work, Coordinating Board staff intends to revisit and revise the existing forms for administrative requests. This work will include a review of the current program proposal forms and a determination of which portions institutions may certify, as opposed to submitting the detailed form.

Comment: Several institutions objected to 2.6(d), which states that an institution may resubmit an application returned as incomplete upon obtaining the requested information or documentation, and that this submission will be considered a new application. Many institutions expressed a belief that considering a resubmitted proposal as a new application would lengthen the timeline for approval.

Response: The Coordinating Board respectfully disagrees. Statute is highly prescriptive of the timelines involved in determining administrative completeness: "The board shall specify by rule the elements that constitute a completed application and shall make an administrative determination of the completeness of the application not later than the fifth business day after receiving the application." In addition, statute specifies a deadline for action once the Coordinating Board receives the administratively complete proposal: "A new degree or certificate program is considered approved if the board has not completed a review under this section and acted to approve or disapprove the proposed program before the first anniversary of the date on which an institution of higher education submits a *completed application* for approval to the board[.] [...] A request for additional information in support of an application that has been determined administratively complete does not toll the period within which the application is considered approved under this section." Tex. Educ. Code §61.0512(a) (emphasis added).

It is not correct to say that considering a resubmitted application a new application would lengthen the timeline for approval. The review process timeline does not begin *until* the proposal is determined to be administratively complete. The Coordinating Board then has one year from the date of administrative completeness to act to approve or deny the program. The program review clock does not start on the date the institution submits an *incomplete* proposal; it starts on the date staff deems the proposal administratively complete.

Comment: Several institutions noted that statute gives Board staff five business days to make the determination of administrative completeness, not six.

Response: Coordinating Board staff thanks the submitters for highlighting this issue. Staff intends to amend the proposed rule language in 2.6(b) to come into alignment with the number of days in Texas Education Code §61.0512(a) as follows: "Board Staff shall determine whether an application is administratively complete and notify the institution not later than the fifth business day after receipt."

Comment: Two institutions and one system expressed support for the change from current policy (which currently requires institutions to notify all other institutions within a 50-mile radius and

resolve disputes prior to proposal submission) to the proposed new policy of informal notice and comment, as outlined in Rule 2.7.

Response: The Coordinating Board thanks the institutions for their support.

Comment: Several institutions asked for clarification on what constitutes "other institutions of higher education in the local community" in sec. 2.7(a) of the proposed rule.

Response: The Coordinating Board will consider programs in the same Higher Education Region (see <https://www.highered.texas.gov/DocID/PDF/2386.PDF> for a map of these regions).

Comment: Several institutions raised questions regarding the timeline of the informal notice and comment process. The proposed rule states that Board staff will provide notice and opportunity to comment not later than sixty days after the institution submits an administratively complete proposal. The noticed institution will then have thirty days to provide comments to Board staff. Some institutions expressed concern that this might result in a notice and comment period of ninety days, or three months, which might lengthen current timelines. One institution asked whether the rules envisioned a maximum cumulative period of time for the applicant to address any objections received by notified institutions.

Response: The proposed rule is intended to shorten the lengthy timeline that can occur when another institution objects to a potential program and the objection is referred to the agency for informal resolution. This approach provides a transparent timeline and will no longer result in disputes that can last for an extended period.

The details of how area institutions will be notified by the Coordinating Board staff will be determined during the implementation phase once the rules are adopted. At this time, we do not anticipate a 90-day process, but the notification will likely occur earlier than the 60th day. These details will be determined during the implementation phase as well.

Board staff has proposed an amendment to Rule 2.7(a) to further guarantee timeliness of this process as follows: "As soon as practicable, but not later than the sixtieth day after an institution submits an administratively complete application for approval..."

Comment: The proposed rule would shift the responsibility of notifying nearby institutions of a proposed new program from the submitting institution to Coordinating Board staff. Several institutions expressed concern that Coordinating Board staff would not be able to handle the increased administrative load. One institution expressed belief that Coordinating Board staff would need to be increased. One institution proposed posting the opportunity to comment on the agency's website.

Response: The details of how area institutions will be notified by Coordinating Board staff will be determined during the implementation phase. The Coordinating Board also intends to adopt technological solutions to automate as much of this process as possible.

Comment: Three institutions asked why this process is termed an "informal" notice and comment period.

Response: This process is termed "informal" to distinguish it from the formal notice and comment procedure established under the Texas Administrative Procedure Act (APA). Because this

process is informal, the strictures the APA places on notice and comment for rulemaking do not apply.

Comment: One institution asked what criteria would be used to evaluate the comments received, and who at the Coordinating Board would be responsible for reviewing comments.

Response: The evaluation criteria for the comments are listed in 2.7(b) of the proposed rules. The comments will be reviewed based upon the level of approval required. For example, if the proposed program requires Assistant Commissioner-level approval, then the comments will be reviewed by the Assistant Commissioner to determine whether the comments demonstrate that the proposed program may fail to meet any requirement of the program approval rules.

Comment: Two institutions stated that the change to current rules, which require the proposing institution to resolve objections raised by nearby institutions, would "negate the collaborative relationships built by the local institutions within the 50-mile radius" and end "the current process where institutions work together for a mutually agreeable solution."

Response: The proposed rule is intended to shorten the lengthy timeline that can occur when an institution objects and is required to come before the agency for resolution. This approach provides a transparent timeline and will no longer result in disputes that can last for an extended period. In addition, to continue the collaboration between institutions, they can still have an informal process of reaching out to area institutions to maintain relationships and create solutions prior to submission of a proposal. Furthermore, the statute does not delegate to institutions the obligation or authority to review the submissions of another institution. The Legislature has tasked the Coordinating Board with evaluating whether programs meet state and local needs or are unnecessarily duplicative. The proposed process allows the Coordinating Board to exercise this prerogative.

Comment: One institution noted that specialized programmatic accreditors may require both Coordinating Board and institutional accreditator approvals (which can be sequential) to be complete before they start their approval processes. For some programs, the institutional accreditation process and the programmatic accreditation process may take more than two years; in some circumstances, both may be required before the institution can begin enrolling students. The institution asked the Coordinating Board to consider a process to request a longer time limit for approvals in these circumstances.

Response: Proposed rule 2.8 states, "Unless otherwise stipulated at the time of approval, if an approved new program is not established within two years of approval, that approval is no longer valid." The Coordinating Board encourages institutions to communicate when they expect subsequent mandatory accreditation cycles to last longer than two years, so that the Coordinating Board can issue an approval letter that stipulates a longer timeframe.

However, in recognition of the fact that institutions cannot always predict with precision how long accreditation cycles may take, the Coordinating Board also agrees to amend this rule. In Rule 2.8(a), the following amendment is proposed: "Unless otherwise stipulated at the time of approval, if an approved new degree program is not established within two years of approval, that approval is no longer valid. An institution may submit a request to the Assistant Commissioner for approval to lengthen that time limit by one additional year for a compelling academic reason.

The Assistant Commissioner has discretion to approve or deny the request."

Comment: Several institutions expressed concerns that substantive revisions to existing programs that have previously undergone Board Approval would need to go back to the board for approval.

Response: This provision was intended to apply to programs receiving Board-level approval moving forward, not to those programs that had historically been approved by the Board (including engineering programs and programs over \$2 million). The Coordinating Board has developed a proposed amendment to Rule 2.9(b) to address this concern as follows: "For a program that initially required Board Approval beginning as of September 1, 2023, any substantive revision or modification to that program will require Board Approval under §2.4 of this subchapter. For all other programs, including programs that initially required Board Approval prior to September 1, 2023, any substantive revision or modification will require Assistant Commissioner Approval under §2.4(a)(2) of this subchapter."

Comment: Several institutions expressed concern that the substantive revision and modification rules would limit the flexibility of Board-approved programs to expand geographic offerings.

Response: The Coordinating Board would like to clarify the distinction between "changing the location of the program" in 2.9(a)(1) and "changing the modality of the program" in 2.9(c)(3).

Changing the location of the program means that the institution proposes to completely close the program in one physical location and move it to an entirely separate geographic location. It does not include the addition of off-campus face-to-face programs.

In the proposed rules, "modality" encompasses many of the changes under the Distance Education umbrella or adding an off-campus face-to-face site and changing in-person/hybrid/online status of the program. The Coordinating Board intends to address changes to Distance Education and Off-Campus rules in greater detail in a subsequent rule revision cycle, and may revisit this policy at a later date.

Comment: Several institutions requested that changing a CIP Code be a notification-only process rather than going through the Assistant Commissioner approval process.

Response: CIP Code changes are currently approved at the Assistant Commissioner level, so this does not represent a change from current practice.

Comment: Several institutions submitted comments raising objections to including changes to administrative units as a non-substantive change subject to Assistant Commissioner approval. Several institutions noted that statute does not give the Coordinating Board the authority to approve new administrative units.

Response: The motivation behind this provision was to ensure that the Coordinating Board's Program Inventories contain accurate and up-to-date information about programs, including correctly representing the college or department that houses the program.

To maintain the accuracy of the Program Inventory, staff proposes making this change a notification rather than an approval:

"(c) Non-substantive revisions and modifications include, but are not limited to:

[...]

(8) Changing the Degree Title or Designation; and

(9) Other non-substantive revisions that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner.

[...]

(e) Public universities and public health-related institutions must notify the Coordinating Board of changes to administrative units, including creation, consolidation, or closure of an administrative unit. Coordinating Board Staff will update the institution's Program Inventory pursuant to this notification.

Comment: The proposed rule contains a non-exclusive list of what constitutes substantive or non-substantive revisions and modifications. Institutions asked for greater specificity in defining these two categories.

Response: During rule implementation, the Coordinating Board intends to provide additional guidance for the submission of program changes. Given the complexity of program development and changes, the most common types of program changes are listed in the proposed rules, but it is not intended to be an exhaustive list. The Coordinating Board has developed amendments that draw tighter boundaries on what constitutes a substantive or non-substantive revision as follows:

Amend Rule 2.9(a) as follows: "(a) Substantive revisions and modifications that materially alter the nature of the program, physical location, or modality of delivery, as determined by the Assistant Commissioner, include, but are not limited to:"

Amend 2.9(c) as follows: "(c) Non-substantive revisions and modifications that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner, include, but are not limited to:"

Comment: Two institutions raised questions related to the Audit and Non-Compliance, specifically asking what the criteria are for undertaking an audit, what the audit will entail, as well as what are any potential ramifications of an audit or an audit that would be deemed unsatisfactory to the Coordinating Board.

Response: The audit requirement does not represent a change, as audit requirements for new program submissions already exist in current rules (see, for example, 19 TAC §§5.44(a)(7), 5.44(b)(4), 9.93(m), and 9.184(b)). The draft rules consolidate the many audit requirements in current administrative code in a single location. Statute gives the Coordinating Board general authority to verify the accuracy of information submitted to the agency (see, for example, Tex. Educ. Code §61.035). Board staff routinely conducts compliance monitoring and may notify an institution if the program is out of compliance.

Compliance monitoring resulting in fiscal program violations follow the compliance provisions in Texas Education Code §61.035.

The new sections are adopted under Texas Education Code §61.001 which charges the agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants. The rules implement Texas Education Code §61.051, which requires, and provides the Board with the authority to, coordinate the efficient and effective use of higher education resources and avoiding

unnecessary duplication, and also with implementing the state's long-range master plan for higher education; Texas Education Code §61.0512, which provides the Board with the authority to approve new degree and certificate programs; and Texas Education Code §61.035, which provides the Board with the authority to conduct compliance monitoring. These rules also implement Texas Education Code chapter 130, subchapter L, which authorizes public junior colleges to offer baccalaureate degrees.

The adopted new rules affect Texas Education Code §§61.003 and chapter 130, subchapter L, which authorizes public junior colleges to offer baccalaureate degrees.

### §2.1. Purpose.

This chapter governs academic and workforce program planning, approval, and implementation.

### §2.2. Authority.

Authority for this section comes from Texas Education Code §61.003, which contains several definitions for terms used throughout this chapter; and Tex. Educ. Code §61.0512, which gives the board permission to authorize new academic programs and sets certain timelines for approval processes. Tex. Educ. Code §61.035 gives the board authority to conduct compliance monitoring to ensure the accuracy of data reported by institutions of higher education and used for policymaking decisions. Other relevant provisions of law include Tex. Educ. Code, chapter 130, subchapter L, which contains information related to baccalaureate degrees at two-year institutions.

### §2.3. Definitions.

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

(1) Administrative Unit--A department, college, school, or other unit at an institution of higher education, which has administrative authority over degree or certificate programs.

(2) Academic Course Guide Manual (ACGM)--The manual that provides the official list of approved courses for general academic transfer to public universities offered for funding by public community, state, and technical colleges in Texas.

(3) Academic Program or Programs--A type of credential primarily consisting of course content intended to prepare students for study at the bachelor's degree or higher.

(4) Applied Baccalaureate Degree Program--Builds on an Associate of Applied Science (A.A.S.) degree, combined with enough additional core curriculum courses and upper-level college courses to meet the minimum semester credit hour requirements for a bachelor's degree. The degree program is designed to grow professional management skills of the learner and meet the demand for leadership of highly technical professionals in the workplace. May be called a Bachelor of Applied Arts and Science (B.A.A.S.), Bachelor of Applied Technology (B.A.T.) or Bachelor of Applied Science (B.A.S.).

(5) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(6) Board Staff--Staff of the Texas Higher Education Coordinating Board who perform the Texas Higher Education Coordinating Board's administrative functions and services.

(7) Career Technical/Workforce Program--An applied associate degree program or a certificate program for which semester credit hours, quarter credit hours, or continuing education units are awarded, and which is intended to prepare students for immediate employment or a job upgrade in a specific occupation.

(8) Certificate program--Unless otherwise specified in these rules for the purpose of this chapter, certificate means a grouping of subject-matter courses which, when satisfactorily completed by a student, will entitle the student to a certificate or documentary evidence, other than a degree, of completion of a course of study at the postsecondary level. Under this chapter, certificate includes a post-baccalaureate certificate, and excludes an associate degree unless otherwise provided.

(9) CIP Codes--See "Texas Classification of Instructional Programs (CIP) Coding System."

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

(11) Contact hour--A time unit of instruction used by community, technical, and state colleges consisting of 60 minutes, of which 50 minutes must be direct instruction.

(12) Continuing Education Unit (CEU)--Basic unit for continuing education courses. One continuing education unit (CEU) is 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

(13) Credential--A grouping of subject matter courses or demonstrated mastery of specified content which entitle a student to documentary evidence of completion. This term encompasses certificate programs, degree programs, and other kinds of formal recognitions such as short-term workforce credentials or a combination thereof.

(14) Degree Program--Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle that student to an associate's, bachelor's, master's, doctoral, or professional degree.

(15) Degree Title--Name of the degree and discipline under which one or more degree programs may be offered. A degree title usually consists of the degree designation (e.g., Bachelor of Science, Master of Arts) and the discipline specialty (e.g., History, Psychology).

(16) Doctoral Degree--An academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field.

(17) Embedded Credential--A course of study enabling a student to earn a credential that is wholly embedded within a degree program.

(18) Field of Study Curriculum--A set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution, as defined in chapter 4, subchapter B, §4.23(7) of this title (relating to Definitions).

(19) Master's Degree Program--The first graduate level degree, intermediate between a Baccalaureate degree program and Doctoral degree program.

(20) New Content--As determined by the institution, content that the institution does not currently offer at the same instructional level as the proposed program. A program with sufficient new content to constitute a 'significant departure' from existing offerings under 34 CFR §602.22(a)(1)(ii)(C) meets the 50% new content threshold.

(21) Pilot Institution--Public junior colleges initially authorized to offer baccalaureate degrees through the pilot initiative established by SB 286 (78R - 2003). Specifically, the four pilot institutions are Midland College, South Texas College, Brazosport College, and Tyler Junior College.

(22) Planning Notification--Formal notification that an institution intends to develop a plan and submit a degree program proposal or otherwise notify the Board of intent to offer a new degree program.

(23) Professional Degree--Certain degree programs that prepare students for a career as a practitioner in a particular profession, including certain credential types that are required for professional licensure. For the purpose of this chapter, the term refers specifically to the following degrees: Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Dental Surgery (D.D.S.), Doctor of Podiatric Medicine (D.P.M.), Doctor of Veterinary Medicine (D.V.M.) and Juris Doctor (J.D.).

(24) Program Inventory--The official list of all degree and certificate programs offered by a public community college, university, or health-related institution, as maintained by Board Staff.

(25) Public Health-Related Institution--Public health-related institutions that are supported by state funds.

(26) Public Junior College--A public institution of higher education as defined in Tex. Educ. Code §61.003(2).

(27) Public Two-year College--Any public junior college, public community college, public technical institute, or public state college as defined in Tex. Educ. Code §61.003(16).

(28) Public University--A general academic teaching institution as defined by Tex. Educ. Code §61.003(3).

(29) Semester Credit Hour, or Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

(30) Texas Classification of Instructional Programs (CIP) Coding System--The Texas adaptation of the federal Classification of Instructional Programs taxonomy developed by the National Center for Education Statistics and used nationally to classify instructional programs and report educational data. The 8-digit CIP codes define the authorized teaching field of the specified program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(31) Texas Core Curriculum--Curriculum required at each institution of higher education students are required to complete as required by 19 TAC §4.23(3).

(32) Texas Success Initiative (TSI--A comprehensive program of assessment, advising, developmental education, and other strategies to ensure college readiness. The TSI Assessment that shall be the sole assessment instrument as specified in 19 TAC §4.56. The passing standards for the authorized TSI Assessment are established in 19 TAC §4.57.

(33) Tracks of Study--Specialized areas of study within a single degree program.

(34) Transcriptable Minor--A transcriptable minor is a group of courses around a specific subject matter marked on the student's transcript. The student must declare a minor for the minor to be included on the student's transcript. The student cannot declare a minor without also being enrolled in a major course of study as part of a baccalaureate degree program.

(35) Workforce Education Course Guide Manual (WECM)--An online database composed of the Board's official statewide inventory of career technical/workforce education courses available for two-year public colleges to use in certificate and associate degree programs.

#### §2.4. Types of Approval Required.

The Board requires each institution to obtain one of the following types of approval for a certificate or degree program. No approval is required for new tracks of study in an existing degree program and tracks of study are not listed as separate degree programs in the Program Inventory.

(1) Notification Only--this approval is obtained when the institution of higher education successfully submits and receives confirmation of its submission to Board Staff.

(2) Assistant Commissioner Approval-a proposed program subject to Assistant Commissioner Approval may be approved by the Assistant Commissioner if the program is administratively complete as described in §2.6 of this subchapter and meets all the requirements established by rule as determined by the Assistant Commissioner.

(A) If the Assistant Commissioner recommends denial of a program or does not take action to approve the program within six months of Board Staff's determination that the program proposal is administratively complete, then the program approval will be subject to the process for Commissioner Approval.

(B) There are two types of Assistant Commissioner Approval depending on the type of action the institution requests.

(i) Regular Review--A proposed program subject to Assistant Commissioner Approval shall receive regular review unless the institution's request is eligible for Expedited Review.

(ii) Expedited Review--an institution submits for review and approval the information required by rule and obtains approval from Board Staff once staff confirms that the institution's request is administratively complete, and the Assistant Commissioner confirms that the institution's request qualifies for Expedited Review. This type of review is authorized only where expressly indicated in rules under this chapter.

(3) Commissioner Approval--The Assistant Commissioner designated to approve academic programs under this chapter will forward a program subject to Commissioner Approval to the Commissioner for review and approval. A proposed program subject to Commissioner Approval may be approved by the Commissioner if the program is administratively complete as described in §2.6 of this subchapter and meets all the requirements established by rule as determined by the Commissioner. This type of approval will include a Board Staff recommendation about whether the program meets all the requirements established by rule.

(A) If the Commissioner does not approve or deny the proposal within nine months of Board Staff's determination that the proposal is administratively complete, the proposal will move to Board Approval.

(B) At the Commissioner's sole discretion, the Commissioner may elect to require Board Approval of the proposed program. Board approval must occur not later than one year after the institution's application was administratively complete.

(4) Board Approval--A program that is subject to Board Approval as indicated in rules under this chapter will be considered at a Board meeting not later than the first anniversary of Board Staff's determination that the application for the proposed program is administratively complete. This type of approval will include a recommendation from the Commissioner about whether the program satisfies the requirements of statute and rule for approval.

(A) Board Staff shall review the required criteria for each proposed program and provide a recommendation to the Commissioner. Board Staff's recommendation shall include a summary and

analysis of whether the proposed program meets each of the required criteria for approval.

(B) The Commissioner shall review Board Staff's recommendation and make a determination about whether to recommend approval of the proposed program to the Board.

(i) Board Staff shall notify the institution of the Commissioner's decision about whether to recommend the program.

(ii) If the Commissioner recommends denial of the program, Board Staff shall notify the institution and provide ten business days in which the institution may request in writing final consideration from the Board.

(iii) If the institution requests final consideration from the Board, Board Staff shall place the proposed program on the Board agenda for consideration at the next Board meeting not later than one year later than the program is determined administratively complete.

(iv) If Board Staff does not receive a request for Board consideration within ten business days from the date the institution was notified of the Commissioner's recommendation for denial of the program, the application shall be considered withdrawn.

(C) The Board shall consider the proposal at a Board meeting not later than the first anniversary of Board Staff's determination that the application for the proposed program is administratively complete. The Board's decision to approve or deny the proposed program is final and may not be appealed. If the Board denies approval, an institution may resubmit a request for approval of the proposed program not sooner than one year from the date of the Board's decision. If the Board fails to approve or deny the program by the first anniversary after Board Staff deems the proposal administratively complete, the program is considered approved by operation of law.

#### §2.5. *General Criteria for Program Approval.*

(a) In addition to any criteria specified in statute or this chapter for a specific program approval, the Assistant Commissioner, Commissioner, or Board, as applicable, shall consider the following factors:

(1) Evidence that the program is needed by the state and the local community, as demonstrated by student demand for similar programs, labor market information, and value of the credential;

(2) Whether the program unnecessarily duplicates programs offered by other institutions of higher education or private or independent institutions of higher education, as demonstrated by capacity of existing programs and need for additional graduates in the field;

(3) Comments provided to the Board from institutions noticed under §2.7 of this subchapter;

(4) Whether the program has adequate financing from legislative appropriation, funds allocated by the Board, or funds from other sources;

(5) Whether the program's cost is reasonable and provides a value to students and the state when considering the cost of tuition, source(s) of funding, availability of other similar programs, and the earnings of students or graduates of similar credential programs in the state to ensure the efficient and effective use of higher education resources;

(6) Whether the program has necessary faculty and other resources including support staff to ensure student success;

(7) Whether and how the program aligns with the metrics and objectives of the Board's Long-Range Master Plan for Higher Education;

(8) Whether the program meets academic standards specified by law or prescribed by Board rule, including rules adopted by the Board for purposes of this section, or workforce standards established by the Texas Workforce Investment Council; and

(9) Past compliance history and program quality of the same or similar programs, where applicable.

(b) In the event of conflict between this rule and a more specific rule regarding program approval, the more specific rule shall control.

#### §2.6. *Administrative Completeness.*

(a) An institution must submit a fully completed application for each proposed program for which approval is required that includes:

(1) each element or item of information required by this subchapter;

(2) each element or item of information required by the subchapter in this chapter governing the type of program approval required;

(3) the required Board form for the type of program approval required; and

(4) fully executed certifications.

(b) Board Staff shall determine whether an application is administratively complete and notify the institution not later than the fifth business day after receipt.

(c) If Board Staff determines that the application is incomplete or additional information or documentation is needed, the institution must respond with all of the requested information or documentation within ten business days or the request will be deemed incomplete and returned to the institution.

(d) An institution may resubmit an application that was returned as incomplete as soon as it has obtained the requested information or documentation. This submission will be considered a new application.

#### §2.7. *Informal Notice and Comment on Proposed Local Programs.*

(a) As soon as practicable, but not later than the sixtieth day after an institution submits an administratively complete application for approval, Board Staff shall provide informal notice and opportunity for comment to other institutions of higher education in the local community that offer substantially similar programs.

(b) Board Staff shall provide notification of the applicant institution's request for approval and allow not fewer than thirty days for a noticed institution to provide comments to Board Staff regarding:

(1) State or local need for the proposed program; or

(2) Evidence of whether the program unnecessarily duplicates programs offered by public, private, or independent institutions in the Higher Education Regions that offer substantially similar programs.

(c) When considering whether to approve a program requiring approval under this chapter, the Assistant Commissioner, Commissioner, or Board shall consider the comments that the noticed institutions provide to the Board under this section.

#### §2.8. *Time Limit on Implementing Approved New Programs or Administrative Changes.*

(a) Unless otherwise stipulated at the time of approval, if an approved new degree program is not established within two years of approval, that approval is no longer valid. An institution may submit a request to the Assistant Commissioner for approval to lengthen that time limit by one additional year for a compelling academic reason. The Assistant Commissioner has discretion to approve or deny the request.

(b) Unless otherwise stipulated at the time of approval, if approved administrative changes are not implemented within two years of approval, that approval is no longer valid.

(c) Provisions of this section apply to all approvals and changes under this chapter.

#### §2.9. *Revisions and Modifications to an Approved Program.*

(a) Substantive revisions and modifications that materially alter the nature of the program, physical location, or modality of delivery, as determined by the Assistant Commissioner, include, but are not limited to:

- (1) Changing the location of the program; and
- (2) Changing the funding from self-supported to formula-funded or vice versa.

(b) For a program that initially required Board Approval beginning as of September 1, 2023, and doctoral and professional programs approved by the Board on or before September 1, 2023, any substantive revision or modification to that program will require Board Approval under §2.4 of this subchapter. For all other programs, including programs that initially required Board Approval prior to September 1, 2023, any substantive revision or modification will require Assistant Commissioner Approval under §2.4(a)(2) of this subchapter.

(c) Non-substantive revisions and modifications that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner, include, but are not limited to:

- (1) Increasing the number of semester credit hours of a program for reasons other than a change in programmatic accreditation requirements;
- (2) Consolidating a program with one or more existing programs;
- (3) Changing the modality of the program;
- (4) Altering any condition listed in the program approval notification;
- (5) Changing the CIP Code of the program;
- (6) Increasing the number of semester credit hours if the increase is due to a change in programmatic accreditation requirements;
- (7) Reducing the number of semester credit hours, so long as the reduction does not reduce the number of required hours below the minimum requirements of the institutional accreditor, program accreditors, and licensing bodies, if applicable;
- (8) Changing the Degree Title or Designation; and
- (9) Other non-substantive revisions that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner.

(d) The non-substantive revisions and modifications in subsection (c)(1) - (5) of this section are subject to Assistant Commissioner Approval Regular Review under §2.4 of this subchapter. All

other non-substantive revisions and modifications are subject to Assistant Commissioner Approval Expedited Review under §2.4(a)(2)(B) of this subchapter.

(e) Public universities and public health-related institutions must notify the Coordinating Board of changes to administrative units, including creation, consolidation, or closure of an administrative unit. Coordinating Board Staff will update the institution's Program Inventory pursuant to this notification.

#### §2.10. *Audit and Non-Compliance.*

(a) Board Staff reserves the right to audit an institution's program at any time to ensure compliance with the provisions of this chapter.

(b) If Board Staff determines that any institution is in non-compliance with the terms of its approval; has otherwise failed to seek approval required by §2.9 for a revision or modification; or is in violation of statute or Board rule governing program operation or approval; Board Staff shall:

- (1) Provide notice to the institution of alleged non-compliance related to the program at issue;
- (2) Provide the institution not more than one year to remedy the violation by achieving compliance with the approval, statute, or rule, by means acceptable to the Commissioner;
- (3) At the end of one-year, if the institution has not achieved compliance acceptable to the Commissioner, Board Staff shall request that the Board authorize issuance of a show cause letter to the institution requiring the institution to show cause why the Board shall not recommend closure of the program and teach out.

(c) **Program Closure and Teach-Out.** If Board Staff determines that a program is in non-compliance or fails to satisfy all contingencies and conditions of its approval after responding to the show cause notice in subsection (b) of this section, Board Staff may notify the institution of:

- (1) the actions necessary for the institution to receive the required approvals or meet the conditions; or
- (2) that Board Staff recommends closure of the program.

(d) If the institution where the program is located wishes to close the program, the institution shall follow the procedures in subchapter H of this chapter.

(e) If the institution chooses not to follow the recommendation, the Board may request that Board Staff send the recommendation for closure to the governing board of the institution.

#### §2.11. *Effective Date of Rules.*

Each rule under this subchapter applies to each program for which an institution has submitted a required Planning Notification on or after June 1, 2023. For a proposed program not required to submit a Planning Notification, these rules apply to a program submitted for notification or approval on or after September 1, 2023. For all other rules not related to program approval, these rules take effect on September 1, 2023.

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 B. APPROVAL PROCESS FOR A CERTIFICATE

### 19 TAC §§2.30 - 2.34

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter B, Approval Process for a Certificate, §§2.30 - 2.34, without changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4225). The rules will not be republished.

Texas Education Code §61.0512(a) requires the Board to approve all new certificate programs before an institution of higher education may offer the program. Certificates are generally divided into two broad categories: academic certificates, which may include courses similar or identical to coursework offered as part of a degree program; and workforce certificates, which prepare a student for direct entry into the workforce and may not have any connection to an existing degree program.

Currently, the Board does not collect information about all certificate programs institutions intend to implement or permit institutions to offer certain types of certificates depending on the institution's sector. For instance, rules limit public junior colleges from offering many types of academic certificates. Likewise, rules discourage public general academic institutions or health-related institutions from offering very many types of workforce certificates.

By broadening the program types encompassed in the definition of "certificate," this new subchapter allows the Board to more comprehensively capture the certificate programs institutions intend to offer. This rule moves toward the Board's goal of institution-neutral regulations - treating similar programs uniformly, even when those programs are offered by institutions in different sectors. This approach is also better aligned with definition of certificate in Education Code §61.003.

This rule aligns the Board with its statute and allows the Board to achieve several strategic objectives. This rule removes restrictions on public junior colleges offering certain types of academic certificates; provides the opportunity for all institutions to offer more types of certificates; and allows the Board to collect critical information about the variety and breadth of certificates offered across the state. This rule is a critical component of the Board's ability to contribute to finely tuned workforce planning.

The Board adopts new chapter 2, subchapter B, Approval Process for a Certificate rules as detailed below:

Rule 2.30, Authority, lays out the sections of the Texas Education Code that grant the Board authority to approve certificates.

Rule 2.31, Certificate Approval by Notification Only, states that institutions must notify the Board when offering a new certificate program. This rule excludes transcriptable minors, associate degrees, workforce education, and non-credit certificates.

Rule 2.32, Notification, lists the information required of institutions intending to submit a certificate program to the Board.

Rule 2.33, Approval, describes the conditions for approval, and states that approved certificates will be recorded as such in the institution's official Program Inventory.

Rule 2.34, Effective Date of Rules, states that the rules of this subchapter become effective for certificates submitted for approval on or after September 1, 2023.

The following comments were received regarding the adoption of the new rules.

Comment: Two institutions submitted comments regarding the proposed certificate approval rules covering the following topics:

- Questions regarding the use of the terms "approval" and "notification" in Subchapter B.

- Questions regarding why the Coordinating Board now wants notification for short certificates, when prior rules did not require institutions to submit those credentials, and a request for a minimum semester credit hour threshold.

- Request for clarification on embedded certificates and minors, and a request to exclude embedded certificates that are conferred at the time the student completes the degree.

- Concerns about the nature and volume of reporting; one system requested that institutions submit a biennial report listing active certificates instead of notifications for individual programs.

Some institutions expressed support for the proposed changes, including for allowing institutions to have clear documentation of certificate approval and respond quickly to workforce needs.

Response: Statute gives THECB the responsibility to approve new certificate programs, regardless of the number of semester credit hours, level, or academic/workforce designation: "A new degree or certificate program may be added at an institution of higher education only with specific prior approval of the board." (Tex. Educ. Code §61.0512). For ease of administrability, under the proposed rules, a certificate will be deemed approved when the Coordinating Board receives notification from the institution (2.33(a)). Certificate is defined broadly in the proposed definitions (see 2.3(8)) without reference to the minimum number of semester credit hours, to encompass even very short micro-certificates. The rule as written excludes transcriptable minors.

However, under current rules, the Coordinating Board does not approve or even receive notification of several categories of certificates. The increased comprehensiveness of the proposed rule not only brings Coordinating Board processes in closer alignment with statute, it also accomplishes an objective of the *Building a Talent Strong Texas* strategic plan: establishing a comprehensive statewide credential repository. This repository is intended to enable the agency to produce actionable data insights on certificate outcomes.

Board staff will consider institutional input on the best ways for institutions to report these certificates during the implementation phase. The proposed rule packet covers academic certificates only; rules pertaining to technical/workforce certificates will be addressed in a future revision.

Comment: One public university noted that the proposed rule revision has expanded the ability of public junior colleges to provide academic certificates and baccalaureate degrees. The institution noted that, while this could be perceived as a competitive threat to university undergraduate programs, that perspective would be shortsighted and unproductive; instead, the expanded abilities of public junior colleges could represent an opportunity



for four-year institutions to collaborate with partners on curriculum.

Response: The Coordinating Board thanks the institution for the submitted comment and agrees with the sentiment expressed. An important motivation behind the ongoing rule revision project is to maximize institutions' ability to offer many types of programs within the framework provided by statute.

The new subchapter is adopted under Texas Education Code §61.0512(a) which provides the Board with the authority to approve all new certificate programs before an institution of higher education may offer the program; and Texas Education Code §61.001 which charges the agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants.

The adopted new rules affect Texas Education Code §§61.0512 and chapter 130, governing programs offered by public junior colleges.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 427-6182



## SUBCHAPTER C. PRELIMINARY PLANNING PROCESS FOR NEW DEGREE PROGRAMS

### 19 TAC §§2.40 - 2.43

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter C, Preliminary Planning Process For New Degree Programs, §§2.40 - 2.43, with changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4227). The rules will be republished.

Texas Education Code §61.0512(b) requires institutions to notify the Board prior to beginning preliminary planning for a new degree program. An institution is planning for a new degree program if it takes any action that leads to the preparation of a proposal for a new degree program.

These rules align with statute and allow the Board to track and effectively plan for new degree program requests. These rules also require the Board Staff to provide labor market and other relevant information to institutions. This information will benefit institutions in developing the new degree program proposal.

Section 2.40, Authority, lists the section of the Texas Education Code that grants the Board authority to require preliminary Planning Notifications for new degree programs.

Section 2.41, Planning Notification: Notice of Intent to Plan, provides the information required for preliminary Planning Notifications. This rule also outlines Board requirements for providing labor market and other relevant information to institutions.

Section 2.42, Board Staff Response, describes the approval process for the Planning Notification and consequences for failing to provide the required information.

Section 2.43, Effective Date of Rules, states that this subchapter becomes effective for new Planning Notifications sent on or after June 1, 2023.

The following comments were received regarding the adoption of the new rules.

Comment: Many institutions submitted comments disagreeing with the proposed changes to planning notifications, and specifically with the expansion of the number of programs requiring planning notifications.

Response: Current Coordinating Board rules only require planning notifications for proposals submitted for Board approvals, which under the current process includes doctoral and professional programs, engineering programs at all levels, programs with an estimated cost over \$2 million, and community colleges offering a baccalaureate program. No other programs submit planning notifications under current processes. This directly conflicts with Texas statute: "At the time an institution of higher education begins preliminary planning for a new degree program, the institution must notify the board before the institution may carry out the planning." (Tex. Educ. Code §61.0512(b)).

Proposed §2.41 imposes very minimal requirements for the content of the planning notification, only requesting the program title, degree designation, CIP Code, and anticipated date of proposal submission. Under current processes, institutions *already* provide this information to the Coordinating Board prior to submitting their requests for new programs through the area institution notification the new planning notification rules therefore do not represent a significant change to current processes for institutions or staff. In fact, the proposed rules *lessen* the burden on staff and institutions by no longer requiring the prior submission of this information for new certificate proposals (contrast with 19 TAC §§5.44(b)(3); 9.93(b)(4)).

The proposed rules bring agency processes into compliance with the law by extending the planning notification to all degree programs. Planning notifications also serve the practical function of assisting Board staff in anticipating and managing workload.

Comment: In the proposed rules, submission of a Planning Notification triggers a sixty-day period for the Board Staff to provide the institution a report containing Labor Market Information and other data related to the proposed program. Several institutions questioned the utility of the Coordinating Board providing Labor Market Information in response to receiving a planning notification, as the current system places that responsibility on institutions. Institutions also expressed concern about the inefficient use of time and burden on Board staff to provide this information, and also the cost to the agency of providing this data. Further, institutions expressed concern about the additional sixty days added to existing program approval timelines.

Several comments noted that institutions already perform the work of gauging local need and compiling labor market information, and that this work is typically done even before beginning the planning process. One comment stated that easy on-demand access to information and data on similar programs would be of more benefit to institutions than tailored reports. Another institution stated that it is easier for the institution to determine student demand and local interest in programs, with better knowledge of the local community.

Response: The Coordinating Board is currently building out agency capacity to develop and provide high-quality data to institutions at an early point in the program development process. The purpose of providing this data early is to give institutions information about whether the proposed program is likely to meet the statutory criteria for approval (particularly whether the program is likely to meet state and local community needs) before they complete the work of preparing the proposal.

Institutions need not wait for the sixty-day period to elapse before submitting their program proposals.

Comment: Several institutions took issue with Board staff approval of planning notifications, stating that statute only provides for notification (Tex. Educ. Code §61.0512(b)).

Response: Coordinating Board staff agrees that the rule should be revised to remove the approval of the planning notification, instead providing for its acknowledgement and amend §2.42 as follows: "The Planning Notification shall be acknowledged upon completed submission of the required information."

Comment: Institutions expressed concern with new timelines for submission of the Planning Notification. Current rules require planning notification at least one year in advance only for professional degrees and for any other program receiving Board-level approval. The planning notification can be submitted at any point before the proposal. The proposed rule extends the one-year timeline to both professional degrees and doctoral degrees. Institutions noted that this would extend the approval timeline for doctoral programs.

Response: Planning Notifications serve the practical purpose of giving Board staff extra notice of institutions' intent to submit new programs. Because of the complexity of doctoral and professional programs, staff must execute an especially complicated review process taking almost a year, requiring the recruitment of impartial external reviewers and the arranging of a site visit. The early notification for these types of programs helps staff plan and manage workloads.

These new sections are adopted under Texas Education Code §61.0512(b), which provides the Board with the authority to require notification when an institution begins preliminary planning for a new degree program.

The adopted new rules affect Texas Education Code §61.0512(b).

#### §2.40. Authority.

The authority for this subchapter is Texas Education Code §61.0512(b), which requires institutions to notify the Board prior to beginning preliminary planning for a new degree program.

#### §2.41. Planning Notification: Notice of Intent to Plan.

(a) Prior to the institution seeking approval for a new degree program from its governing board, each institution's Chief Academic Officer, or delegate, shall provide notification to Board Staff of the

institution's intent to engage in planning for a new degree program. The Planning Notification shall contain the following information:

- (1) The title of the degree;
- (2) The degree designation;
- (3) CIP Code; and
- (4) Anticipated date of submission.

(b) Not later than sixty days after Board Staff receives the Planning Notification, Board Staff shall provide to that institution a report including available labor market information and other relevant data to inform the institution's planning for the proposed program, including data about the number of similar programs approved in an area likely to be served by the applicant institution.

#### §2.42. Board Staff Response.

The Planning Notification shall be acknowledged upon completed submission of the required information.

#### §2.43. Effective Date of Rules.

This subchapter goes into effect on June 1, 2023. Institutions must submit a Planning Notification for new programs in accordance with this subchapter on or after that date.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. APPROVAL PROCESS FOR NEW BACCALAUREATE PROGRAMS AT PUBLIC JUNIOR COLLEGES

### 19 TAC §§2.80 - 2.92

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter E, Approval Process for New Baccalaureate Programs at Public Junior Colleges, §§2.80 - 2.92, without changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4228). The rules will not be republished.

In 2003, the legislature first gave permission to a small number of public junior colleges (the "pilot institutions") to begin offering baccalaureate degrees. The pilot institution grouping came to include Midland College, South Texas College, Brazosport College, and Tyler Junior College. In 2017, the legislature expanded permission to offer a baccalaureate degree to all public junior colleges in the state.

Statute treats pilot institutions and non-pilot institutions distinctly, giving them different authority to offer these programs and subjecting them to different approval processes. In addition, statute

treats baccalaureate program requests from public junior colleges and from other institutions of higher education distinctly. Chapter 2, subchapter E therefore follows statute, separating out the baccalaureate approval process for public junior colleges in a separate subchapter and treating pilot and non-pilot institutions differently.

Except for pilot institutions for which Texas Education Code §130.303(a) mandates approval, the types of approval that the Board will require under new §2.85 for a public junior college that proposes to offer a baccalaureate program are aligned with the types of approval required of general academic institutions under this chapter. The Board adopts using the same definitions, general criteria, and approval type set out in chapter 2, subchapter A, to ensure alignment and clarity for all institutions seeking program approval required by law.

Section 2.87 sets out the criteria for a proposed baccalaureate program offered by a public junior college, other than a pilot institution. The rule requires that the institution meet the criteria set out in subchapter A, §2.5, consistent with other institutions of higher education. The rule additionally references the statutory criteria for approval as Tex. Educ. Code §130.308, which contains numerous express statutory criteria for approval. For the purpose of clarity and to ensure alignment between the rule and statute these statutory criteria are not restated in the rule.

Section 2.80, Purpose, establishes the purpose of the subchapter.

Section 2.81, Authority, lists the sections of the Texas Education Code providing the Board with the authority to promulgate rules related to baccalaureate degree programs, including §61.0512(h)(2) giving the Board power to approve programs generally and Texas Education Code chapter 130, subchapter L, pertaining to baccalaureate degree programs at public junior colleges specifically.

Section 2.82, Applicability, limits applicability of the subchapter to public junior colleges.

Section 2.83, Definitions, cross-references this subchapter to the definitions section in subchapter A.

Section 2.84, Submission of Planning Notification, cross-references this subchapter to the procedures to submit a Planning Notification outlined in subchapter C.

Section 2.85, Approval Required, sets out the levels of approval for different degree types. For non-pilot institutions, the Board will subject the institution's first baccalaureate degree to Board Approval, proposed baccalaureate degrees with over 50% new content to Commissioner Approval, and proposed baccalaureate degrees with 50% or less new content to Assistant Commissioner Approval. For pilot institutions, the Board will subject baccalaureate degree proposals to Assistant Commissioner Approval.

Section 2.86, Presentation of Requests and Steps for Implementation, sets out the procedures public junior colleges must follow to submit a proposed baccalaureate degree program.

Section 2.87, Criteria for New Baccalaureate Degree Programs, contains the criteria Board Staff will use to evaluate baccalaureate degree program proposals submitted by public junior colleges.

Section 2.88, Approval and Semester Credit Hours, describes the process institutions must follow if the proposed baccalaureate degree program would exceed 120 hours.

Section 2.89, Post-Approval Program Reviews, requires institutions to submit post-approval reviews in line with statutory requirements.

Section 2.90, Revisions to Approved Baccalaureate Programs, cross-references this subchapter to the procedure to request a revision or modification listed in subchapter B.

Section 2.91, Phasing Out a Baccalaureate Program, cross-references this subchapter to the procedure to request a program be phased out in subchapter H.

Section 2.92, Effective Date of Rules, states that the rules become effective for proposals with required Planning Notifications submitted on or after June 1, 2023. For programs not requiring a Planning Notification submission, the rules become effective for a proposal submitted on or after September 1, 2023.

No comments were received regarding the adoption of the new rules.

Texas Education Code §61.0512(h)(2) gives the Board authority to approve programs generally; and Texas Education Code chapter 130, subchapter L, grants the Board authority to administer approval processes for baccalaureate degree programs at public junior colleges specifically. The new sections are also adopted under Texas Education Code §61.001 which charges the agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants.

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## SUBCHAPTER F. APPROVAL PROCESS FOR NEW BACCALAUREATE AND MASTERS DEGREES AT PUBLIC UNIVERSITIES AND PUBLIC HEALTH-RELATED INSTITUTIONS

### 19 TAC §§2.110 - 2.121

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter F, Approval Process for New Baccalaureate and Master's Degrees at Public Universities and Public Health-Related Institutions, §§2.110 - 2.121, with changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4231). The rules will be republished.

Texas Education Code §61.051 tasks the Board with coordinating the efficient and effective use of higher education resources and avoiding unnecessary duplication. Texas Education Code §61.0512 states that a public institution of higher education may not offer any new degree program without Board approval. Texas Education Code §61.0515 requires that the number of semester credit hours required for the baccalaureate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

Section 2.110, Purpose, sets out the purpose of the subchapter, to establish a process for public universities and health-related institutions to request approval of a new baccalaureate or master's degree.

Section 2.111, Authority, lists the sections of the Texas Education Code that grant the Board authority to approve new degree programs.

Section 2.112, Applicability, limits applicability of the subchapter to public universities and public health-related institutions. This chapter does not apply to public junior colleges, as Subchapter E sets out the approval process for those institutions to seek approval for a baccalaureate degree; nor does this subchapter apply to the master's degree embedded credential.

Section 2.113, Submission of Planning Notification, provides the information required for institutions to submit preliminary Planning Notifications to the Board, giving early notice that they intend to submit a proposal for a new baccalaureate or master's degree. This provision aligns the rule to Tex. Educ. Code §61.0512(b), which requires each institution to notify the Board before the institution carries out preliminary planning of a proposed new degree program.

Section 2.114, Approval Required, outlines the various approval endpoints for different types of degrees. Programs with 50% or less new content receive Assistant Commissioner Approval. Programs with over 50% new content receive Commissioner Approval. Institutions seeking approval for a program that will be the institution's first program offered at that level must receive Board Approval. The Board believes this approval process reserves the greatest level of review for those programs that offer the greatest amount of new content and thus require additional information and consideration. Proposed programs that contain less new content are subject to a lower-level approval and faster process. This process also provides greater alignment with an institution's accrediting body and works to streamline the process for institutions to the extent practical while allowing the Board to exercise more authority over the addition of new content at institutions.

Section 2.115, Presentation of Requests and Steps for Implementation, sets out the steps an institution must follow in order to request a new baccalaureate or master's degree, as well as the approval procedures Board Staff must follow for these programs. This process is consistent throughout new Chapter 2, creating a transparent and predictable process so institutions know what is required at each stage.

Section 2.116, Approval and Semester Credit Hours, requires institutions to provide a compelling academic reason for proposed baccalaureate degree programs exceeding a minimum of 120 semester credit hours. This section implements Texas Education Code §61.0515, which requires that baccalaureate degrees not exceed the institutional accreditor's minimum number of hours,

in the absence of a compelling academic reason provided by the institution.

Section 2.117, Criteria for New Baccalaureate and Master's Degrees, lists the standards proposed baccalaureate and master's programs must meet for approval. In addition to fulfilling the standard new program criteria contained in Subchapter A, this rule contains criteria specific to the baccalaureate and master's degree program type. Texas Education Code §61.0512(c) lists minimum criteria the Board must use to evaluate a proposed program, including program need, adequate financing, necessary faculty and other resources, and academic standards. Section 2.117 develops those criteria in greater detail, tailoring them for baccalaureate and master's degree programs. This rule references back to the general criteria in §2.5 that apply to all new degree programs. New §2.117 incorporates the statutory minimum and additional criteria in one place so that each institution will know what criteria the institution must meet to obtain program approval. These new criteria, by reference back to §2.5, will ensure that new degree programs are better aligned with the Board's revised Long Range Master Plan for Higher Education. The plan in effect at this time of this proposal, Building a Talent Strong Texas, focuses on providing credential of value to students and limiting student debt to what is manageable based on the degree.

Section 2.118, Post-Approval Program Reviews, states that Board Staff will conduct post-implementation reviews in accordance with Subchapter I. This process is significantly similar to the current post-implementation review process.

Section 2.119, Revisions to Approved Baccalaureate or Master's Programs, states that an institution may request a revision or modification in line with Subchapter A, §2.7. The new rules are much more specific, clear, and predictable about what types of revisions require approval and what type of approval. This process is both streamlined, but also more robust, in that it ensures significant revisions receive appropriate review.

Section 2.120, Phasing Out a Baccalaureate or Master's Program, states that an institution wishing to phase out a program approved under this chapter may follow the process set forth in Subchapter H. This process is substantially similar to the current process.

Section 2.121, Effective Date of Rules, states that the rules become effective for proposals with required Planning Notifications submitted on or after June 1, 2023. For programs not requiring a Planning Notification submission, the rules become effective if the proposal would be submitted on or after September 1, 2023.

The following comments were received regarding the adoption of the new rules.

Comment: Two institutions commented that this is a change and that this will now be required for all new degree programs. Another comment pointed out that "preliminary planning" of a proposed program is undefined.

Response: The Coordinating Board agrees that requiring the submission of a Planning Notification is a change to the current requirement. This revision to the rule brings Coordinating Board processes into alignment with the existing statutory requirements provided in Texas Education Code §61.0512(b), which states: "At the time an institution of higher education begins preliminary planning for a new degree program, the institution must notify the board before the institution may carry out that planning." The details of what is required in the Planning No-

tification are in 2.41, which requires notifications to contain the following information (1) Title of the degree; (2) the degree designation; (3) CIP Code; and (4) Anticipated date of submission.

Comment: Five institutions commented that they had concerns about the approval now required for new baccalaureate and master's degrees. Currently, the Coordinating Board allows for a streamlined approval form for bachelor's and master's degree programs aside from those costing more than \$2 million or engineering programs. In the current version of the rule draft, proposed programs with less than 50% new content receive Assistant Commissioner approval, whereas programs with 50% or more new content receive Commissioner approval.

Institutions expressed concern that the requirement for Assistant Commissioner review would unnecessarily increase the Assistant Commissioner's workload and delay the approval process, hindering an institution's ability to quickly respond to job market and student demand. Institutions also expressed concern that Commissioner approval for new bachelor's and master's degrees with 50% new content would lengthen the timelines.

There was also a recommendation that institutions should align with SACSCOC and require notification only for program proposals with new content between 25-49%.

One institution states that the section assumes Texas institutions are all accredited by a single accrediting entity, whereas regional accreditation entities no longer exist, and institutions can now choose their own federally-recognized institutional accreditor.

One institution requests clarification on the definition of "new content," asking whether it is specific to the degree program, based on new courses developed within the new program or subject matter at the university. Another institution asked whether it is appropriate for the Coordinating Board to exercise more authority over new content.

Response: Statute charges the Coordinating Board with the responsibility to approve new programs: "A new degree ["'] program may be added at an institution only with specific prior approval of the [Coordinating Board]." Tex. Educ. Code §61.0512(a). For this reason, the Board intends to keep the requirement that all new programs must receive Board approval, with special attention to programs with a high volume of new content.

The draft rules do not significantly alter existing processes. The Coordinating Board staff currently reviews all the documentation that is submitted for each new bachelor's or master's program. After a review is completed by Coordinating Board staff, an approval letter is sent by the Assistant Commissioner to the institutions. Section 2.114 will not alter the current practice, instead merely formalizing the process.

The draft rules make one significant improvement on existing rules: for the first time, §2.114 provides unprecedented transparency to institutions by specifying the exact timeline for each level of approval. The rule states that Assistant Commissioner approval will take no more than six (6) months from submission of an administratively complete request and Commissioner approval will take no more than nine (9) months from submission of an administratively complete request. These timelines are periods that cannot be exceeded, though the Board does not anticipate that any processes would significantly extend current approval times. These deadlines represent the Coordinating Board's commitment to establishing clear and predictable timeline expectations for institutions.

The proposed rules require submission of a completed application in order to be administratively complete but do not specify which forms must be included. During rule implementation, the Coordinating Board commits to reviewing and updating all documentation forms required for program approval.

The rule does not specifically reference SACSCOC or require that an institution hold its accreditation from that entity-the rule's language is accreditor-agnostic. However, it does happen to align with SACSCOC cut-offs for program notifications and approvals.

"New content" is defined in the Definitions section of the proposed rule packet (§2.3(20)) as such: "Content that the institution does not currently offer at the same instructional level as the proposed program." All Texas public institutions must already assess the percentage of new content in each proposed program, as this is an institutional accreditation requirement. Programs with a high volume of new content may require different resources or additional faculty members. The Coordinating Board has chosen to sort programs according to this dividing line for scrutiny, aligning expectations with levels of program scrutiny conducted by institutional accreditors.

Comment: One institution agreed with the clarification regarding the Coordinating Board's expectations regarding faculty and allowing flexibility where appropriate in terms of rank or type of faculty positions.

Response: The Coordinating Board agrees that providing the flexibility for faculty for rank/type of faculty is appropriate.

Comment: One institution commented that for the rule for bachelor's and master's degree programs §2.117(B)(ii) the phrase "proposed doctoral program field" should be corrected to the "proposed appropriate program field" in relation to library and IT resources.

Response: The Coordinating Board concurs with the recommendation and will revise §2.117(B)(ii) to reflect the revision as follows: "Library and IT Resources. Library and information technology resources must be adequate for the proposed program and meet the standards of the appropriate accrediting agencies. Library resources should be strong in the appropriate program field and in related and supporting fields."

Comment: One institution questioned the need for there to be high-quality programs in other related and supporting disciplines, stating that this could impact an institution's ability to respond to the local needs of the community region.

Response: The Coordinating Board supports innovation at the institutions. This provision is intended to ensure that there are appropriate resources in related programs for the new program and students to be successful.

The new sections are adopted under Texas Education Code §§61.051 and 61.0512, which provides the Board with the authority to approve all new degree programs before an institution of higher education may offer the program and Texas Education Code §61.001 which charges the agency to provide leadership and coordination for the Texas higher education system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants.

The adopted new rules affect Texas Education Code §61.0515.

§2.110. *Purpose.*

The purpose of this subchapter is to establish the process for public universities and public health-related institutions to request new baccalaureate or master's degrees from the Board.

§2.111. *Authority.*

The authority for this subchapter is Texas Education Code §§61.051 and 61.0512, which provide that no new degree program may be added at any public institution of higher education except with specific prior approval of the Board. Tex. Educ. Code §61.0515 requires that the number of semester credit hours required for the baccalaureate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

§2.112. *Applicability.*

(a) This subchapter applies to public universities and public health-related institutions.

(b) This subchapter does not apply to public junior colleges.

(c) This subchapter does not apply to a master's degree awarded by a public institution pursuant to Subchapter H, §2.147, of this chapter.

§2.113. *Submission of Planning Notification.*

An institution of higher education seeking approval to offer a degree program under this subchapter must submit a Planning Notification to Board Staff in accordance with Subchapter C of this chapter prior to submitting an administratively complete request for a new baccalaureate or master's degree proposal.

§2.114. *Approval Required.*

(a) A Public Health-Related Institution and Public University is subject to Assistant Commissioner Approval under Subchapter A, §2.4, of this chapter, if the proposed program contains not greater than 50% new content.

(b) A Public Health-Related Institution and Public University is subject to Commissioner Approval under Subchapter A, §2.4, of this chapter, if the proposed program contains greater than 50% new content.

(c) A Public Health-Related Institution or Public University proposing a master's degree that will be the institution's first degree at that level will be subject to Board Approval under Subchapter A, §2.4, of this chapter.

§2.115. *Presentation of Requests and Steps for Implementation.*

(a) A requesting institution must submit a Planning Notification in accordance with Subchapter C of this chapter.

(b) A Public Health-Related Institution and Public University must request a new baccalaureate or master's degree using the forms available on the Board's website.

(c) Board Staff will make the determination of administrative completeness in accordance with Subchapter A, §2.6, of this chapter.

(d) The Assistant Commissioner, Commissioner, or Board, as applicable, shall approve or deny the proposed program within the timelines specified in Subchapter A, §2.4, of this chapter, after receipt of the complete program proposal. If the Assistant Commissioner, Commissioner, or Board does not act to approve or deny the proposal within the specified time frames, the program is considered approved.

(e) Upon approval, Board Staff will add the new degree program to the institution's official Program Inventory. The Program Inventory contains the list of degrees and certificates with official Board approval.

§2.116. *Approval and Semester Credit Hours.*

If the minimum number of semester credit hours required to complete a proposed baccalaureate program exceeds 120, the institution must provide detailed documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 120-semester credit hour limit. Board Staff will review the documentation provided and make a determination to approve or deny a request to exceed the 120-semester credit hour limit.

§2.117. *Criteria for New Baccalaureate and Master's Degrees.*

(a) All proposed baccalaureate and master's degree programs must meet the criteria set out in this subsection, in addition to the general criteria in Subchapter A, §2.5, of this chapter.

(b) Board Staff shall ensure that each institution certifies and provides required evidence that a proposed baccalaureate or master's degree meets the criteria in Subchapter A, §2.5, of this chapter and the following criteria in its proposal request:

(1) Program Need. To meet the requirements of Subchapter A, §2.5(a)(1) and (2), the institution must be able to demonstrate present and future workforce need of the state and nation. There should be a ready job market for graduates of the program, or alternatively, the program should produce students for master's or doctoral-level programs in fields in which there is a demonstrated need for professionals.

(2) Adequate Financing. In assessing whether the program meets the requirements of Subchapter A, §2.5(a)(4) and (5), the program must demonstrate that there is adequate financing available to initiate the proposed program without reducing funds for existing programs or weakening them in any way. The program must provide evidence demonstrating generation of sufficient semester credit hours under funding formulas and student tuition and fees to pay faculty salaries, departmental operating costs, and instructional administration costs for the program after the start-up period.

(3) Faculty and Resources.

(A) Faculty. In assessing the criteria under Subchapter A, §2.5(a)(6), Board Staff shall ensure that the faculty are adequate to provide high program quality. In reviewing faculty, Board Staff will review for the following minimum criteria:

(i) With few exceptions, the master's degree should be the minimum educational attainment for faculty teaching in baccalaureate programs.

(ii) In most disciplines, the doctorate should be the minimum educational attainment for faculty teaching in graduate programs.

(iii) Faculty shall meet the qualitative and quantitative criteria of the institution's appropriate accrediting body.

(iv) The institution must dedicate a sufficient number of qualified faculty to a new program. This number shall vary depending on the discipline, the nature of the program, and the anticipated number of students; however, there must be at least one full time equivalent faculty already in place for the program to begin enrolling students.

(v) In evaluating faculty resources for proposed degree programs, Board Staff shall consider only those degrees held by faculty that were issued by:

(I) United States institutions accredited by accrediting agencies recognized by the Board, or

(II) institutions located outside the United States that have demonstrated that their degrees are equivalent to degrees issued from an institution in the United States accredited by accrediting agencies recognized by the Board.

(B) Facilities and Other Resources. To meet the criteria in Subchapter A, §2.5(a)(6), each program must include adequate facilities and resources to accommodate the program, including:

(i) Office space for the faculty, teaching assistants, and administrative and technical support staff; seminar rooms; computer and electronic resources; and other appropriate facilities such as laboratories; and

(ii) Library and IT Resources. Library and information technology resources must be adequate for the proposed program and meet the standards of the appropriate accrediting agencies. Library resources should be strong in the appropriate program field and in related and supporting fields.

(4) Quality of the Program and Alignment with the Long-Range Plan. To assess the quality of the program, the program must be able to demonstrate the quality of the program, including quality of curriculum design. In addition to meeting the criteria in Subchapter A, §2.5(a)(6) and (a)(8), the proposed program must offer high-quality curriculum, as evidenced by the following:

(A) Professional programs and those resulting in licensure are designed to meet the standards of appropriate regulatory bodies;

(B) The curricular structure and policies of the proposed program should promote students' timely completion of the program, including policies awarding:

(i) transfer of credit, as required by Chapter 4, Subchapter B of this title (relating to Transfer of Credit, Core Curriculum and Field of Study Curricula);

(ii) course credit by examination, credit for professional experience, placing out of courses, and any alternative learning strategies, such as competency-based education, which may increase efficiency in student progress in the proposed program; and

(iii) Strong Related Programs. There must be high-quality programs in other related and supporting disciplines at the baccalaureate or master's levels, as evidenced by enrollments, numbers of graduates, and completion rates in those related and supporting programs, as appropriate.

*§2.118. Post-Approval Program Reviews.*

Board Staff shall conduct post-approval reviews in accordance with Subchapter I of this chapter.

*§2.119. Revisions to Approved Baccalaureate or Master's Degree Programs.*

An institution may request a non-substantive or substantive revision or modification to an approved baccalaureate or master's program under Subchapter A, §2.7, of this chapter.

*§2.120. Phasing Out a Master's or Baccalaureate Degree Program.*

An institution may request to phase out a master's or baccalaureate program under Subchapter H of this chapter.

*§2.121. Effective Date of Rules.*

Each rule under this subchapter applies to each program for which an institution has submitted a required Planning Notification on or after June 1, 2023. For a proposed program not required to submit a Planning

Notification, these rules apply to a program submitted for notification or approval on or after September 1, 2023.

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 G. APPROVAL PROCESS  
FOR NEW DOCTORAL AND PROFESSIONAL  
DEGREE PROGRAMS**

**19 TAC §§2.140 - 2.153**

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter G, Approval Process for New Doctoral and Professional Degree Programs, §§2.140 - 2.153, with changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4234). The rules will be republished. The changes include language that clarifies Coordinating Board acknowledgment, not approval, of graduate medical education plans in §2.144.(b), the addition of language to reflect faculty participation in multidisciplinary or interdisciplinary programs in §2.146(b)(C)(3), clarity on language for programs that offer external learning experiences in §2.146(b)(C)(A)(6)(IV)(iv), and the addition of language to offer flexibility on the criteria doctoral and professional programs must meet outside of accreditation bodies such as the Council of Graduate Schools in §2.146(b)(C)(A)(6)(IV)(v).

Texas Education Code §61.051 tasks the Board with coordinating the efficient and effective use of higher education resources and avoiding unnecessary duplication. Texas Education Code §61.0512 states that a public institution of higher education may not offer any new degree program, including doctoral and professional degrees, without Board approval. Texas Education Code §61.05122 requires institutions to submit a plan for graduate medical education ahead of submitting an M.D. or D.O. proposal.

This subchapter sets up a uniform, fair process for institutions to submit requests for new doctoral and professional degree programs. Each rule sets out the steps which institutions must take, and standards proposed programs must meet in a methodical, chronological fashion. This subchapter also establishes, for the first time, rules carrying out several statutory provisions, including Texas Education Code §61.05122 requiring an institution requesting a new medical program to submit a plan to provide sufficient Graduate Medical Education.

Rule 2.140, Purpose, sets out the purpose of the subchapter to establish a process for public universities and health-related

institutions to request approval of a new doctoral or professional degree.

Rule 2.141, Authority, lists the sections of the Texas Education Code that grant the Board authority to approve new degree programs.

Rule 2.142, Applicability, limits the applicability of the chapter to public universities and public health-related institutions.

Rule 2.143, Submission of Planning Notification, provides the information required for institutions to submit preliminary Planning Notifications to the Board, giving early notice that they intend to submit a proposal for a new doctoral or professional degree.

Rule 2.144, Graduate Medical Education Plan for New Medical Degree Programs, outlines steps institutions must take to come into compliance with Texas Education Code §61.05122, which requires institutions requesting a new M.D. or D.O. program to submit a plan to support sufficient Graduate Medical Education slots for graduates as well.

Rule 2.145, Presentation of Requests and Steps for Implementation, sets out the steps an institution must follow in order to request a new doctoral or professional degree, as well as the approval procedures Board Staff must follow for these programs. This process is aligned with each subchapter in this chapter.

Rule 2.146, Criteria for New Doctoral and Professional Degree Programs, lists the standards that proposed doctoral and professional programs must meet for approval. In addition to fulfilling the standard new program criteria contained in subchapter A, this rule contains criteria specific to the doctoral or professional degree program type. Texas Education Code §61.0512(c) lists criteria the Board must use to evaluate a proposed program, including program need, adequate financing, necessary faculty and other resources, and academic standards. Rule 2.146 develops those criteria in greater detail, tailoring them for doctoral and professional programs (for example, by requiring faculty for the proposed program to have experience in supervising doctoral dissertations). This rule references back to the general criteria in §2.5 that apply to all new degree programs. New §2.146 incorporates the statutory minimum and additional criteria in one place so that each institution will know what criteria the institution must meet to obtain program approval. These new criteria, by reference back to §2.5, will ensure that new degree programs are better aligned with the Board's revised Long Range Master Plan for Higher Education. The plan in effect at this time of this proposal, *Building a Talent Strong Texas*, focuses on providing credential of value to students and limiting student debt to what is manageable based on the credential.

Rule 2.147, Embedded Master's Degree, allows institutions receiving approval for a doctoral degree to also offer a master's degree embedded within the larger doctoral program, giving doctoral students who do not complete their program the possibility of still earning a degree. This was permissible in practice in many circumstances, but inclusion in the rule makes the process clear as to what approval an institution must obtain to offer an embedded degree. This policy benefits students by providing a credential for those who do not complete a doctoral program and provides clarity and direction to institutions about how to offer this type of degree.

Rule 2.148, Approval and Semester Credit Hours, relates to formula implications stemming from the number of semester credit hours in a doctoral program. Texas Education Code §61.059(l) states that, to receive formula funding, doctoral programs over

100 semester credit hours must provide the Board with evidence of a compelling academic reason why the program needs to be over 100 hours. Under the same provision, doctoral programs over 130 semester credit hours may not receive formula funding. Rule 2.148 states that the institution may submit this compelling academic reason to the Board as part of the initial approval request for proposed doctoral programs over 100 semester credit hours. This will streamline the process for institutions and create a clear process for reporting these hours.

Rule 2.149, Non-Compliance with Approval Conditions, describes what happens if a new doctoral or professional program does not fulfill all conditions of its approval. Board Staff will notify the institution in writing of its failure to meet the conditions of approval. If the institution does not respond to or remedy the deficiencies, Board Staff may recommend that the Board issue a show cause letter to the institution. The institution will have a one-year period to respond to the show-cause letter. If the institution does not respond or remedy the contingencies and conditions of approval, Board Staff may recommend to the institution to phase out the program; if the institution does not respond, Board Staff may send the recommendation to the institution's governing board. If the institution or its governing board take no further action the institution must identify the program recommended for closure in its Legislative Appropriations Request. This process provides clarity to the Board Staff and to institutions about expectations, process, and consequences for non-compliance while remaining aligned with the Board's authority and role set out in statute. This new rule language closely parallels existing processes in current rules.

Rule 2.150, Post-Approval Program Reviews, states that Board Staff will conduct post-implementation reviews in accordance with subchapter I. This process is substantially similar to the current process.

Rule 2.151, Revisions to Approved Doctoral or Professional Programs, states that an institution may request a revision or modification in line with subchapter A, §2.7. The new rules are much more specific, clear, and predictable about what types of revisions require approval and what type of approval. This process is both streamlined, but also more robust, in that it ensures significant revisions receive appropriate review.

Rule 2.152, Phasing Out a Doctoral or Professional Program, states that an institution wishing to phase out a doctoral or professional program may follow the process set forth in subchapter H. This process is substantially similar to the current process.

Rule 2.153, Effective Date of Rules, states that the rules become effective for proposals with required Planning Notifications submitted on or after June 1, 2023. For programs not requiring a Planning Notification submission, the rules become effective if the proposal is submitted on or after September 1, 2023.

The following comments were received regarding the adoption of the new rules.

Comment: Six institutions raised concerns that requiring a submission of a planning notification one year before submitting a full doctoral proposal would extend the timeline. The institutions did not agree with waiting a year after submitting a planning notification before submitting a full doctoral proposal.

Response: To develop a new doctoral program is a substantial effort at institutions and often involves significant resources. It is reasonable that when an institution begins the planning for the program that it would take a year before submitting the full pro-



posal. This planning notification a full year before submitting the full proposal will allow Coordinating Board staff time to plan for the rigorous review that is required for a new doctoral program.

Comment: One institution identified that the Texas statute (Tex. Educ. Code §61.05122) calls solely for notification and not approval for the GME Plan for New Medical Degree Programs.

Response: The Coordinating Board concurs with the recommendation to revise the language from "approve" to "acknowledge".

Comment: Three institutions raised concerns regarding §2.146(b)(C)(3), which details the Faculty and Resources required for a new doctoral and professional degree program. This section also requires that an institution must provide an approved hiring schedule demonstrating the ability to hire any additional faculty appropriate to support the projected number of enrolled students. These institutions raised concerns about using the term department and recommend revising "department" to include the possibility of additional departments or units that may participate in multidisciplinary or interdisciplinary programs.

Response: The Coordinating Board concurs with the recommendation to revise the language to include "unit."

Comment: One institution raised additional questions about faculty hiring in §2.146(b)(C)(3). The institution stated that, while reasonable to provide an approved hiring schedule, sometimes institutions cannot adhere to those hiring schedules because of unforeseen circumstances such as the recent pandemic. The institution stated that it is not realistic to provide documentation for future faculty hires like their letter of intent, curriculum vitae, or equivalent documentation at the time of proposal development.

Response: Statute does require the Coordinating Board to take into account adequacy of the faculty in approving new programs: the board must ensure the program "has necessary faculty and other resources to ensure student success." Tex. Educ. Code §61.051(c)(3). While some interdisciplinary programs may span multiple departments, the rule requires the institution to submit at least one core faculty member active in the department offering the proposed program""in the case of an interdisciplinary program, the institution should submit at least one faculty member from at least one of the sponsoring departments.

The Coordinating Board acknowledges that unforeseen circumstances may hinder institutions' ability to execute on future hiring plans. Coordinating Board staff has worked with applicants in the past to provide needed flexibility in emergent situations, and will continue to do so.

Section 2.146(b)(3) states that institutions must provide documentation "on a schedule determined by Board Staff" of faculty hires for the proposed program. The draft rule language is precisely identical to existing rule and practice, which have been in place for many years. In current practice, institutions do not provide documentation of faculty hires at the time of the proposal's submission; instead, institutions submit this documentation to the Coordinating Board after approval once the hires are made, as proof they have carried out the faculty hiring plan outlined in the initial proposal.

Comment: One institution commented that in §2.146(b)(C)(A)(6)(IV)(iv), the phrase, "in disciplines that require them" should be inserted at the beginning of the sentence to clarify that some doctoral programs will require external learning experiences.

Response: The Coordinating Board concurs with the recommendation to revise the language to include, "in disciplines that require them."

Comment: One institution clarified that for rule 2.146(b)(C)(A)(6)(IV)(v) accreditation standards by other bodies are not required for each proposed doctoral program and requested that the language be clarified that some doctoral programs may need to meet the criteria other than accreditation boards such as the Council of Graduate Schools, MLA, etc.

Response: The Coordinating Board concurs with the recommendation to revise the language to include, "where relevant."

Comment: Two institutions requested clarity on the institutional demonstration of comprehensive assistance packages for doctoral proposals.

Response: The details of what will be considered to determine a comprehensive assistance package will be determined if the rules are adopted during the implementation phase.

Comment: One institution requested that a bachelor's degree in the same CIP Code as a pre-existing graduate degree have the same option to seek expedited approval as embedded master's degrees under this section.

Response: The embedded master's degree provides an off-ramp for students who do not complete their doctoral program. Students are given the opportunity to apply graduate credit accumulated towards their Ph.D. program towards a master's degree. Embedded credentials are defined in 2.3(17) as programs of study that enable a student to earn a credential that is wholly embedded with the degree program. Since students generally enroll in graduate school *after* completing their baccalaureate program, undergraduate programs are not considered embedded credentials within a graduate program. The coursework for the bachelor's and graduate degrees is different; in contrast, students will be able to count the same coursework in their Ph.D. program towards their master's degree.

Comment: One institution requested clarification as to whether the conditions of approval is the same as the "Annual Progress Report" process or whether this is a separate process, noting that if it is separate that it is a duplication of an existing process, but if it is a replacement of the 1-, 3-, and 5-year reports that would be helpful.

Response: This provision is not intended to be a new, separate process, but rather to formalize existing Coordinating Board processes. The Coordinating Board will at times approve programs with conditions of approval, for example to execute the institution's stated plan to hire sufficient faculty members for a high-quality doctoral program. Staff will receive follow-up reports from the institution on implementation of those conditions of approval at regular intervals.

The new sections are adopted under Texas Education Code §61.051, which provides the Board with the authority to coordinate the efficient and effective use of higher education resources and avoid unnecessary duplication; Texas Education Code §61.0512, which states that a public institution of higher education may not offer any new degree program, including doctoral and professional degrees, without Board approval; Texas Education Code §61.05122, which requires institutions to submit a plan to the Board for graduate medical education ahead of submitting an M.D. or D.O. proposal; and Texas Education Code §61.001 which charges the agency to provide leadership and coordination for the Texas higher education

system, institutions, and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants.

The adopted new rules affect Texas Education Code §§61.051, 61.0512, 61.05122, and 61.059(l).

§2.140. *Purpose.*

The purpose of this subchapter is to establish the process for public universities and public health-related institutions to request new doctoral or professional degrees from the Board.

§2.141. *Authority.*

The authority for this subchapter is Texas Education Code §§61.051 and 61.0512, which provide that no new degree program may be added at any public institution of higher education except with specific prior approval of the Board. In addition, Tex. Educ. Code §61.05122 requires institutions to submit a plan for graduate medical education ahead of submitting an M.D. or D.O. proposal.

§2.142. *Applicability.*

This subchapter applies to public universities and public health-related institutions as defined under subchapter A of this chapter.

§2.143. *Submission of Planning Notification.*

An institution of higher education must submit a Planning Notification to Board Staff in accordance with subchapter C, §2.41 of this chapter (relating to Planning Notification: Notice of Intent to Plan), at least one year prior to submitting an administratively complete request for a new doctoral or professional degree.

§2.144. *Graduate Medical Education Plan for New Medical Degree Programs.*

(a) In addition to submitting a Planning Notification under subchapter C, §2.41 of this chapter (relating to Planning Notification: Notice of Intent to Plan), an institution of higher education seeking approval to offer a doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) professional degree must also submit a graduate medical education plan, in accordance with Tex. Educ. Code §61.05122. Submission of this plan is a prerequisite to Board consideration of the proposed degree program.

(b) Board Staff may acknowledge the graduate medical education plan if the institution's plan meets all the requirements of Tex. Educ. Code §61.05122. Board Staff may request additional information as necessary to determine if the requirements of Tex. Educ. Code §61.05122 are met.

(c) An institution that experiences substantial growth in an individual enrollment class size after Board Staff approves the graduate medical education plan must submit an updated plan that meets the requirements of Tex. Educ. Code §61.05122(d-1) not later than one academic term after experiencing substantial growth.

(1) For the purpose of this section, "substantial growth" is defined as an increase in enrollment that would require additional first-year residency positions to achieve a ratio for the number of first-year graduate medical education positions, relative to the number of medical school graduates in the state, of at least 1.1 to 1.

(2) The Assistant Commissioner shall approve the updated graduate medical education plan if the institution's plan meets all the requirements of Tex. Educ. Code §61.05122. Board Staff may request additional information as necessary to determine if the requirements of Tex. Educ. Code §61.05122 are met.

§2.145. *Presentation of Requests and Steps for Implementation.*

(a) The requesting institution must submit a Planning Notification in accordance with subchapter C, §2.41 of this chapter (relating to Planning Notification: Notice of Intent to Plan), at least one year prior to submitting an administratively complete program proposal.

(b) Each institution must request new doctoral and professional degree programs using the New Doctoral and Professional Degree Proposal Form available on the Board's website.

(c) Board Staff will make the determination of administrative completeness in accordance with subchapter A, §2.6 of this chapter (relating to Administrative Completeness).

(d) Board Staff shall utilize out-of-state disciplinary experts to assist in the review process to evaluate the quality of a proposed doctoral or professional program. The institution submitting the proposal is responsible for paying the costs of the external review.

(e) Each proposed doctoral and professional degree program is subject to Board Approval under subchapter A, §2.4(4) of this chapter (relating to Types of Approval Required).

(f) Upon Board approval, Board Staff will add the new doctoral or professional program to the institution's official Program Inventory. The Program Inventory contains the list of programs with official Board approval.

§2.146. *Criteria for New Doctoral and Professional Degree Programs.*

(a) All proposed doctoral and professional degree programs must meet the criteria set out in this subsection, in addition to the general criteria in subchapter A, §2.5 of this chapter (relating to General Criteria for Program Approval).

(b) Each institution must provide evidence in its application that a proposed doctoral and professional program meets the following criteria.

(1) Program Need. To meet the requirements of subchapter A, §2.5(a)(1) and (2) of this chapter, the institution must be able to demonstrate present and future workforce need of the state and nation. There should be a ready job market for graduates of the program. In assessing the need for the program, the institution should consider labor market information and other data provided by Board Staff in response to the institution's Planning Notification. While Board Staff may also recommend or use generally available information to assess the need for the program, particularly in cases where labor market needs are changing rapidly, it is the responsibility of the institution requesting a doctoral or professional program to demonstrate that a workforce need for the proposed program exists. Acceptable documentation includes:

(A) An analysis of national data showing the number of doctoral or professional degrees being produced annually in the discipline and comparing that to the numbers of professional job openings for those degrees in the discipline as indicated by sources such as the main professional journal(s) of the discipline.

(B) The institution must also provide data on the enrollments, number of graduates, and capacity to accept additional students of other similar doctoral programs in Texas, demonstrating that current production levels of graduates are insufficient to meet projected workforce needs. The Board may consider local, state, or national workforce needs in this analysis.

(C) The institution should also provide evidence of student demand for a doctoral program in the discipline, such as potential student survey results and documentation that qualified students are not gaining admission to existing programs in Texas.

(2) Adequate Financing. In assessing whether the program meets the requirements of subchapter A, §2.5(a)(4) and (5) of this chapter, the program must demonstrate that there is adequate financing available to initiate the proposed program without reducing funds for existing programs or weakening them in any way. For doctoral programs, institutions shall offer comprehensive financial assistance packages to recruit and retain high-quality doctoral students.

(3) Faculty and Resources. In assessing the criteria under subchapter A, §2.5(a)(7) of this chapter, Board Staff shall ensure that each institution demonstrates a strong core of qualified doctoral faculty capable of guaranteeing a high-quality doctoral program with the potential to attain national prominence. The institution must employ at least one core faculty member active in the department or unit offering the proposed program at the time of application. The institution must also provide an approved hiring schedule demonstrating the ability to hire any additional faculty appropriate to support the projected number of enrolled students. The institution must provide documentation on a schedule determined by Board Staff of the faculty hires through submission of a letter of intent, curriculum vitae or equivalent documentation of faculty credentials in a format determined by the Board, and a list of courses in the curriculum that the faculty hire would be qualified to teach. The program must not result in such a high ratio of doctoral students to faculty as to make individual guidance prohibitive. Evidence of quality faculty may include:

(A) Doctoral faculty, holding the Doctor of Philosophy degree or its equivalent from a variety of graduate schools of recognized reputation.

(B) Professors and associate professors have achieved national or regional professional recognition.

(C) Core faculty are currently engaged in productive research and have published the results of such research in the main professional journals of their discipline.

(D) Faculty come from a variety of academic backgrounds and have complementary areas of specialization within their field.

(E) Some doctoral faculty have experience directing doctoral dissertations.

(F) In evaluating faculty resources for proposed degree programs, the Board shall consider only those degrees held by the faculty that were issued by:

(i) United States institutions accredited by accrediting agencies recognized by the Board; or

(ii) institutions located outside the United States that have demonstrated that their degrees are equivalent to degrees issued from an institution in the United States accredited by accrediting agencies recognized by the Board.

(4) Support Staff. Each program must have an adequate number of support staff to provide sufficient services for both existing programs and any proposed increases in students and faculty in the proposed program.

(5) Facilities and Resources. To meet the criteria in subchapter A, §2.5(a)(7) of this chapter, each program must include adequate facilities and resources to accommodate the program, including:

(A) Office space for the faculty, teaching assistants, and administrative and technical support staff; seminar rooms; computer and electronic resources; and other appropriate facilities such as laboratories.

(B) Library and IT Resources. Library and information technology resources must be adequate for the proposed program and meet the standards of the appropriate accrediting agencies. Library resources should be strong in the proposed doctoral program field and in related and supporting fields.

(6) Quality of the Program and Alignment with the Long-Range Plan. In addition to meeting the criteria in subchapter A, §2.5(a)(6) and (8) of this chapter, an institution must demonstrate the quality of a proposed program by the meeting the following:

(A) An institution shall be required to utilize disciplinary experts to review the proposed program to assess the overall quality of the program.

(B) Elements of a high-quality program, may include, but are not limited to:

(i) Design of proposed program as evidenced by the program's ability to prepare a graduate student for teaching, creative activities, research, or other professional activities. The program must be characterized by freedom of inquiry and expression.

(ii) Availability of quality undergraduate and graduate programs in a wide number of disciplines at the undergraduate and master's levels. The institution must also offer high-quality programs in other related and supporting doctoral areas.

(iii) Quality Planning. The proposed program shall be carefully planned and result in a degree plan that is clear, comprehensive, and generally uniform. The program may include flexibility to meet the legitimate professional interests of doctoral-level degree or professional degree students. Evidence of a carefully planned, high-quality program includes:

(I) A logical sequence of degree requirements;

(II) Alternative methods of determining mastery of program content, such as competency-based education, prior learning assessment, and other options for reducing students' time to degree;

(III) Specialization and breadth of education, with rules for the distribution of study to achieve both, including interdisciplinary programs if indicated; and

(IV) A research dissertation or equivalent requirements to be judged by the doctoral faculty on the basis of quality.

(v) External Learning Experiences. In disciplines that require them program must include plans for external learning experiences for students, such as internships, clerkships, or clinical experiences, in disciplines that require them.

(vi) Accreditation Standards. Each proposed program shall meet the criteria of its accrediting Board and doctoral or professional program criteria of relevant professional groups and organizations, such as the Council of Graduate Schools, the Modern Language Association, the American Historical Association, the Accreditation Board for Engineering and Technology, or other bodies where relevant to the particular discipline.

(vii) Teaching Loads of Faculty. Unless justification is provided in the application, teaching loads of faculty in the doctoral or professional program should not exceed two courses per term. The mix of courses shall include advanced courses and seminars with low enrollments.

*§2.147. Embedded Credential: Master's Degree.*

An institution may offer a master's degree as an embedded credential in the same, a related, or supporting field to a student who enrolled in a

doctoral program. The institution may request approval for the master's degree:

(1) in the application for the doctoral program; or

(2) may request the master's degree program subject to Expedited Review under subchapter A, 2.4 of this chapter, if the institution already offers an approved doctoral program in the same CIP Code.

*§2.148. Approval and Semester Credit Hours.*

(a) The Board shall review and approve or deny a proposed doctoral or professional degree in accordance with the applicable provisions under subchapter A and this subchapter.

(b) If the Board approves a program that requires more than 100 semester credit hours, that program is deemed to meet the requirements for formula funding of doctoral students over 100 credit hours, but not to exceed 130 semester credit hours, set out in Tex. Educ. Code §61.059.

*§2.149. Non-Compliance with Approval Conditions.*

(a) If a new doctoral or professional degree program fails to satisfy all conditions of approval by the end of the first five years following program implementation, Board Staff shall notify the institution in writing of its deficiencies. Within sixty days of receipt of notification, the program shall:

(1) provide to Board Staff a written report containing the institution's findings as to why all conditions of approval were not met;

(2) submit a written plan describing how the program will fulfill all unsatisfied conditions of approval within one year; and

(3) at the end of the one-year period provide a report to Board Staff on whether all unsatisfied conditions of approval have been fulfilled.

(b) If the institution fails to respond or fails to remedy the deficiencies or non-compliance in accordance with subsection (a) of this section, Board Staff may recommend that the Board issue a show cause letter to the institution in accordance with subsection (c) of this section.

(c) If the Board approves the issuance of a show cause letter to a new doctoral degree or professional program that fails to satisfy all remaining conditions of approval during the one-year period referenced in subsection (a)(2) of this section, the institution shall be required to show cause why the Board shall not revoke the program approval and require teach-out and closure of the program.

(d) Program Closure and Teach-Out. If it is determined that a new doctoral degree program fails to satisfy all contingencies and conditions of approval, after responding to the show cause notice in subsection (b) of this section, Board Staff may notify the institution in writing with a recommendation to eliminate the program.

(e) If the institution chooses not to follow the recommendation, Board Staff may send the recommendation to the governing board of the institution. If the governing board does not accept the recommendation to eliminate the program, then the university system or, where a system does not exist, the institution must identify the programs recommended for closure by the Board on the next legislative appropriations request submitted by the system or institution.

*§2.150. Post-Approval Program Reviews.*

Board staff shall conduct post-approval reviews in accordance with subchapter I of this chapter.

*§2.151. Revisions to Approved Doctoral or Professional Programs.*

An institution may request a non-substantive or substantive revision or modification to an approved doctoral or professional program un-

der subchapter A, §2.7 of this chapter (relating to informal Notice and Comment of Proposed Local Programs).

*§2.152. Phasing Out a Doctoral or Professional Program.*

An institution may request to phase out a doctoral or professional program under subchapter H of this chapter.

*§2.153. Effective Date of Rules.*

Each rule under this subchapter applies to each program for which an institution has submitted a required Planning Notification on or after June 1, 2023. For a proposed program not required to submit a Planning Notification, these rules apply to a program submitted for notification or approval on or after September 1, 2023.

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 H. PHASING OUT DEGREE AND CERTIFICATE PROGRAMS

### 19 TAC §§2.170 - 2.172

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter H, Phasing Out Degree and Certificate Programs, §§2.170 - 2.172, with changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4238). The rules will be republished.

Texas Education Code §61.0512 gives the Board authority to approve new degree and certificate programs. The Board maintains a list of approved and active programs for each institution in a Program Inventory. This rule outlines procedures for maintaining the Program Inventory by creating a process for phasing out programs.

Rule 2.170, Authority, lists the section of the Texas Education Code that grants the Board authority to approve new degree and certificate programs. This authority necessitates an accurate list of approved and active programs.

Rule 2.171, Program Phase-Out Notifications, outlines the procedures and information needed to remove a program from the Board's Program Inventory. Requiring this information allows the Board to keep an accurate list of approved programs.

Rule 2.172, Effective Date of Rules, states that the rules become effective for a program an institution wants to phase out on or after September 1, 2023.

The following comments were received regarding the adoption of the new rules.

Comment: Six institutions requested clarification regarding the timing of the teach-out plan submission, as this document is typically developed first in the process. In addition, some of these institutions requested evaluation of whether the rule is duplicative, as the current proposed rule requires two similar notifications, one that is submitted with a teach-out plan and one that is submitted when a program is finally closed. In addition, one institution requested removal of the reference to the SACSCOC, as SACSCOC is no longer the required institutional accreditor.

Response: The Coordinating Board agrees that only one notification of program closure is necessary, and further agrees with the institutions' proposed changes to the order in which documentation should be submitted to move the teach-out plan first. The rules will be amended to reflect that the institution must only submit a notice of intent to close a program, and otherwise only notify the Coordinating Board if that plan changes.

The Coordinating Board agrees with the suggestion to amend the language of the rule to reflect an accreditor-agnostic approach as follows:

In 2.171(a), renumber (3) ("develop and execute a teach-out plan;") to be (1); renumber the rest of the list accordingly.

In 2.171(a), strike out "(6) notify the Board when the program is finally closed." In 2.171(d), add the following sentence at the end: "If the institution chooses not to phase a program out after providing prior notification to the Coordinating Board of intent to phase out the program, the institution must submit an update that the program will continue to Board Staff."

In 2.171(a)(1), amend to say: "(1) give appropriate notification to the federally-recognized institutional accreditor and the Program's accreditor, as applicable;"

The new sections are adopted under Texas Education Code §61.0512, which provides the Board with the authority to approve new degree or certificate programs.

The adopted new rules affect Texas Education Code §61.0512.

#### §2.170. Authority.

Texas Education Code §61.0512 gives the Board authority to approve new degree or certificate programs. The Board maintains the list of approved programs in a Program Inventory for each institution. Establishing a phase-out procedure for programs ensures the accuracy of the Program Inventories, which is necessary for the Board to carry out its duties under Tex. Educ. Code §61.0512.

#### §2.171. Program Phase-Out Notification.

(a) If the institution where the program is located wishes to close the program, the institution shall:

- (1) develop and execute a teach-out plan;
- (2) give appropriate notification to the federally-recognized institutional accreditor and the Program's accreditor, as applicable;
- (3) cease to admit new students to the program;
- (4) ensure that all courses necessary to complete the program are offered on a timely basis; and
- (5) close the program when the last student enrolled in the program has graduated or the teach-out period has lapsed.

(b) Public institutions of higher education must notify Board Staff of intent to phase out a degree or certificate program prior to closure of the program.

(c) The institution shall provide the information required in this section by submitting the Phase Out Notification Form on the Board's website. The notification form will require the institution to submit the following information:

- (1) The name, designation, and CIP Code of the degree or program, as listed in the institution's Program Inventory; and
- (2) The anticipated closure date of the program.

(d) Upon receiving the Phase Out Notification Form, Board Staff will update the institution's Program Inventory to reflect the phase-out date of the program. Board Staff will remove the program from the Program Inventory at the time of the date of closure, as reported by the institution. If the institution chooses not to phase a program out after providing prior notification to the Coordinating Board of intent to phase out the program, the institution must submit an update that the program will continue to Board Staff.

#### §2.172. Effective Date of Rules.

This rule applies to a program that an institution seeks to close on or after September 1, 2023.

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 I. REVIEW OF EXISTING DEGREE PROGRAMS

### 19 TAC §§2.180 - 2.184

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter I, Review of Existing Degree Programs, §§2.180 - 2.184, with changes to the proposed text as published in the July, 22, 2022, issue of the *Texas Register* (47 TexReg 4239). The rules will be republished. The changes include clarification of the process for undergraduate program review in §2.181(c), several amendments in §2.181 to broaden graduate programs included in the review cycle, and changes to §2.181(d) and §2.181(e) that allow for criteria for graduate program review to be specified during the implementation process.

Texas Education Code §61.0512(e) requires the Board to review each degree or certificate program offered by an institution of higher education at least every ten years. Texas Education Code §130.311 applies to baccalaureate degrees offered by public junior colleges and requires program review each biennium. The rules outline how the Board meets statutory requirements regarding existing program review.

Rule 2.180, Authority, lists the sections of the Texas Education Code that require program review.

Rule 2.181, Academic Programs at Public Universities and Health-Related Institutions, outlines the criteria for review of existing baccalaureate, master's, doctoral, and professional programs at public universities and health-related institutions. The new rule makes explicit the expectations and process by which the Board fulfills the obligations of Tex. Educ. Code §61.0512(e). This process provides an opportunity for the institution to routinely engage in a continuous improvement process through examination of its own baccalaureate programs. The rule provides a comprehensive list of criteria by which each institution and the Board should assess degree programs. These criteria exist in the current rules and were developed to ensure that each institution's programs are high-quality and relevant.

Rule 2.182, Doctoral and Professional Degree Programs, outlines the criteria for review of new doctoral or professional degree programs at public universities and health-related institutions. These criteria exist in the current rules and were developed to ensure that each institution's programs are properly and successfully implemented consistent with the program's approval.

Rule 2.183, Baccalaureate Degree Programs at Public Junior Colleges, outlines criteria for review of baccalaureate degree programs at public junior colleges. This process provides an opportunity for the institution to routinely engage in a continuous improvement process through examination of its own baccalaureate programs. This review requirement in this rule aligns with statutory requirements for reviews for these types of programs under Texas Education Code §130.311.

Rule 2.184, Effective Date of Rules, states that the rules become effective for proposed programs with Planning Notifications submitted on or after June 1, 2023; for all other programs, these rules become effective September 1, 2023.

The following comments were received regarding the adoption of new rules.

Comment: Three institutions submitted comments regarding the requirements for undergraduate program review. One institution stated that this would be a major change if all undergraduate programs need to undergo program review. One institution noted that there is not currently an existing Program Performance Review schedule for undergraduate programs. Another institution noted that the Existing Program Performance Review is based on CBM reports data, not incorporating a self-study, and requested clarification as to whether a self-study would be required going forward.

Response: The Legislature requires the Coordinating Board to conduct reviews of *all* degree and certificate programs, including undergraduate bachelor's degree programs: "The board shall review each degree or certificate program offered by an institution of higher education for at least 10 years after a new program is established." Tex. Educ. Code §61.0512(e). Staff intends to fulfill this requirement by using existing data collections and processes to meet this obligation. This rule does not require institutions to conduct a self-study review for undergraduate programs. Staff agrees to clarify this portion of the rule.

Comment: Four institutions made comments on the review criteria for master's and doctoral programs. Most institutions noted that the master's program review rules contain 19 criteria (§2.181(e)(6)), while the doctoral and professional program review rules contain 10 criteria (§2.181(d)(8)). Some institutions stated a preference for having more uniform criteria across the two program types.

Response: The Coordinating Board agrees with the recommendation to have uniform review processes for master's and doctoral degrees. The uniform criteria for review will be specified during the implementation process.

The new sections are adopted under Texas Education Code §§61.0512(e) and 130.311, which require the review of new and existing degree programs.

The adopted new rules affect Texas Education Code §§61.0512 and 130.311.

*§2.180. Authority.*

The authority for this subchapter is Texas Education Code §61.002, which directs the Board to coordinate higher education through efficient and effective use of resources and elimination of costly program duplication; Tex. Educ. Code §61.0512(e), which requires the Board to conduct reviews of programs at least every ten years after the program's establishment; and Tex. Educ. Code §130.311, which requires public junior colleges to issue a report on their baccalaureate programs to the Board.

*§2.181. Academic Programs at Public Universities and Public Health-Related Institutions.*

(a) Each public institution of higher education, in accordance with the requirements of the institution's approved accreditor, shall have a process to review the quality and effectiveness of existing degree programs and for continuous improvement.

(b) Board Staff shall develop a process for conducting a periodic audit of the quality, productivity, and effectiveness of each existing master's, doctoral, and professional degree program at a public institution of higher education.

(c) Board Staff will meet the requirements of program review established by Tex. Educ. Code §61.0512(e) by reviewing program data reported in the Accountability System for each undergraduate degree offered by a public institution of higher education in Texas.

(d) Each public university and public health-related institution shall review each of its master's, doctoral and professional degree programs at least once every ten years.

(1) On a schedule to be determined by the Commissioner, institutions shall submit a schedule of review for all graduate programs to the Assistant Commissioner with oversight of academic program approval.

(2) Each institution shall begin each review of a graduate degree program with a rigorous self-study.

(3) As part of the required review process, an institution shall use at least two external reviewers with subject-matter expertise who are employed by institutions of higher education outside of Texas. External reviewers must be provided with the materials and products of the self-study and must participate in a site review.

(4) External reviewers must be part of a program that is nationally recognized for excellence in the discipline.

(5) External reviewers must affirm that they have no conflict of interest related to the Board, the institution, or program under review.

(6) Closely-related programs, defined as sharing the same four-digit Classification of Instructional Programs code, may be reviewed in a consolidated manner at the discretion of the institution.

(7) Institutions shall review master's and doctoral programs in the same discipline simultaneously, using the same self-study materials and reviewers. Institutions may also, at their discretion, review

baccalaureate programs in the same discipline as master's and doctoral programs simultaneously.

(8) Institutions shall submit a report on the outcomes of each review, including the evaluation of the external reviewers and actions the institution has taken or will take to improve the program, and shall deliver these reports to Board Staff no later than 180 days after the reviewers have submitted their findings to the institution.

(9) Institutions may submit reviews of master's, doctoral, and professional programs performed for reasons of programmatic licensure or accreditation in satisfaction of the review and reporting requirements in this subsection.

(10) Each institution shall submit a report of the outcomes of each review, including the evaluation of the external reviewer(s) and actions the institution has taken or will take to improve the program, and shall deliver these reports to the Assistant Commissioner with oversight of academic approval not later than 180 days after the reviewer(s) have submitted their findings to the institution.

(11) Each institution may submit reviews of graduate programs performed for reasons of programmatic licensure or accreditation in satisfaction of the review and reporting requirements in this subsection.

(e) Board Staff shall review all reports submitted for a master's, doctoral, or professional degree program and shall conduct analysis as necessary to ensure high quality. The Commissioner may require an institution to take additional actions to improve its program as a result of Board review.

*§2.182. Doctoral and Professional Degree Programs.*

(a) Board Staff shall monitor a new doctoral or professional degree program for a period of five years following implementation of the program to ensure that any conditions of approval stipulated by the Board have been satisfied by the end of that period.

(b) The institution shall describe progress toward satisfaction of any conditions of approval to Board Staff in the new doctoral and professional program's annual reports to the Board.

(c) Board Staff shall not require a new doctoral or professional degree program that adequately satisfied all conditions of approval during the first five years following program implementation to submit further annual reports unless directed to do so by the Commissioner.

(d) The Commissioner may require any reporting necessary to determine whether the program remains in compliance with the terms of its program approval or these rules.

*§2.183. Baccalaureate Degree Programs at Public Junior Colleges.*

(a) Each public junior college offering a baccalaureate degree program under this subchapter shall conduct a review of each baccalaureate degree program offered and prepare a biennial report on the operation, quality, and effectiveness of the baccalaureate degree programs in a format specified by the Board. A copy of the report shall be delivered to the Board by January 1 of each odd numbered year.

(b) The Commissioner may require any reporting necessary to determine whether the program remains in compliance with the terms of its program approval, statute, or these rules.

*§2.184. Effective Date of Rules.*

Each rule under this subchapter applies to a review of a program for which an institution has submitted a required Planning Notification on or after June 1, 2023, or submitted its program approval request on or after September 1, 2023. For all other programs, including proposed programs not required to submit a Planning Notification, these rules apply on or after September 1, 2023.

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## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

#### CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

**22 TAC §§537.20, 537.28, 537.30 - 537.33, 537.37, 537.43, 537.46 - 537.48, 537.51, 537.58, 537.59**

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-15; §537.28, Standard Contract Form TREC No. 20-16; §537.30, Standard Contract Form TREC No. 23-17; §537.31, Standard Contract Form TREC No. 24-17; §537.32, Standard Contract Form TREC No. 25-14; §537.33, Standard Contract Form TREC No. 26-7; §537.37, Standard Contract Form TREC No. 30-15; §537.43, Standard Contract Form TREC No. 36-9; §537.46, Standard Contract Form TREC No. 39-8; §537.47, Standard Contract Form TREC No. 40-9; §537.48, Standard Contract Form TREC No. 41-2; §537.51, Standard Contract Form TREC No. 44-2; §537.58, Standard Contract Form TREC No. 51-0; and §537.59, Standard Contract Form TREC No. 52-0 with non-substantive changes to the rule text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5067), and with non-substantive changes to forms adopted by reference in Chapter 537, Professional Agreements and Standard Contracts. The rule text will be republished, and the non-substantive changes to the forms adopted by reference are available through the Commission's website at [www.trec.texas.gov](http://www.trec.texas.gov). The non-substantive changes to the rule text include updating the year of the approved form to 2022.

The amendments to Chapter 537 are made as a result of the Commission's quadrennial rule review. The changes to the existing rules add the title of the form adopted by reference in each rule to the rule title and add clarifying language to specify which forms are for mandatory versus voluntary use by license holders.

Each of the rules also include corresponding contract forms adopted by reference. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public

member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the amendments. The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale)*.

The term "Escrow Agent" is capitalized throughout the contract to reflect its status as a defined term.

Paragraph 3 is amended to add a definition of "cash portion of the sales price."

A new "required notices" section is added to Paragraph 6, which provides one location where MUD, PID, or other similar notices that have been given or are attached to the contract can be listed.

Paragraph 7.F is revised to require that the seller: (i) provide the buyer with copies of documentation from the repair person that shows both the scope of work and payment for the work completed; and (ii) transfer, at seller's expense, any transferable warranties at closing.

Paragraph 7.H is amended to replace the term "residential service company" with the terminology used by the Texas Department of Licensing and Regulation, which as of September 1, 2021, regulates residential service companies.

Paragraph 9.B(3) is amended to add the transfer of any warranties to correspond with the change in Paragraph 7F. New paragraph 9.B(5) provides that private transfer fees will be the obligation of the seller, unless otherwise provided in this contract and that transfer fees assessed by a property owner's association are governed by the Addendum for Property Subject to Mandatory Membership in a Property Owners Association. A similar sentence is added to the Residential Condominium Contract.

Paragraph 11 is amended to further clarify the intent of the paragraph by replacing the terms "factual statements" and "business details" with "informational items," which is now defined, and adding that real estate brokers cannot practice law and are prohibited from adding to, deleting, or modifying the contract unless drafted by a party to the contract or a party's attorney. Lines have also been inserted into the blank.

Paragraph 13 is amended to clarify what amounts will be prorated through the closing date.

Paragraph 18.B is amended to add that if no closing occurs, the escrow agent may require a written release of liability *before* releasing the earnest money.

Paragraph 21 is amended to add a line for a copy to the buyer's and seller's agent respectively.

In the Unimproved Property Contract, the Farm and Ranch Contract, the New Home Contract (Incomplete Construction), and the New Home Contract (Complete Construction), the Seller's Disclosures paragraph has been amended to: (i) add checkboxes to each disclosure item to indicate whether the seller is or is not aware; and (ii) add two additional disclosures relating to whether the property is located in a floodplain or if any tree located on the property has oak wilt.

The Farm and Ranch Contract contains the following additional changes:

-A notice is added that states the form is designed for use in sales of existing farms or ranches of any size, and that it's not for use in complex transactions.

-Paragraph 2.A adds the term "Counties" to reflect the fact that farm and ranch properties could be located across two or more counties. Additionally, the phrase "including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships" is deleted from the paragraph.

-Paragraph 2.B is amended to make the terms "house" and "garage" plural.

-Paragraph 3.D is amended to alter the calculation of the sales price adjustment should the survey reveal a difference in acreage.

-New paragraph 4.D is added to address surface leases and includes options regarding whether the seller has delivered copies of written leases or provided notice of oral leases to the buyer, similar to the existing natural resource lease paragraph. The corresponding language in Paragraph 6.F is also amended.

-On page 10 of the Contract, the statement "Do not sign if there is a separate written agreement for payment of Brokers' fees" is being modified to make it more conspicuous.

The Residential Condominium Contract contains the following additional changes:

-Paragraph 2.B(2) and 2.C(2) are amended to clarify the timing related to termination and to add a reference to the applicable Property Code provision.

-Paragraph 12.A(3) is amended to except regular periodic maintenance fees, assessments, or dues (including prepaid items) that are prorated under Paragraph 13 from the parties' obligation to pay under this section, as well as costs and fees provided by Paragraph 2.

The Amendment to Contract is amended to add a notice to consult an attorney and to add a reference to Paragraph 7 of the contracts in Paragraph 2 of the Amendment dealing with repairs. The form is also amended to replace the parenthetical following Paragraph 9, Other Modifications, with a statement that real estate brokers and sales agents are prohibited from practicing law. Lines have also been inserted into the blank.

The Seller Financing Addendum contains the following amendments:

-A notice encouraging consultation with an attorney and a financial professional and informing parties of the complicated nature of these transactions is added to the top of the form.

-Paragraph B is amended to modify the time period within which the seller may terminate.

-A new instructional parenthetical is added in Paragraph C. Additionally, the interest is modified to reflect a per annum interest rate.

-Paragraph D.2(a) and (b) are amended to clarify the casualty insurance requirements and new paragraph D.2 is added to address casualty insurance.

-Paragraph D.2(b) is further amended to add a requirement that the seller provide the buyer with an annual accounting of the escrow account, use escrow deposits to pay taxes and insurance premiums in a timely manner in certain circumstances, and hold the escrow deposit in a separate account. Language is also added to specify whether the escrow account will or will not be serviced by a third-party servicer at either the buyer's or seller's expense.



The Addendum for Property Subject to Mandatory Membership in a Property Owners Association is amended to except regular periodic maintenance fees, assessments, or dues (including prepaid items) that are prorated under Paragraph 13 from the parties' obligation to pay under this section, as well as costs and fees provided by Paragraphs A and D.

The Third Party Financing Addendum is amended to add an "other financing" box in Paragraph 1. Paragraph 3 is amended to add that a note must be secured by vendor's and deed of trust liens only if required by the buyer's lender. Finally, the phrase "provided in relation to the closing of this sale" is struck from Paragraph 5.B to streamline the paragraph.

Both the Addendum Regarding Residential Leases and the Addendum Regarding Fixture Leases are amended to add a checkbox in Paragraph B.1 related to notice of oral leases. Additionally, the Addendum for Disclosure of Fixture Leases is amended to modify Paragraph A.1 to include checkboxes, in lieu of a blank line, so that the parties can specifically indicate what types of fixture leases will be assumed and assigned.

The Loan Assumption Addendum contains the following amendments:

- "Effective Date" and "Title Company" are capitalized throughout.

- Paragraph A is amended to add that the noteholder of the loan being assumed is authorized to receive a copy of the buyer's credit reports.

- Paragraph B is amended to modify the time period within which the seller may terminate.

- Paragraph C is amended to clarify that the buyer will assume in writing the following notes at closing, to remove the reference to \$500 and instead insert a blank, and to add the following sentence: "Within 7 days after the Effective Date, Seller will deliver to Buyer copies of the note(s) to be assumed, the deed(s) of trust, and the most recent loan statement(s) from the lender."

- New paragraph H is added related to authorization to release information.

- A new due on sale notice is added.

The Addendum for Reservation of Oil, Gas, and Other Minerals is amended to replace the phrase "reserve and retain implied" with "waive" in Paragraph C. The term "current" is added to "contact information" in Paragraph D.

One hundred twenty-three comments were received. The Broker-Lawyer Committee (committee) met on October 14, 2022, and addressed each comment received.

Texas Realtors submitted comments in agreement with the majority of changes made to the contract forms; however, the Association expressed concern regarding proposed changes to language in the Addendum for Property Subject to Mandatory Membership in a Property Owners Association, which is addressed below. Additionally, the Association recommended adding a provision of the Farm and Ranch contract and the Unimproved Property contract regarding like-kind property exchange. The committee declined to make such a change at this time.

The committee changed two typographical errors cited in two comments received from members of the public.

The committee received multiple comments regarding Paragraphs 3, 5, 6D, 6E, 7F, 7H, 9B(2), 11, and 18 in all contract

forms, Paragraph 7E of contract form nos. 9-15, 23-17, 24-17, and 25-14, and Paragraph 6F of 25-14.

In particular, the committee discussed at length multiple comments related to language in Paragraph 3 regarding disclosure of "Cash portion of the Sales Price" as it relates to an individual's privacy. The committee determined the language as proposed provided the best route to disclosure related to hard money in a real estate transaction and ultimately benefited the parties to the transaction. The committee also discussed the proposed changes to Paragraph 6E regarding required notices in response to comments, noting that the changes as proposed were an important step to better call attention to the required notices. The committee will continue to assess possible changes to the contract forms as it relates to the required notices under Paragraph 6E, but agreed the changes as proposed worked well.

The committee also discussed the proposed changes to Paragraph 11. 16 comments received were identical in language and were against the proposed changes to Paragraph 11 based on a concern that agents who were principals to a transaction could not draft language. The committee noted there was an exception to anyone who was a party to the transaction, which would include license holders who are also principals, to draft language. The committee noted this appeared to be an education issue for license holders and not a conflict with statute or rule. Ultimately, the committee declined to make any additional changes to Paragraphs 3, 5, 6D, 6E, 7F, 7H, 9B(2), 11, and 18 in all contract forms, Paragraph 7E of contract form Nos. 9-15, 23-17, 24-17, and 25-14, and Paragraph 6F of 25-14.

In response to multiple comments regarding proposed changes to Paragraph 9(B)5, the committee added language to all contract forms, except for the Farm and Ranch and Condominium contracts, clarifying that transfer fees assessed by a property owner's association are governed by the Addendum for Property Subject to Mandatory Membership in a Property Owners Association. A similar change was made to Paragraph 9(B)5 of the Condominium contract to clarify that the paragraph does not apply to fees assessed by the Association.

In response to multiple comments received, the committee also clarified language regarding proration of prepaid items in Paragraph 13. The committee made corresponding edits in the Addendum for Property Subject to Mandatory Membership in a Property Owners Association to clarify that certain specified items are governed by Paragraph 13 and discussed the last sentence in that paragraph, which had been proposed by the committee at the request of the Texas Land Title Association (TLTA). Texas Realtors provided written comment regarding the language recommended by TLTA, stating that it had potential to create confusion. The committee decided to strike this language and determined the TLTA's concern regarding third party collections by an property owners' association was sufficiently addressed by the amendments to the addendum.

In response to multiple comments received, the committee added an extra line to Paragraph 21 for a second email/fax address for each of the parties, as well as lines specifically intended for copies to be sent to the buyer's and seller's agent. Also in response to multiple comments, the committee inserted the Public Improvement District Notice back into the list of addenda or notices that are attached to the contract in Paragraph 22. The committee capitalized "Escrow Agent" in the Third Party Financing Addendum and inserted the word "days" after "7" in Paragraph C of the Loan Assumption Addendum. The committee requested staff to modify the term "license holders"

to "brokers and sales agents" throughout all the forms, but not in the instructional box at the bottom of the forms. Finally, the committee decided to delete "as described on exhibit" in Paragraph 2A(1) in the proposed Condominium contract form.

The committee received multiple comments both solely related to being generally in favor of the proposed changes and being generally against the same proposed changes. The committee declined to make additional changes in response to the opposing comments and noted the new changes have been overall favorably received by license holders, real estate associations, and the title industry.

The Broker-Lawyer Committee recommended the Commission adopt the forms as modified.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

§537.20. *Standard Contract Form TREC No. 9-16, Unimproved Property Contract.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 9-16 approved by the Commission in 2022 for mandatory use in the sale of unimproved property where the intended use is for one to four family residences.

§537.28. *Standard Contract Form TREC No. 20-17, One to Four Family Residential Contract (Resale).*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 20-17 approved by the Commission in 2022 for mandatory use in the resale of residential real estate.

§537.30. *Standard Contract Form TREC No. 23-18, New Home Contract (Incomplete Construction).*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 23-18 approved by the Commission in 2022 for mandatory use in the sale of a new home where construction is incomplete.

§537.31. *Standard Contract Form TREC No. 24-18, New Home Contract (Completed Construction).*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 24-18 approved by the Commission in 2022 for mandatory use in the sale of a new home where construction is completed.

§537.32. *Standard Contract Form TREC No. 25-15, Farm and Ranch Contract.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 25-15 approved by the Commission in 2022 for mandatory use in the sale of a farm or ranch.

§537.33. *Standard Contract Form TREC No. 26-8, Seller Financing Addendum.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 26-8 approved by the Commission in 2022 for mandatory use as an addendum concerning seller financing.

§537.37. *Standard Contract Form TREC No. 30-16, Residential Condominium Contract (Resale).*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 30-16 approved by the Commission in 2022 for mandatory use in the resale of a residential condominium unit.

§537.43. *Standard Contract Form TREC No. 36-10, Addendum for Property Subject to Mandatory Membership in a Property Owners Association.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 36-10 approved by the Commission in 2022 for mandatory use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association.

§537.46. *Standard Contract Form TREC No. 39-9, Amendment to Contract.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 39-9 approved by the Commission in 2022 for mandatory use as an amendment to promulgated forms of contracts.

§537.47. *Standard Contract Form TREC No. 40-10, Third Party Financing Addendum.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form, TREC No. 40-10 approved by the Commission in 2022 for mandatory use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing.

§537.48. *Standard Contract Form TREC No. 41-3, Loan Assumption Addendum.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 41-3 approved by the Commission in 2022 for mandatory use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan.

§537.51. *Standard Contract Form TREC No. 44-3, Addendum for Reservation of Oil, Gas, and Other Minerals.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 44-3 approved by the Commission in 2022 for mandatory use as an addendum to be added to promulgated forms of contracts for the reservation of oil, gas, and other minerals.

§537.58. *Standard Contract Form TREC No. 51-1, Addendum Regarding Residential Leases.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 51-1 approved by the Commission in 2022 for mandatory use as an addendum to be added to promulgated forms of contracts as related to lease agreements.

§537.59. *Standard Contract Form TREC No. 52-1, Addendum Regarding Fixture Leases.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 52-1 approved by the Commission in 2022 for mandatory use as an addendum to be added to promulgated forms as related to fixture leases.

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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Abby Lee

Deputy General Counsel

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For further information, please call: (512) 936-3057



## 22 TAC §537.65

The Texas Real Estate Commission (TREC) adopts new rule §537.65, Standard Contract Form TREC No. 57-0, Notice to Prospective Buyer, without changes to the rule text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5067), and without changes to the form adopted by reference. The rule text will not be republished, but the adopted changes to the form adopted by reference are available through the Commission's website at [www.trec.texas.gov](http://www.trec.texas.gov).

The new rule is made as a result of the Commission's quadrennial rule review. The new rule pairs a previously existing form that was available for voluntary use by license holders with a rule to provide greater clarity about the form's purpose and use.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The new rule and form adopted by reference are recommended for adoption by the Texas Real Estate Broker-Lawyer Committee.

The Notice to Prospective Buyer form (which currently exists, but has not had a corresponding rule which adopts the form by reference) is amended to add a reference to the notice requirements regarding public improvement districts.

No comments were received specifically regarding the new rule or the form adopted by reference.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The 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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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 53. FINANCE

## SUBCHAPTER G. MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS

### 31 TAC §53.113

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022, adopted the repeal of 31 TAC §53.113, concerning Refusal to Issue or Renew License; Review of Agency Decision to Refuse or Renew License, without changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4264). The rule will not be republished.

Under Government Code, Chapter 525, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if there is a continuing need for the agency to exist and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until the next sunset review in 2034. As part of that process, the Sunset Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement.

In another rulemaking, the department has adopted rules in new Chapter 56 to establish a uniform process for decisions to refuse issuance or renewal of licenses and permits for which such processes are not prescribed by statute. As a result, conforming changes must be made in order to eliminate conflicts with current rules regarding those processes. The repeal eliminates the current rule governing agency decisions to refuse permit issuance or renewal of licenses for marine dealers, distributors, and manufacturers.

The department received no comments supporting or opposing adoption of the repeal as proposed.

The repeal is adopted under Parks and Wildlife Code, §31.0412, which authorizes the commission to adopt rules regarding licenses issued under Parks and Wildlife Code, §31.041, including rules regarding application and renewal procedures.

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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James Murphy

General Counsel

Texas Parks and Wildlife Department

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#### CHAPTER 55. LAW ENFORCEMENT

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022, adopted amendments to 31 TAC

§55.404, concerning Party Boat Operator License--General Provisions, and §55.653, concerning Controlled Exotic Snakes, without changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4265). The rules will not be republished.

Under Government Code, Chapter 525, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if there is a continuing need for the agency exist and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until the next sunset review in 2034. As part of that process, the Sunset Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement.

In another rulemaking the department adopted rules in new Chapter 556 to establish a uniform process for decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. As a result, conforming changes must be made in order to eliminate conflicts with current rules regarding those processes. The amendments eliminate the current rules governing agency decisions to refuse permit issuance or renewal of licenses for holders of party boat operators licenses and holders of controlled exotic snake permits.

The department received no comments supporting or opposing adoption of the rules as proposed.

## SUBCHAPTER H. PARTY BOATS

### 31 TAC §55.404

The amendments are adopted under Parks and Wildlife Code, §31.180, which authorizes the commission to promulgate rules necessary to implement Parks and Wildlife Code, Chapter 31, Subchapter G.

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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James Murphy

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## SUBCHAPTER J. CONTROLLED EXOTIC SNAKES

### 31 TAC §55.653

The amendment is adopted under Parks and Wildlife Code, §43.855, which authorizes the commission to adopt rules to implement Parks and Wildlife Code, Chapter 43, Subchapter V, including rules to govern permit application forms, fees, and procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 57. FISHERIES

In a duly noticed meeting on August 25, 2022, the Texas Parks and Wildlife Commission adopted amendments to 31 TAC §57.124, concerning Refusal to Issue; Review of Agency Decision to Refuse Issuance, and §57.384, concerning Refusal to Issue; Review of Agency Decision to Refuse Issuance. The amendment to §57.384 is adopted with changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4273). The amendment to §57.124 is adopted without changes and will not be republished.

The change to §57.384 nonsubstantively alters subsection (a)(4) by removing a semicolon and the word "or" to preserve structural parallelism.

Under Government Code, Chapter 525, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if there is a continuing need for the agency exist and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until the next sunset review in 2034. As part of that process, the Sunset Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement.

In another rulemaking published elsewhere in this issue of the *Texas Register*, the department adopts rules to establish a uniform process for decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. As a result, conforming changes must be made in order to eliminate conflicts with current rules regarding those processes. The amendments eliminate the current provisions governing agency decisions to refuse permit issuance or renewal of exotic aquatic species permits and permits to possess or sell nongame fish taken from public fresh waters. The amendments also retitle the affected sections accordingly.

The department received no comments supporting or opposing adoption of the rules as proposed.

## SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

### 31 TAC §57.124

The amendment is adopted under Parks and Wildlife Code, §66.007, which authorizes the commission to promulgate rules necessary to implement that section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. PERMITS TO POSSESS OR SELL NONGAME FISH TAKEN FROM PUBLIC FRESH WATER

### 31 TAC §57.384

The amendment is adopted under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limitations on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

§57.384. *Refusal to Issue.*

The department may refuse to authorize any prospective activity on any water body or impose restrictions on permitted species, water bodies, devices, or live transfer if the department determines that:

- (1) the prospective take of nongame fish is detrimental to the target species, species listed as endangered or threatened, or any other aquatic species;
- (2) the prospective take of nongame fish is likely to increase the risk of transfer or spread of harmful or potentially harmful exotic fish or shellfish;
- (3) the prospective take of nongame fish cannot be accomplished in a manner consistent with the management goals and objectives of the department;
- (4) the applicant or assistant(s) seeking renewal is not in compliance with provisions of this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022 adopted amendments to 31 TAC §65.154, concerning Issuance of Permit; Amendment and Renewal; §65.255, concerning Bobcat Dealer Permits; §65.256, concerning Penalties; §65.264, concerning Permit Application Requirements; §65.329, concerning Permit Application; §65.363, concerning Nuisance Alligator Control; and §65.376, concerning Possession of Live Fur-bearing Animals, without changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4276). The rules will not be republished.

Under Government Code, Chapter 525, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if there is a continuing need for the agency exist and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until the next sunset review in 2034. As part of that process, the Sunset Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement.

The department notes that the amendment to §65.256, concerning Penalties, corrects an inaccurate internal reference with respect to violations. The penalties for violation of the subchapter are prescribed by statute and the rule text is simply intended to recapitulate that fact; however, the statement in current rule is inaccurate and should reflect the fact that violations of the subchapter, not the subsection, are punishable as provided in Parks and Wildlife Code.

In another rulemaking, the department has adopted rules in new Chapter 56 to establish a uniform process for decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. As a result, conforming changes must be made in order to eliminate conflicts with current rules regarding those processes. The amendments eliminate the current provisions governing agency decisions to refuse permit issuance or renewal for various permits and licenses and retitle affected sections where necessary.

The department received no comments supporting or opposing adoption of the rules as proposed.

## SUBCHAPTER F. PERMITS FOR AERIAL MANAGEMENT OF WILDLIFE AND EXOTIC SPECIES

### 31 TAC §65.154

The amendment is adopted under Parks and Wildlife Code, §43.109, which authorizes the commission to make regulations governing management of wildlife or exotic animals by the use of aircraft, including procedures for permit applications and rules to require, limit, or prohibit any activity as necessary to implement the subchapter.

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 J. BOBCAT PROCLAMATION

### 31 TAC §65.255, §65.256

The amendment is adopted under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limitations on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

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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James Murphy

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## SUBCHAPTER K. RAPTOR PROCLAMATION

### 31 TAC §65.264

The amendment is adopted under Parks and Wildlife Code, Chapter 64, which authorizes the commission to prescribe eligibility requirements and fees for and issue any falconry, raptor propagation, or nonresident trapping permit.

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 O. COMMERCIAL NONGAME PERMITS

### 31 TAC §65.329

The amendment is adopted under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limitations on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

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## SUBCHAPTER P. ALLIGATOR PROCLAMATION

### 31 TAC §65.363

The amendment is adopted under Parks and Wildlife Code, §65.003, which authorizes the commission to promulgate regulations to provide for permit application forms, fees, and procedures, and hearing procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 389-4775

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**SUBCHAPTER Q. STATEWIDE FUR-  
BEARING ANIMAL PROCLAMATION**

**31 TAC §65.376**

The amendment is adopted under Parks and Wildlife Code, §71.002, which authorizes the commission to promulgate regulations to provide for permit application forms, fees, and procedures, and hearing procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 14, 2022.

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James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
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**CHAPTER 69. RESOURCE PROTECTION  
SUBCHAPTER J. SCIENTIFIC, EDUCA-  
TIONAL, AND ZOOLOGICAL PERMITS**

**31 TAC §69.303**

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 25, 2022, adopted an amendment to 31 TAC §69.303, concerning Application for Permit and Permit Issuance, with changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4281). The rule will not be republished.

The change makes a nonsubstantive alteration to eliminate the subsection (a) designation because as a result of the amendment there are no subsequent subsection designations.

Under Government Code, Chapter 325, the Sunset Advisory Commission is established to conduct reviews of state agencies to determine if a public need exists for the continuation of a state agency and to identify areas for improvement. Typically, state agencies undergo sunset review once every 12 years. The department underwent sunset review during the last regular session of the legislature and was reauthorized to continue in existence until September 1, 2033. As part of that process, the Sunset Advisory Commission adopted recommendations aimed to improve consistency and fairness for individuals and small business owners licensed by the department, including a directive to provide an option for an informal review for non-recreational license types that do not have an existing statutory review process

and alignment of criminal and administrative enforcement processes to ensure fair, strong, and consistent enforcement.

In another rulemaking the department has adopted rules in new Chapter 56 to establish a uniform process for decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. As a result, conforming changes must be made in order to eliminate conflicts with current rules regarding those processes. The amendments eliminate the current rules governing agency decisions to refuse permit issuance or renewal for various permits and licenses and retitle affected sections where necessary.

The department received no comments supporting or opposing adoption of the rules as proposed.

The amendment is adopted under Parks and Wildlife Code, §43.022, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

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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James Murphy  
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Texas Parks and Wildlife Department  
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**TITLE 40. SOCIAL SERVICES AND ASSIS-  
TANCE**

**PART 15. TEXAS VETERANS  
COMMISSION**

**CHAPTER 452. ADMINISTRATIVE GENERAL  
PROVISIONS**

**40 TAC §452.4**

The Texas Veterans Commission (commission) adopts amendments to §452.4 of Title 40, Part 15, Chapter 452 of the Texas Administrative Code concerning Advisory Committees without changes to the proposed text as published in the August 26, 2022 issue of the *Texas Register* (47 TexReg 5082) and will not be republished.

The amended rule is adopted to eliminate language that is no longer applicable.

No comments were received regarding the proposed rule amendments.

The amended rule is adopted under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2022.

TRD-202204502

Cory Scanlon

General Counsel

Texas Veterans Commission

Effective date: November 28, 2022

Proposal publication date: August 26, 2022

For further information, please call: (737) 320-4167



## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 801, relating to Local Workforce Development Boards:

Subchapter A. General Provisions, §801.1

Subchapter B. One-Stop Service Delivery Network, §§801.21 - 801.25, 801.28, and 801.29

TWC adopts the repeal of the following section of Chapter 801, relating to Local Workforce Development Boards:

Subchapter B. One-Stop Service Delivery Network, §801.27

TWC adopts the following new sections to Chapter 801, relating to Local Workforce Development Boards:

Subchapter B. One-Stop Service Delivery Network, §801.26 and §801.27

The amendments, repeal, and new sections are adopted *without changes* to the proposal, as published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5458), and, therefore, the adopted rule text will not be published.

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The amendments to Chapter 801 are adopted to conform the chapter with language and requirements implemented by Workforce Innovation and Opportunity Act (WIOA), including statutorily required Local Workforce Development Board (Board) partners.

The General Appropriations Act - Senate Bill 1, Article VII, Texas Workforce Commission, Rider 46 from the 87th Texas Legislature, Regular Session (2021) requires TWC to ensure that digital skill building is a permitted activity in workforce development programs. House Bill 900 from the 79th Texas Legislature, Regular Session (2005) amended Texas Labor Code, Chapter 302 by adding §302.0027, which requires TWC and Boards to ensure financial literacy training is an included activity in all workforce development programs. Chapter 801 is amended to conform with these requirements.

Texas Government Code, §2001.039, requires that every four years each state agency review and consider for reoption, re-

vision, or repeal each rule adopted by that agency. TWC reviewed the rules in Chapter 801 and determined that the rules are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist and any changes to the rules are described in Part II of this preamble.

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

##### SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§801.1. Requirements for Formation of Local Workforce Development Boards

Section 801.1 is amended to remove Workforce Investment Act (WIA) from the reference to Texas Government Code, Chapter 2308, and update other references from WIA to WIOA. Additionally, Section 801.1 is amended to update Texas State Data Center to Texas Demographic Center and revise the section to clarify that veteran Board members must represent veterans in the local area.

##### SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

TWC adopts the following amendments to Subchapter B:

The section titles and language throughout the subchapter, including the subchapter's title, are amended to update references from WIA to WIOA and "Network" to "System" to align with WIOA terminology.

§801.22. Requirement to Maintain a One-Stop Service Delivery Network.

Section 801.22 is amended to specify that Boards must maintain at least one Comprehensive Center in each local workforce development area.

§801.23. Definitions

Section 801.23 is amended to add the definitions for "Access" and "Direct linkage;" update the definitions for "Eligible Veteran" and "Workforce Solutions Office;" and remove the definition for "National Emergency."

§801.24. Workforce Solutions Office Certification

Section 801.24 is amended to clarify local office certification requirements and processes for Comprehensive Centers and Affiliate sites.

§801.25. Minimum Standards for Certified Workforce Solutions Offices

Section 801.25 is amended to update requirements for Comprehensive Centers (previously identified as certified offices) and to clarify these requirements apply to Comprehensive Centers only, not all local offices. Additional amendments require that access to digital skill building and financial literacy assistance be provided to all participants. The section's title is updated to align with these amendments.

§801.26. Memorandum of Understanding

New §801.26 is added to clarify memorandum of understanding (MOU) requirements with local Board partners and that except



where indicated, MOUs are not required for Board- or TWC-administered programs.

#### §801.27. Workforce Solutions Office Partners

Section 801.27 is repealed and replaced with new §801.27, Workforce Solutions Office Programs and Partners, to update required and optional programs and partners to align with WIOA requirements. Prior consistent state law in place during implementation of WIA allowed Boards to operate with fewer required partnerships. The updates in new §801.27 address significant changes in workforce development systems that have occurred in past decades and help align regional efforts to serve customers more effectively throughout the state. Additional updates designate Board- and TWC-administered programs.

#### §801.28. Services Available Through the One-Stop Service Delivery Network

Section 801.28 is amended to align available services with those required by WIOA.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

### PART III. PUBLIC COMMENTS

The public comment period closed on October 10, 2022. No comments were received.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §801.1

#### STATUTORY AUTHORITY

The rule is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule implements changes made to the Texas Labor Code, particularly Texas Labor Code, Chapters 301 and 302, as well as bringing the rules into conformity with the Workforce Innovation and Opportunity Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2022.

TRD-202204456

Les Trobman

General Counsel

Texas Workforce Commission

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Proposal publication date: September 9, 2022

For further information, please call: (512) 689-9855



## SUBCHAPTER B. ONE-STOP SERVICE

### DELIVERY NETWORK

#### 40 TAC §§801.21 - 801.29

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt,

amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement changes made to the Texas Labor Code, particularly Texas Labor Code, Chapters 301 and 302, as well as bringing the rules into conformity with the Workforce Innovation and Opportunity Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Workforce Commission

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### 40 TAC §801.27

The repeal is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted repeal implements changes made to the Texas Labor Code, particularly Texas Labor Code, Chapters 301 and 302, as well as bringing the rules into conformity with the Workforce Innovation and Opportunity Act.

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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Les Trobman

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For further information, please call: (512) 689-9855



## CHAPTER 803. SKILLS DEVELOPMENT

### FUND

## SUBCHAPTER B. PROGRAM ADMINISTRATION

### 40 TAC §803.14

The Texas Workforce Commission (TWC) adopts amendments to the following section of Chapter 803, relating to the Skills Development Fund:

Subchapter B. Program Administration, §803.14

The amendment is adopted *without changes* to the proposed text as published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5466), and, therefore, the adopted rule text will not be published.

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The amendment to Chapter 803 is adopted to streamline the grant proposal and approval process.

In Fiscal Year 2021, TWC implemented Skills Development Fund (SDF) Contingent Proposals to respond quickly and to effectively assist in the COVID-19 recovery effort by helping Texas employers, including small businesses, to train and hire employees while simultaneously aiding Texas workers in regaining employment and reducing the number of individuals depending on unemployment assistance. The new process has proven to be successful in streamlining the SDF approval process and shortening the grant development time by saving anywhere from 40 to 55 days. To be able to use this new process, the Outreach and Employer Initiatives Division developed a rule waiver pursuant to 40 TAC §803.32 for approval by TWC's executive director. The adopted amendment will remove the need for a waiver and allow the use of the streamlined process moving forward.

Texas Government Code, §2001.039, requires that every four years each state agency review and consider for reoption, revision, or repeal each rule adopted by that agency. TWC reviewed the rules in Chapter 803 and determined that the rules are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist and any changes to the rules are described in Part II of this preamble.

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

##### SUBCHAPTER B. PROGRAM ADMINISTRATION

TWC adopts the following amendments to Subchapter B:

##### §803.14. Procedure for Requesting Funding

Section 803.14 is amended to add subsection (i) to outline the procedure for requesting a contingency proposal.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

#### PART III. PUBLIC COMMENTS

The public comment period closed on October 10, 2022. No comments were received.

#### PART IV.

##### STATUTORY AUTHORITY

The rule is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule implements Texas Labor Code, Chapter 303.

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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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## CHAPTER 807. CAREER SCHOOLS AND COLLEGES

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 807, relating to Career Schools and Colleges:

Subchapter A. General Provisions, §§807.1 - 807.3 and 807.6 - 807.8

Subchapter B. Certificates of Approval, §§807.11 - 807.17

Subchapter C. Financial Requirements, §§807.31 - 807.35 and 807.37

Subchapter D. Representatives, §§807.51, 807.53, and 807.54

Subchapter E. School Director and Administrative Staff, §§807.62 - 807.64 and 807.66

Subchapter F. Instructors, §§807.81 - 807.84

Subchapter G. Staff Education Requirements, §807.101 and §807.102

Subchapter H. Courses of Instruction, §§807.121 - 807.123 and 807.129 - 807.134

Subchapter I. Application Fees and Other Charges, §§807.151 - 807.153

Subchapter J. Advertising, §§807.171 - 807.173 and 807.175

Subchapter K. Admission, §§807.191 - 807.194, 807.196, and 807.197

Subchapter L. Progress Standards, §§807.221, 807.223, and 807.224

Subchapter M. Attendance Standards, §§807.241 - 807.245

Subchapter N. Cancellation and Refund Policy, §807.261 and §807.263

Subchapter O. Records, §§807.281 - 807.284

Subchapter P. Complaints, §807.301 and §807.302

Subchapter Q. Truck Driver Training Programs, §§807.321, 807.322, 807.324, and 807.325

Subchapter R. Closed Schools, §807.341 and §807.342

Subchapter S. Sanctions, §§807.351 - 807.353

Subchapter T. Cease and Desist Orders, §§807.362, 807.365, and 807.366

Subchapter U. Career Schools Hearings, §§807.385 - 807.387 and 807.395

TWC adopts the following new section to Chapter 807, relating to Career Schools and Colleges:

Subchapter A. General Provisions, §807.5

TWC adopts the repeal of the following sections of Chapter 807, relating to Career Schools and Colleges:

Subchapter H. Courses of Instruction, §§807.124 - 807.127

Subchapter J. Advertising, §807.176

The amendment to §807.2 is adopted *with changes* to the proposed text as published in the July 29, 2022, issue of the *Texas Register* (47 TexReg 4455), and, therefore, the adopted rule text will be published. The remaining amendments, new section, and repeals are adopted *without changes* to the proposal, and, therefore, the adopted rule text will not be published.

## PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Education Code, Chapter 132, Career Schools and Colleges (the Act) charges TWC with oversight of career schools and colleges operating in Texas. By TWC's authority under the Act and TWC's Chapter 807 Career School and Colleges rules, the Career Schools and Colleges (CSC) Program licenses and regulates private postsecondary schools that offer vocational training to Texas residents. In this capacity, TWC currently regulates more than 600 schools, consisting of approximately 4,000 courses of instruction that provide vocational training to more than 146,000 students annually.

The amendments to Chapter 807 are based on a thorough review of the existing rules, the Act, policy implementation, and application processing. The amendments provide clarity and remove unnecessary regulation for CSC; ensure that students seeking to further their education are provided clear information, receive timely refunds, as appropriate, and have timely access to school outcome data; and streamline CSC Program processes.

The amendments also implement House Bill (HB) 33, passed by the 87th Texas Legislature, Regular Session (2021). HB 33 amended Texas Education Code, Chapter 132, relating to measures facilitating the award of postsecondary course credit leading to workforce credentialing based on military experience, education, and training.

Throughout Chapter 807, where appropriate, the term "Commission" is replaced with "Agency." The Commission is the body of governance of the three Commissioners appointed by the governor. The Agency is the unit of state government presided over by the Commission and administered by the executive director.

The definitions for class, course, course of instruction, program, and program of instruction, were amended, and, therefore, where appropriate, the terms were changed to ensure consistency of usage throughout Chapter 807.

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

### SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

#### §807.2. Definitions

Section 807.2(12) is amended to include "course of instruction" and modify the definition to include an identifiable unit of orga-

nized instruction to avoid confusion with a subject, which is an element of a program or seminar.

Current §807.2(15) is removed because "course of instruction" is defined in amended §807.2(12). The subsequent paragraphs are renumbered accordingly.

Renumbered §807.2(15) is amended to revise the definition term of "course time" to include "course time hour." Also, "externship" is utilized in all CSC materials and replaces "internship" in the definition to avoid confusion.

Renumbered §807.2(18) is amended to revise the definition of "distance education course" to align with the definition of "distance education" in the statute. Additionally, the current definition relates specifically to asynchronous education and is amended to include synchronous education. At adoption, the Commission revised §807.2(18) to include "from a remote site" that was inadvertently proposed for deletion.

Renumbered §807.2(21) is amended to revise the definition of "good reputation" to restate with potential disqualifiers instead of inversely worded with qualifiers.

Section 807.2(26) is added to define "hybrid program or blended program."

Section 807.2(27) is amended to revise the definition of "job placement" to provide clarity of what constitutes placement.

Section 807.2(29) is added to define "military service."

Section 807.2(30) and (31) are added to define "owner" and "owner designee." The subsequent paragraphs are renumbered accordingly.

Renumbered §807.2(33) is amended to remove the word "program" from the definition.

Section 807.2(39) is added to define "school authorized official" to reduce confusion of who is authorized to sign official documents.

Renumbered §807.2(40) is amended to clarify the definition of "school." The addition of "educational institution" and "training program" as synonyms for school is necessary to provide definition to these terms used in statute without definition or clarification provided.

Renumbered §807.2(41) is amended to revise the definition of "secondary education" to further define what constitutes that level of education.

Renumbered §807.2(42) is amended to clarify that "workshop" is a synonymous term for "seminar."

Section 807.2(47) is added to define a "subject" to delineate its use from "class" for clarification.

#### §807.3. Memorandum of Understanding for Regulation of Schools

Section 807.3 is amended to revise the current name of "Texas Guaranteed Student Loan Corporation" to "Trellis Company."

#### §807.5. Suspensions

New §807.5 is added to state the executive director's authority to suspend the operation of provisions within Chapter 807 under certain circumstances.

#### §807.6. Processing Periods

Section 807.6 is amended to include "Application" in the section title and allow the program the ability to modify processing times that are not required to be publicly identified by Texas Government Code, §2005.003.

#### §807.7. Exemptions

Section 807.7(a) is amended to include program authority to approve, deny, or revoke exemptions.

Section 807.7 is amended to remove subsections (b) and (c) as the language is redundant.

Relettered §807.7(b) is amended to reference the Act, as opposed to the vague reference to the Texas Education Code.

New §807.7(c) is amended to remove extraneous language. Exemption criteria is addressed in the Act.

### SUBCHAPTER B. CERTIFICATES OF APPROVAL

TWC adopts the following amendments to Subchapter B:

#### §807.11. Original Approvals

Section 807.11(d)(1) is amended to revise the conditions of reapplication. To reapply, the applicant must currently submit fees again and the section is amended to clarify that all fees are due again.

#### §807.12. Renewal

Section 807.12(a)(2) and (b)(3) are amended to remove the reference to the fee for the tuition trust account. The renewal fee paid by career schools and colleges is seamless in its application.

#### §807.14. Locations

Section 807.14(b)(2) is removed, because the itinerate program typically meet the criteria outlined for seminars or short-term programs. The subsequent paragraphs are renumbered accordingly.

#### §807.15. Notification of Actions

Section 807.15(c) is added to include the requirement for schools to notify TWC of mortgage and/or lease lateness or defaults. This can be used by TWC as an indicator of possible closures. The subsequent subsections are relettered accordingly.

Relettered §807.15(d) is amended to add the copy of the legal notice to the documents that need to be included by the school with the notice.

#### §807.16. Degrees

Section 807.16(b) is amended to remove the reference that approval from the accreditor may be required. Accreditor approval is a necessary element for review.

#### §807.17. Unlicensed Schools

Section 807.17 is amended to revise verbiage to clarify that TWC may take one or more of the listed actions against schools that operate without a certificate of approval from TWC.

### SUBCHAPTER C. FINANCIAL REQUIREMENTS

TWC adopts the following amendments to Subchapter C:

#### §807.31. Definitions Relating to Financial Requirements

Section 807.31(1) is added to define attest services. Attest services require specific licensure per the Texas Public Account-

tancy Act. The subsequent paragraphs are renumbered accordingly.

Renumbered §807.31(5) is amended to remove the unnecessary element of the projection of tuition and fees for the upcoming fiscal year from the definition of unearned tuition affidavit.

#### §807.32. Financial Standards

Section 807.32(a)(2) is removed because the requirement for a school to report unearned tuition on its balance sheet is no longer needed. All school financial submissions will require a CSC-048, which identifies unearned tuition. The subsequent paragraphs are renumbered accordingly.

Section 807.32(b) is amended to require both an unearned tuition affidavit and sworn statement with any submission. Currently these are not required with audited or reviewed financials.

Section 807.32(c) is amended to modify the statement regarding preparation. The information for the preparer is not needed, only for the certified public accountant (CPA) firm performing the attest engagement.

Section 807.32(d) is added to include attest services to indicate legal requirements and address the CPA being in jurisdictions other than Texas. The subsequent subsection is relettered accordingly.

#### §807.33. Financial Requirements for Original Approvals

Section 807.33(a)(2) is amended to remove redundant language. Audits must be completed by a CPA and in Texas, a firm license holder. Generally Accepted Accounting Principles or Generally Accepted Auditing Standards require a CPA to complete a financial review.

Section 807.33(b) is amended to clarify that the intent is three full calendar months, not partial, and to remove references to contract basis, as an evaluation of financial stability is necessary to issue a Certificate of Approval (per §807.4(a)(3) and Texas Education Code, §132.055(b)(9)).

Section 807.33(b)(1) and (2) are amended to remove unnecessary details associated with projected expenses. Expenses for the categories of salaries and lease payments for equipment are sufficient to perform a review.

#### §807.35. Financial Requirements for Renewal

Section 807.35 is amended to revise the section title from "Financial Requirements for Renewal" to "Financial Requirements for Annual Reporting" to clarify the requirement and to allow the addition of language specific to revocations.

Section 807.35(a) and (b) are amended to clarify that the financial statements submitted must be true and correct and to remove extraneous language as the standards have been identified in §807.32.

Section 807.35(c) is amended to add language to clarify the requirement of federal tax return documents to avoid confusion of schools submitting their Texas Franchise Tax reports.

Section 807.35(e) is added to clarify the outcome of not providing compliant financial statements within 60 days of notice of deficiency. This will allow TWC to take administrative action without delay.

#### §807.37. Commission Ordered Audits

Section 807.37(a)(1) and (2) is amended to clarify audit standards and language is added to §807.37 regarding failure to provide TWC with Commission-ordered item(s).

#### SUBCHAPTER D. REPRESENTATIVES

TWC adopts the following amendments to Subchapter D:

##### §807.51. Representative Requirements

New §807.51(a) is added to include clarifications regarding individuals not required to register as representatives given the nature of their ownership structure. The subsequent subsections are relettered accordingly.

##### §807.53. Representative Limitations

Section 807.53(c)(1) is deleted to reduce the restriction on locations a representative is authorized to solicit students. The subsequent paragraphs are renumbered accordingly.

Section 807.53(c) is amended to include courses in addition to programs.

Section 807.53(c)(11) is added to require students be advised of the policies and procedures related to granting credit.

##### §807.54. Representative Compliance

Section 807.54 is amended to modify the matrix to align with the changes in §807.53.

#### SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

TWC adopts the following amendments to Subchapter E:

##### §807.62. School Director Qualifications and Duties

Section 807.62 is amended to add new subsection (a) to consolidate and clarify requirements for small, and other than small, schools.

Current §807.62(a) and (b) are deleted based on consolidation under §807.62(a). The subsequent subsections are relettered accordingly.

##### §807.64. Director of Education Requirements

Section 807.64(b)(2) is amended to modify "employment as a supervisor" to "supervisory employment experience," which aligns with the expectations of an individual who is appointed to a director position.

##### §807.66. Director of Admissions Requirements

Section 807.66(a) is amended to remove obsolete references. This provision was adopted in 2006, so any individual in this position in 2006 would have the necessary qualifications in 2020.

Section 807.66(b)(1) is amended to change "administrative experience" to "administration experience" to align with intent.

#### SUBCHAPTER F. INSTRUCTORS

TWC adopts the following amendments to Subchapter F:

##### §807.81. Instructor Qualifications

Section 807.81(b) is amended to modify the requirement to indicate three full calendar months as opposed to allowing partial months.

Section 807.81(b)(1)(A) - (D) and (2)(B) - (C), (d), and (e) are amended to indicate "subject" instead of "class," and "subjects" instead of "classes," to reflect the correct element of a program.

Additional amendments are adopted throughout to clarify subject, in lieu of course.

##### §807.82. Temporary Instructors

Section 807.82(a) is amended to indicate the maximum term of a temporary instructor is 90 days, to match current practice.

Section 807.82(b)(1) is amended to change "class" to "subject(s)."

Section 807.82(b)(2) is deleted, removing the requirement to list the instructor. This information is redundant. The subsequent paragraphs are renumbered accordingly.

Section 807.82(b)(4) is added to include any other information required by TWC.

Section 807.82(c) is deleted to remove notice of possible sanctions for using an unapproved instructor since this is stated as part of the instructor application process. The subsequent subsections are relettered.

Relettered §807.82(c) is amended to clarify subject, in lieu of course.

Relettered §807.82(d) is amended to clarify the period as an "academic term" and "subject" as the appropriate element.

##### §807.84. School Responsibilities Regarding Instructors

Section 807.84(e) is added to stress refunds and administrative actions to be taken against a school for utilizing an unapproved instructor.

#### SUBCHAPTER G. STAFF EDUCATION REQUIREMENTS

TWC adopts the following amendments to Subchapter G:

##### §807.101. Initial Training

Section 807.101(a) is amended to remove references to the Director's Resource Guide, as it is obsolete.

Section 807.101(b) is amended to use three full calendar months instead of three months for practicality.

##### §807.102. Continuing Education

Section 807.102(a) is amended to remove language relating to TWC approving the continuing education providers, as this is not the practice. TWC's Career Schools and Colleges program will continue to vet training (as per Texas Education Code, §132.0551(e)) and ensure that it is relevant to the practice of higher education instruction and administration or the subject(s) being taught, but TWC does not maintain a published list.

Section 807.102(b) is deleted since the language is redundant to what is stated in §807.102(a). The subsequent subsections are relettered accordingly.

Section 807.102(c) is amended to remove "full-time instructor" because the continuing education requirement for full-time instructors is different from the requirement for school directors and directors of admission

#### SUBCHAPTER H. COURSES OF INSTRUCTION

TWC adopts the following amendments to Subchapter H:

##### §807.121. Definitions Relating to Courses of Instruction

Section 807.121(1) is amended to add language to clarify the role that externship plays in classifying a program type.

Section 807.121(2) is amended to clarify that "lab" is a synonym for "laboratory experience."

Section 807.121(6) is amended to clarify terminology.

Section 807.121(7) is added to define "military service course credit directory."

#### §807.122. General Information for Courses of Instruction

Section 807.122(a) and (b) are amended to move language from §807.127(a) and (c) for better alignment.

Section 807.122(c) is amended to move language from §807.124(a) for better alignment.

Section 807.122(d) is amended to move language from §807.125(a) for better alignment and provide requirement to conform to legal standard.

Section 807.122(e) is amended to move language from §807.126(a) for better alignment.

Section 807.122(e)(7) is added to require the addition of criteria evaluating military service experience, education, or training, for any course listed in the military service course credit directory.

Section 807.122(f) is added to ensure TWC reviews course time and balances it against the industry standard for each state occupation. The subsequent subsections are relettered accordingly.

Relettered §807.122(n) is amended to modify the language to clarify that only a simple majority of members can have no ownership or employment interest regarding the school.

#### §807.123. Applications for Additional Courses of Instruction

Section 807.123(b)(1) and (4) are deleted to remove abbreviated program application requirements for duplicate programs and continuing professional education issues. The subsequent paragraphs are renumbered accordingly.

#### §807.124. Stated Occupation

Section 807.124 is repealed. The requirements in §807.124 are outside the scope of program capability. Elements of §807.124(a) have been moved to §807.122 in an effort to ensure students are trained for a stated occupation.

#### §807.125. Curriculum Content

Section 807.125 is repealed to reduce duplicated language and unnecessary items. The language in §807.125(a) is moved to §807.122 for better alignment.

#### §807.126. Curriculum Length

Section 807.126 is repealed and language in §807.126(a) is moved to §807.122 for better alignment.

#### §807.127. Program Title

Section 807.127 is repealed and language in §807.127(a) and (c) is moved to §807.122 for better alignment.

#### §807.129. Facilities

Section 807.129(b) is amended to clarify that the enrollment capacity is related to seats, as well as workstations, in a lecture capacity.

#### §807.131. School Responsibilities Relating to Courses of Instruction

Section 807.131(b)(1) is amended to establish TWC determines what constitutes "reasonable."

Section 807.131(i) is amended to reflect basic recommendations and reduce language complexity. There are not statutory guidelines on class size; rule language provides recommendations based on training experiences.

#### §807.132. Course of Instruction Revisions

Section 807.132(c) is deleted. This is not something the program reviews or enforces and is just extraneous language. Ultimately employment will be indicative of the alignment.

### SUBCHAPTER I. APPLICATION FEES AND OTHER CHARGES

TWC adopts the following amendments to Subchapter I:

#### §807.151. Fee Schedule

Section 807.151(5), (9), (10), (11), and (13) are amended to modify language for clarity.

Section 807.151(8) is deleted. These changes do not require the reissuance of approval. The subsequent paragraphs are renumbered accordingly.

Renumbered §807.151(10) is amended to remove the application fee for an administrative staff member.

#### §807.152. Renewal Fees

Section 807.152(c) is amended to correct the terminology of the late renewal fee as identified in statute.

#### §807.153. Installment Payments

Section 807.153(b)(3) is amended to specify that failure to meet an installment agreement may result in revocation of the school's certificate of approval.

Section 807.153(c) is added to provide rule authority to take administrative action against a school that has received a multi-year certificate for not submitting required renewal payments.

### SUBCHAPTER J. ADVERTISING

TWC adopts the following amendments to Subchapter J:

#### §807.171. General Information for Advertising

Section 807.171(a) is amended to clarify that the intent is not limited only to deceptive statements, but also misleading statements, concerning enrollment.

#### §807.173. Advertisement Content

Section 807.173 is amended to include "and Monitoring" in the section title to reflect TWC's authority to monitor schools' advertising content.

Section 807.173(d) is amended to allow the use of the student's abbreviated name in endorsements and to review schools to maintain records of the student endorsement.

Section 807.173(g) is added to allow TWC to order steps countering advertisement violations.

#### §807.175. Catalog

Section 807.175(a)(14), (b), (c), and (d) are amended to adjust language to align with other changes in Chapter 807.

#### §807.176. Advertisement Monitoring

Section 807.176 is repealed to eliminate extraneous language. The language in §807.176(a) and (b) are moved to §807.173 for better alignment.

## SUBCHAPTER K. ADMISSION

TWC adopts the following amendments to Subchapter K:

### §807.191. General Information for Admission

Section 807.191(a) and (b) are amended to clarify that specific admission requirements apply to all schools.

### §807.192. Admission Requirements

Section 807.192(a)(3) is amended to replace "certificate" with "nondegree" to encompass all courses of instruction.

### §807.193. Receipt of Enrollment Policies

Section 807.193(a) is amended to require all schools meeting criteria to use TWC-approved document.

Section 807.193(b) is amended to update administrative requirements.

### §807.194. Enrollment Agreement

Section 807.194(a) is deleted, which excludes seminar schools from being required to complete enrollment agreements. The subsequent subsections are relettered accordingly.

Section 807.194(h) is deleted because it allows schools to submit abbreviated enrollment agreements. Schools are required to submit all enrollment agreements to TWC for approval prior to use.

### §807.196. Tuition and Fees

Section 807.196(a) is amended to clarify the element to which the charge is related.

### §807.197. Admission Requirements for Degree Granting Schools

Section 807.197(a) is amended to clarify that this restriction does not apply to TWC-approved teach-outs.

## SUBCHAPTER M. ATTENDANCE STANDARDS

TWC adopts the following amendments to Subchapter M:

### §807.243. Termination of Enrollment

Section 807.243(b) is amended to clarify the amount of time associated with the academic term and §807.243(c) is removed because it is no longer needed. The subsequent subsection is relettered accordingly.

### §807.244. Make-up Work

Section 807.244(a) is amended to clarify that work may be made up, the appropriate increments, and note that the time itself cannot be made up.

### §807.245. Leaves of Absence

Section 807.245(a) is amended to clarify that this is specific to the program length and not just applicable to small schools.

Section 807.245(c) is amended to clarify the time period.

## SUBCHAPTER N. CANCELLATION AND REFUND POLICY

TWC adopts the following amendments to Subchapter N:

### §807.261. Requirement for Tour

Section 807.261(b) is amended to remove the exclusion for hybrid or blended programs.

Section 807.261(c) is amended to add the tour conditions for hybrid or blended programs.

### §807.263. Refund Requirements

Section 807.263(a) is amended to clarify that refunds to students are contingent upon the outcome of TWC's review of facts associated with the school's conduct and that TWC may order full or partial refunds.

## SUBCHAPTER O. RECORDS

TWC adopts the following amendments to Subchapter O:

### §807.282. Student Information and Records

Section 807.282(b) is added to require schools to maintain records electronically. The subsequent subsections are relettered accordingly.

New §807.282(g) is added to address possible need for translation.

### §807.283. Attendance Record Keeping

Current §807.283(a)(1) is deleted so that schools must maintain attendance records for all programs. The subsequent paragraphs are renumbered accordingly.

Renumbered §807.283(a)(1) is amended to specify what information must be on school master record of attendance.

Renumbered §807.283(a)(2) requiring attendance records is amended to include instructor name, course name, date, class hours scheduled for each day and absence(s).

Section 807.283(b) is deleted to remove the attendance record keeping requirements for Title IV schools. Verifiable academically related activity is already addressed in refunds. The subsequent subsection is relettered accordingly.

### §807.284. Reporting

Section 807.284(d) is amended to remove redundant language.

## SUBCHAPTER P. COMPLAINTS

TWC adopts the following amendments to Subchapter P:

### §807.301. School Policy Regarding Complaints

Section 807.301(a)(5)(C) is deleted to remove redundant guidance for addressing complaints. The subsequent subparagraphs are relettered accordingly.

### §807.302. Complaints and Investigations

Section 807.302(d) is amended to substitute course of instruction for program to clarify that seminars are included and indicate that the investigation for a complaint not filed timely may be declined.

## SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

TWC adopts the following amendments to Subchapter Q:

### §807.321. General Information Regarding Truck Driver Training

Section 807.321(b) is added to require all truck driver training programs to comply with applicable requirements outlined in 49 Code of Federal Regulations Part 380.

## SUBCHAPTER R. CLOSED SCHOOLS

TWC adopts the following amendments to Subchapter R:

### §807.341. School Closures

Section 807.341(a) is added to establish the requirement for owners to notify TWC of pending closure as soon as possible.

Section 807.341(b) is added to list information that a school must provide TWC upon notification of closure.

Section 807.341(c) is added to grant TWC the ability to impose sanctions for schools failing to comply with §807.341. The subsequent subsections are relettered accordingly.

#### §807.342. Tuition Trust Account

Section 807.342(e) is deleted, because it is part of the renewal amounts and not a line item fee.

### SUBCHAPTER S. SANCTIONS

TWC adopts the following amendments to Subchapter S:

#### §807.352. Sanctions

Section 807.352 is amended to change references of program to course, which is inclusive of programs and seminars.

Section 807.352(a)(2) is deleted because it is not a form of sanction, but a required element of renewal, if applicable, per the Act. The subsequent paragraphs are renumbered accordingly.

Renumbered §807.352(a)(8) and (9) are amended to align with language from the Act and other sections of Chapter 807.

#### §807.353. Administrative Penalties

The penalty matrix in §807.353 is amended to reflect addition of failure of notice as required per §807.15; reduce the penalty, in conjunction with redefining an instance, for unlicensed instructors as a deterrent; and include a penalty for failure to grant credit, when required.

### SUBCHAPTER U. CAREER SCHOOLS HEARINGS

TWC adopts the following amendments to Subchapter U:

#### §807.387. Hearing Procedures

Section 807.387(a) is amended to change the default hearing format from in person to telephonically.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

### PART III. PUBLIC COMMENTS

The public comment period closed on August 29, 2022. TWC received a comment from Birring NDE Center.

#### §807.2. Definitions.

COMMENT: Birring NDE Center commented that changing the definition of "seminar" from "a course of instruction" to "a type of program" would create an unnecessary burden on schools by requiring the submission of annual student completion and employment information.

RESPONSE: The definition of "seminar" was changed to align with statute. A seminar is a type of program for which a school would only report the number of completers, as is currently required, with no additional reporting requirements. No changes were made to the rules as a result of this comment.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 40 TAC §§807.1 - 807.3, 807.6 - 807.8

#### STATUTORY AUTHORITY

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or

repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

#### §807.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Academic quarter--A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Agency.

(2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Agency.

(3) Academic term--An academic quarter, academic semester, or other progress evaluation period.

(4) Academically related activity--An exam, tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment, or attending a study group that is assigned by the institution, or other activity as determined by the Agency.

(5) Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.

(6) Act--Texas Education Code, Chapter 132, Career Schools and Colleges.

(7) Address of record--In addition to the mailing address contained in the application for a certificate of approval, each career school or college shall establish an email address of record for a distribution list that consistently maintains a minimum of two current subscribers, with the format of the address to be "School#Director@xdo-main," for example, S1111Director@gmail.com.

(8) Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.

(9) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of Agency applies to all uses of the term in this chapter.

(10) Appellant--The party or the party's authorized hearing representative who files an appeal from an appealable determination or decision.

(11) Asynchronous distance education--Distance education training that the Agency determines is not synchronous.

(12) Class, course, or course of instruction--An identifiable unit of organized instruction that is part of a program of instruction.

(13) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code, §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission applies to all uses of the term in this chapter.

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



(15) Course time or course time hour--A class period that is:

(A) a 50-minute to 60-minute lecture, recitation, or class, including a laboratory class or shop training, in a 60-minute period;

(B) a 50-minute to 60-minute externship in a 60-minute period; or

(C) 60 minutes of preparation in asynchronous distance education.

(16) Date of notice--The date the notice is mailed, unless good cause exists for the hearing officer to determine otherwise.

(17) Date of request of hearing--The date on which the appellant or the hearing representative filed a written notice of appeal with the Agency by hand delivery, facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as of the postmark date on the envelope containing the appeal request unless good cause exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or facsimile after 5:00 p.m., the date of request shall be the next day.

(18) Distance education course--Either a seminar or a program that is offered to nonresidence school students delivered either synchronously or asynchronously to the student from a remote site.

(19) Distance education school--A school that offers only distance education courses.

(20) Employment--A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.

(21) Good reputation--The possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the educational process and the training or preparing of a person for a field of endeavor in a business, trade, technical, or industrial occupation, as well as the condition of being regarded as possessing such qualities. In determining whether a person is of good reputation, the Agency is not limited to the following acts or omissions. The Agency may consider similar acts or omissions and rehabilitation efforts in response to prior convictions in making its determination. A person may be considered to lack good reputation if the person:

(A) has been convicted of a felony or any other crime that would constitute risk of harm to the school or students as determined by the Agency;

(B) has been successfully sued for fraud or deceptive trade practices, or breach of contract, within the last 10 years;

(C) owns or administers a school currently in violation of legal requirements, has owned or administered a school with repeated violations, or has owned or administered a school that closed with violations including, but not limited to, unpaid refunds or administrative penalties; or

(D) has falsified or withheld information from the Agency.

(22) Hearing--An informal, orderly, and readily available proceeding held before an impartial hearing officer. A party or hearing representative may present evidence to show that the Agency's determination should be reversed, affirmed, or modified.

(23) Hearing officer--An Agency employee designated to conduct impartial hearings and issue final administrative decisions.

(24) Hearing representative--Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

(25) Human trafficking--The action or practice of illegally transporting people for the purposes of forced labor or commercial sexual exploitation, including all offenses referred to in Texas Penal Code, Chapter 20A.

(26) Hybrid program or blended program--A program that has any combination of residence and synchronous distance education offerings.

(27) Job placement--An active effort by the school to assist the student in obtaining employment in the same or substantially similar stated occupation for which the student was trained. Active efforts include, but are not limited to, the school:

(A) arranging an interview;

(B) contacting potential employers; and/or

(C) bringing potential employers to the school to assist the student.

(28) Master Student Registration List (MSRL)--A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.

(29) Military service--Service as a member of the armed forces of the United States, including service in the National Guard or Reserves.

(30) Owner--

(A) In the case of a career school or college owned by an individual or married couple, that individual or married couple;

(B) In the case of a career school or college owned by a partnership, all full, silent, and limited partners;

(C) In the case of a limited liability company, all members and managers;

(D) In the case of professional associations, the members and governing persons;

(E) In the case of a career school or college owned by a corporation, the corporation, its directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least 10 percent of the total of the issued and outstanding shares;

(F) In the case of a career school or college in which the ownership interest is held in trust, the beneficiary of that trust;

(G) In the case of a career school or college owned by another legal entity, a person who owns at least 10 percent ownership interest in the entity; or

(H) In all instances, for any entity owned by a parent or holding entity, whether in whole or part, the definition of an owner shall extend to those entities and corresponding person.

(31) Owner designee--A person designated in writing by an owner to act on behalf of the ownership, including having signatory authority.

(32) Party--The person or entity with the right to participate in a hearing authorized in applicable statute or rule.

(33) Program or program of instruction--A postsecondary sequence of organized instruction or study that may lead to an academic, professional, or vocational degree, certificate, or other recognized educational credential.

(34) Refund--The completed payment of a refund such that the refund instrument has been negotiated or credited into the proper account(s).

(35) Reimbursement contract basis--A school operating, or proposing to operate, under a contract with a state or federal entity in which the school receives payment upon completion of the training.

(36) Residence school--A school that offers at least one program that includes classroom instruction or synchronous distance education.

(37) Response deadline--Deadlines that fall on a weekend, an official state holiday, a state holiday for which minimal staffing is required, or a federal holiday are extended one working day.

(38) Sanctions--Administrative or civil actions, including, but not limited to, penalties, revocation of approvals, or cease and desist orders taken by the Agency against an entity in response to violations of the Act or this chapter.

(39) School authorized official--Any identified owner, director, or owner designee of a school.

(40) School, educational institution, or training program--A "career school or career college," as defined in the Act, that includes each location where courses of instruction shall be offered.

(41) Secondary education--Successful completion of public, private, or home schooling at the high school level or attainment of a recognized high school equivalency credential, recognized by an institution of higher education or a private or independent institution of higher education, as defined by Texas Education Code, §61.003.

(42) Seminar or workshop--A type of program that enhances a student's career, as opposed to a program that teaches the skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge for a particular occupation, language training, continuing professional education, and review for postsecondary examination.

(43) Seminar school--A school that offers only seminars.

(44) Small school--A "small career school or college" as defined in the Act.

(45) Stated occupation--An occupation for which a program is offered that:

(A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;

(B) is in demand; and

(C) requires training to achieve entry-level proficiencies.

(46) Student--Any individual solicited, enrolled, or trained in Texas by a school.

(47) Subject--An identifiable unit of instruction or study that imparts specific knowledge or skills, which is a subpart of a program or seminar.

(48) Suspension of enrollments--A sanction that requires the school to suspend enrollments, re-enrollments, advertising, and so-

licitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

(49) Synchronous distance education--The Agency may determine distance education to be synchronous under the following conditions:

(A) the training is conducted simultaneously in real time, or the training is conducted so that the manner of delivery ensures that even if the instructor and student are separated by time, the course time of instruction that the student experiences can be determined; and

(B) there is consistent interaction between the student(s) and the instructor on a schedule that includes a definite time for completion of the program and periodic verifiable student completion/performance measures that allow the application of the progress standards of Subchapter L of this chapter and attendance standards of Subchapter M of this chapter.

(50) Title IV school--A career school or college that participates in student financial aid programs under Title IV, Higher Education Act of 1965 (20 United States Code Section 1070 et seq.).

(51) Tour--A required, in-person inspection of the facilities and equipment pertaining to a course of instruction.

(52) Week--Seven consecutive calendar days.

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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Les Trobman

General Counsel

Texas Workforce Commission

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## SUBCHAPTER B. CERTIFICATES OF APPROVAL

### 40 TAC §§807.11 - 807.17

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. FINANCIAL REQUIREMENTS

### 40 TAC §§807.31 - 807.35, 807.37

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

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## SUBCHAPTER D. REPRESENTATIVES

### 40 TAC §§807.51, 807.53, 807.54

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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## SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

### 40 TAC §§807.62 - 807.64, 807.66

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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## SUBCHAPTER F. INSTRUCTORS

### 40 TAC §§807.81 - 807.84

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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## SUBCHAPTER G. STAFF EDUCATION REQUIREMENTS

### 40 TAC §§807.101, §807.102

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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## SUBCHAPTER H. PROGRAMS OF INSTRUCTION

### 40 TAC §§807.121 - 807.123, 807.129 - 807.134

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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## SUBCHAPTER H. COURSES OF INSTRUCTION

### 40 TAC §§807.124 - 807.127

The rules are repealed under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted repeals affect Title 3, Texas Education Code, particularly Chapter 132.

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## SUBCHAPTER I. APPLICATION FEES AND OTHER CHARGES

### 40 TAC §§807.151 - 807.153

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

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Les Trobman

General Counsel

Texas Workforce Commission

Effective date: November 28, 2022

Proposal publication date: July 29, 2022

For further information, please call: (512) 689-9855



## SUBCHAPTER J. ADVERTISING

### 40 TAC §§807.171 - 807.173, 807.175

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2022.

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Les Trobman  
General Counsel  
Texas Workforce Commission  
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For further information, please call: (512) 689-9855



#### **40 TAC §807.176**

The repeal is adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted repeal affects Title 3, Texas Education Code, particularly Chapter 132.

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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Les Trobman  
General Counsel  
Texas Workforce Commission  
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For further information, please call: (512) 689-9855



#### **SUBCHAPTER K. ADMISSION**

##### **40 TAC §§807.191 - 807.194, 807.196, 807.197**

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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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Les Trobman  
General Counsel  
Texas Workforce Commission  
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For further information, please call: (512) 689-9855



#### **SUBCHAPTER L. PROGRESS STANDARDS**

##### **40 TAC §§807.221, 807.223, 807.224**

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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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Les Trobman  
General Counsel  
Texas Workforce Commission  
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For further information, please call: (512) 689-9855



#### **SUBCHAPTER M. ATTENDANCE STANDARDS**

##### **40 TAC §§807.241 - 807.245**

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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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Les Trobman  
General Counsel  
Texas Workforce Commission  
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For further information, please call: (512) 689-9855



#### **SUBCHAPTER N. CANCELLATION AND REFUND POLICY**

##### **40 TAC §§807.261, 807.263**

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## SUBCHAPTER O. RECORDS

### 40 TAC §§807.281 - 807.284

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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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Les Trobman

General Counsel

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For further information, please call: (512) 689-9855



## SUBCHAPTER P. COMPLAINTS

### 40 TAC §§807.301, §807.302

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

### 40 TAC §§807.321, 807.322, 807.324, 807.325

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

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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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## SUBCHAPTER R. CLOSED SCHOOLS

### 40 TAC §§807.341, §807.342

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2022.

TRD-202204484

Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## SUBCHAPTER S. SANCTIONS

### 40 TAC §§807.351 - 807.353

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2022.

TRD-202204485

Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## SUBCHAPTER T. CEASE AND DESIST ORDERS

### 40 TAC §§807.362, 807.365, 807.366

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2022.

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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## SUBCHAPTER U. CAREER SCHOOLS HEARINGS

### 40 TAC §§807.385 - 807.387, 807.395

The rules are adopted under Texas Education Code, Chapter 132 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 3, Texas Education Code, particularly Chapter 132.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2022.

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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



## CHAPTER 821. TEXAS PAYDAY RULES

The Texas Workforce Commission ("TWC" or "Agency") adopts the repeal of the following section in Chapter 821, relating to Texas Payday Rules:

Subchapter C, Wage Claims, §821.45

TWC adopts the following new sections to Chapter 821, relating to Texas Payday Rules:

Subchapter C. Wage Claims, §821.48 and §821.49

The repeal and new sections are adopted *without changes* to the proposal, as published in the September 9, 2022, issue of the *Texas Register* (47 TexReg 5468), and, therefore, the adopted rule text will not be published.

### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 821 rule change is to modify the chapter to allow the Agency's Labor Law department to reissue determinations.

Under Texas Labor Code, Chapter 61, also referred to as the Texas Payday Law, the Texas Legislature granted the Agency authority to adjudicate wage claims and issue preliminary wage determination orders (PWDOs). After issuing a PWDO, the parties have 21 days to appeal. If no appeal is filed, then the order becomes final "for all purposes." If appealed, the Wage Claim Appeal Tribunal (WCAT) will hold a hearing and issue a decision. The WCAT decision becomes final 14 days after mailing unless a party appeals to TWC's three-member Commission (Commission). A decision of the Commission becomes final 14 days after mailing unless a party files a Motion for Rehearing or for judicial review of the Commission's decision.

The Texas Payday Law and TWC rules do not state whether the Agency may reissue a corrected PWDO. Currently, when an error is made on the PWDO or additional information becomes available between issuance of the PWDO and when the decision is final, there is no clear authority for the Agency to issue a corrected PWDO. This can result in costly appeal hearings to resolve minor clerical errors.

In statute and rule related to unemployment claims, the Agency has similar authority to that adopted in this rulemaking. Texas Labor Code, §212.054 allows for an examiner to issue a re-determination of an unemployment determination if there is an error or upon the discovery of new information. The examiner has 14

days from the mailing date of the original determination to issue the redetermination. The 14 days includes the period prior to the original determination becoming final. An unemployment examiner may issue a redetermination to correct a clerical or machine error at any time during a claimant's benefit year.

Title 40 Texas Administrative Code (TAC) §815.16(6)(B) allows the Appeal Tribunal for unemployment hearings to issue a corrected decision as follows:

"At any time during the 14-day period from the date a decision on an appeal is mailed, unless a party of interest has already appealed to the Commission, the appeal tribunal or the supervisor of appeals may assume continuing jurisdiction over the appeal for the purpose of reconsidering the issues on appeal and issuing a corrected decision. During the period in which continuing jurisdiction is assumed, the appeal tribunal, after notice to the parties, may take any additional evidence or secure any additional information it deems necessary to issue a decision."

Clear written authority in rule would allow TWC to exercise plenary power over decisions which have mailed but are not yet final. As adopted, TWC would not exercise this authority if an appeal has been filed. A reissued PWDO would void and replace any prior incorrect PWDOs, and the appeal period would start again allowing either party 21 days to file an appeal from the mailing date of the reissued PWDO.

Texas Payday Law appeals rules and procedures are governed by current rule 40 TAC §821.45, which incorporates the rules and hearing procedures set out in TWC's Unemployment Insurance rules at 40 TAC Chapter 815, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under the Texas Payday Rules or the Texas Payday Act.

Finally, Texas Government Code, §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC reviewed the rules in Chapter 821 and determined that the rules are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist and any changes to the rules are described in Part II of this preamble.

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

### SUBCHAPTER C. WAGE CLAIMS

TWC adopts the following amendments to Subchapter C:

#### §821.45. Appeals.

Section 821.45 is repealed and the language is moved to new §821.49.

#### §821.48. Corrected Preliminary Wage Determination Order

New §821.48 provides that if an examiner discovers an error or receives additional information not previously available when the determination was made, the examiner may reconsider and reissue the PWDO within the 21-day period provided for in Texas Labor Code, §61.054.

New §821.48 is necessary to allow for a full and factually correct PWDO to be rendered to the parties when an error is made or additional information becomes available before the decision becomes final. New §821.48 provides payday examiners with similar authority to unemployment examiners, albeit with a 21-day redetermination period per Texas Labor Code, §61.054. Similar to 40 TAC §815.16(6)(B), if a timely appeal is filed within the 21-day period, the Labor Law department would no longer have

authority to reissue a corrected PWDO once that appeal is filed. Labor Law staff determined this to be a best practice to avoid interference with any actions the WCAT may have already taken with the filing of the appeal. The reissued PWDO would supersede any previous incorrect PWDOs. Either party would then have 21 days from the mailing date of the most recent reissued PWDO to file an appeal.

New §821.48 includes a caveat for instances in which the examiner has mailed the PWDO to a party's wrong address. This would only apply to errors made by the examiner, and not to situations in which the party provided the Agency with the wrong address.

#### §821.49. Appeals.

New §821.49 replaces repealed §821.45. The language in §821.45 is moved to new §821.49 to logically follow the corrected PWDO process in the rules.

TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

## PART III. PUBLIC COMMENTS

The public comment period closed on October 10, 2022. No comments were received.

## SUBCHAPTER C. WAGE CLAIMS

### 40 TAC §821.45

#### PART IV.

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Labor Code, §61.002(a)(2), which allows TWC to adopt rules as necessary to implement Texas Labor Code, Chapter 61.

The adopted repeal affects Texas Labor Code, Chapter 61.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2022.

TRD-202204488

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: November 28, 2022

Proposal publication date: September 9, 2022

For further information, please call: (512) 689-9855



### 40 TAC §821.48, §821.49

The rules are adopted under Texas Labor Code, §61.002(a)(2), which allows TWC to adopt rules as necessary to implement Texas Labor Code, Chapter 61.

The adopted rules affect Texas Labor Code, Chapter 61.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.



Filed with the Office of the Secretary of State on November 8,  
2022.

TRD-202204489

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: November 28, 2022

Proposal publication date: September 9, 2022

For further information, please call: (512) 689-9855





# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Alcoholic Beverage Commission

### Title 16, Part 3

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) files this notice of its intent to review the following rules in Chapter 31, §§31.2 and 31.12 - 31.13 concerning Administration, in accordance with Texas Government Code §2001.039. The Commission will assess whether the reasons for adopting or readopting the rules continue to exist and whether any rule should be moved into different place within the agency's rules. Each rule will 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 Commission.

Comments on the review may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov). The Commission must receive written comments postmarked no later than 30 days from the date this notice is published in the *Texas Register*.

TRD-202204572

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Filed: November 15, 2022



Texas Education Agency

### Title 19, Part 2

Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal; Subchapter BB, Administrator Appraisal; and Subchapter CC, Superintendent Appraisal, pursuant to Texas Government Code, §2001.039.

As required by Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting Chapter 150, Subchapters AA, BB, and CC, continue to exist.

The public comment period on the review begins November 25, 2022, and ends December 26, 2022. A form for submitting public comments on the proposed rule review is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review>.

TRD-202204522

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: November 9, 2022



Department of State Health Services

### Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for re Adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1 of the Texas Administrative Code:

Chapter 181, Vital Statistics

Subchapter A, Miscellaneous Provisions

Subchapter B, Vital Records

Subchapter C, Central Adoption Registry

Subchapter D, Birth Registration Certification

Subchapter E, Delayed Registration

This review is conducted pursuant to the requirements of the Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will consider whether these rules should be repealed, re adopted, or re adopted with amendments.

Comments on the review of Chapter 181, Vital Statistics, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1 of the Texas Administrative Code or on the Secretary of State's website at [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=25&pt=1&ch=181](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=25&pt=1&ch=181).

TRD-202204531

Mahan Farman-Farmaian

Director

Department of State Health Services

Filed: November 10, 2022



## Adopted Rule Reviews

Texas Real Estate Commission

### Title 22, Part 23

In accordance with Texas Government Code §2001.039, the Texas Real Estate Commission (TREC) has concluded its review of Texas Administrative Code, Title 22, Part 23, Chapter 535, General Provisions. The notice of proposed rule review was published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3069).

Two comments were received related to rules found within Chapter 535. One comment expressed concern about commission rebates to consumers. The other comment requested that the rules related to advertising be amended to require that license holders have a specific voicemail greeting. The Commission declines to make changes to the rule at this time.

TREC has determined that the reasoned justification for adopting Texas Administrative Code, Title 22, Part 23, Chapter 535 continues to exist.

This notice concludes TREC's review of Texas Administrative Code, Title 22, Part 23, Chapter 535.

TRD-202204525

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

Filed: November 9, 2022



# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 10 TAC §10.622 - Preamble

Property A			
1 bedroom	30%	50%	60%
# of units	1	4	5
2021 rent limit	\$475	\$847	\$1,032
2021 UA	\$81	\$81	\$81
2021 max tenant rent	\$394	\$766	\$951
2022 rent limit	\$539	\$953	\$1,160
2022 UA	\$82	\$82	\$82
2022 max tenant rent	\$457	\$871	\$1,078
allowable rent increase	\$63	\$105	\$127
potential impact per month		\$420	\$635
3 months' lost rent		\$1,260	\$1,905

2 bedrooms	30%	50%	60%
# of units	2	10	13
2021 rent limit	\$566	\$1,012	\$1,235
2021 UA	\$101	\$101	\$101
2021 max tenant rent	\$465	\$911	\$1,134
2022 rent limit	\$642	\$1,139	\$1,387
2022 UA	\$102	\$102	\$102
2022 max tenant rent	\$540	\$1,037	\$1,285
allowable rent increase	\$75	\$126	\$151
potential impact per month	\$150	\$1,260	\$1,963
3 months' lost rent	\$450	\$3,780	\$5,889

3 bedrooms	30%	50%	60%
# of units	3	10	12

2021 rent limit	\$650	\$1,165	\$1,422
2021 UA	\$121	\$121	\$121
2021 max tenant rent	\$529	\$1,044	\$1,301
2022 rent limit	\$738	\$1,312	\$1,599
2022 UA	\$122	\$122	\$122
2022 max tenant rent	\$616	\$1,190	\$1,477
allowable rent increase	\$87	\$146	\$176
potential impact per month	\$261	\$1,460	\$2,112
3 months' lost rent	\$783	\$4,380	\$6,336

Total potential impact:        \$24,783





# 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 the Attorney General

Office of the Attorney General Findings Senate Bill 181, 87th Leg., Regular Session (2021)

The Office of the Attorney General makes the following findings:

States are required under 23 U.S.C. §159 to enact and enforce a law requiring in all circumstances the revocation, or suspension for at least six months, of the driver's license of an individual who is convicted of a drug offense.

A state's noncompliance with 23 U.S.C. §159 could result in the U.S. Secretary of Transportation withholding 10 percent of the amount required to be apportioned to the state under the law governing federal aid for highways.

In 1991, Texas enacted §521.372, Transportation Code, Automatic Suspension; License Denial, to comply with the federal law. Section 512.372 of the Transportation Code establishes a six-month license suspension period after a person is convicted of a drug offense and a six-month license denial period after the person applies for reinstatement or issuance of a driver's license.

The federal mandate for states to enact and enforce a law requiring automatic suspension of the driver's license of an individual who is convicted of any drug-related offense inappropriately limits the ability of Texas courts to exercise discretion in determining punishment.

As an alternative to enacting or enforcing such a law, the governor of a state can submit a written certification to the U.S. Secretary of Transportation stating the governor's opposition to the enactment or enforcement in the state of such a law. A governor pursuing this alternative must also certify that the state legislature has adopted a concurrent resolution expressing opposition to the enactment or enforcement in the state of such a law.

The Office of the Attorney General finds the following:

1. The 87th Legislature of the State of Texas adopted Senate Concurrent Resolution 1 on May 14, 2021, expressing its opposition to a law that requires the automatic suspension of an individual's driver's license where that individual is convicted of certain offenses. Tex. S. Con. Res. 1, 87th Leg., R.S. (2021)

2. On May 27, 2021, the 87th Legislature of the State of Texas passed Senate Bill 181 removing the automatic suspension of a driver's license for an individual who is convicted of certain misdemeanor drug offenses from law. Act of May 27, 2021, 87th Leg., R.S., S.B. 181, §1.02

3. On August 20, 2021, the Governor of Texas submitted a written statement to the U.S. Secretary of Transportation expressing opposition to the enactment or enforcement in Texas of a law that conforms to 23 U.S.C. §159(a)(3)(A). In addition, the Governor certified both Senate Concurrent Resolution 1 and Senate Bill 181 passed by the 87th Legislature of the State of Texas.

5. On December 14, 2021, the Governor of Texas submitted a second written statement to the U.S. Secretary of Transportation notifying him that Texas still had not received certification from the U.S. Transportation Secretary that Texas has met the requirements of 23 U.S.C.

§159 and will not have federal highway funds withheld. In addition, the Governor again certified both Senate Concurrent Resolution 1 and Senate Bill 181 passed by the 87th Legislature of the State of Texas.

4. On October 31, 2022, the Governor of Texas received written certification from the U.S. Secretary of Transportation that Texas has met the alternative requirements of 23 U.S.C. §159 and will not have federal highway funds withheld.

Therefore, Article 1 of Senate Bill 181 shall take effect on February 25, 2023, the 91st day after the date of publication of this finding in the *Texas Register*.

TRD-202204536

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: November 10, 2022

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/21/22 - 11/27/22 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/21/22 - 11/27/22 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202204566

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 15, 2022

## Credit Union Department

### Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application for a change to its principal place of business was received from Plus4 Credit Union, Houston, Texas. The credit union is proposing to change its name to Priority Trust Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed

during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202204580  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: November 16, 2022



### Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas, to expand its field of membership. The proposal would permit members of the Texas Consumer Council who reside in Texas, to be eligible for membership in the credit union.

An application was received from Members Choice Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit members of the Texas Consumer Council, to be eligible for membership in the credit union.

An application was received from Mobiloil Credit Union #1, Beaumont, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located within Galveston County, Texas, to be eligible for membership in the credit union.

An application was received from Mobiloil Credit Union #2, Beaumont, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located within Harris County, Texas, to be eligible for membership in the credit union.

An application was received from Mobiloil Credit Union #3, Beaumont, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located within Montgomery County, Texas, to be eligible for membership in the credit union.

An application was received from Mobiloil Credit Union #4, Beaumont, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located within San Jacinto County, Texas, to be eligible for membership in the credit union.

An application was received from Mobiloil Credit Union #5, Beaumont, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located within Polk County, Texas, to be eligible for membership in the credit union.

An application was received from Mobiloil Credit Union #6, Beaumont, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located within Angelina County, Texas, to be eligible for membership in the credit union.

An application was received from Mobiloil Credit Union #7, Beaumont, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located within San Augustine County, Texas, to be eligible for membership in the credit union.

An application was received from Mobiloil Credit Union #8, Beaumont, Texas, to expand its field of membership. The proposal would

permit persons who live, work, worship or attend school in, businesses and other legal entities located within Sabine County, Texas, to be eligible for membership in the credit union.

An application was received from Space City Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses within Harris County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-character-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202204579  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: November 16, 2022



### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Articles of Incorporation Change - Approved

Navy Army Community Credit Union (Corpus Christi) - See *Texas Register* dated on September 30, 2022.

RelyOn Credit Union (Dallas) - See *Texas Register* dated on September 30, 2022.

Merger or Consolidation - Approved

WesTex Community Credit Union (Kermit) and Ward County Credit Union (Monahans) - See *Texas Register* dated on February 25, 2022.

TRD-202204578  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: November 16, 2022



### Texas Education Agency

Notice of Correction Concerning the 2023-2024 Nita M. Lowey 21st Century Community Learning Centers (CCLC), Cycle 12, Year 1 Grant Program under Request for Applications #701-23-106

Filing Authority. The availability of grant funds is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965, as amended by Every Student Succeeds Act, Title IV, Part B (20 U.S.C. §§7171-7176).

The Texas Education Agency (TEA) published Request for Applications Concerning the 2023-2024 Nita M. Lowey 21st Century Com-

munity Learning Centers (CCLC), Cycle 12, Year 1 Grant Program in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7569).

TEA is amending the maximum award amount. In the Project Amount section, the anticipated award range is amended to read, "It is anticipated that approximately 40 grants will be awarded ranging in amounts from \$250,000 to \$2 million each year of the five-year project period."

TRD-202204585

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: November 16, 2022



## Request for Student Reading Instrument, Grade 7

**Description.** The Texas Education Agency (TEA) is notifying publishers that reading diagnostic instruments for students in Grade 7 (Texas Education Code (TEC), §28.006(c-1)) may be submitted for review for inclusion on the 2023-2027 Commissioner's List of Approved Grade 7 Reading Instruments.

Publishers, including those on the current Commissioner's Lists of Reading Instruments, will be responsible for submitting instruments they wish to have considered for inclusion on the 2023-2027 Commissioner's List of Approved Grade 7 Reading Instruments.

### *Grade 7 Reading Instruments*

Only reading instruments for Grade 7 may be submitted for review at this time. In accordance with TEC, §28.006(c-1), each school district and open-enrollment charter school is required to administer at the beginning of Grade 7 a reading instrument adopted by the commissioner to each student whose performance on the assessment instrument in reading administered under TEC, §39.023(a), to the student in Grade 6 did not demonstrate reading proficiency, as determined by the commissioner. The district shall administer the reading instrument in accordance with the commissioner's recommendations under TEC, §28.006(a)(1).

**Program Requirements.** Since the 2008-2009 school year, school districts and open-enrollment charter schools have been required to administer a diagnostic reading assessment to Grade 7 students whose performance on the Grade 6 state reading assessment did not meet the passing standard. Results from the diagnostic reading assessment are to be used to inform additional reading instruction and intervention.

**Selection Criteria Specific to Student Reading Instrument for Grade 7.** To be considered for approval by the commissioner, the Grade 7 student reading instrument must at a minimum (1) be based on current, published scientific research in reading; (2) be age and grade-level appropriate, valid, and reliable; (3) identify specific skill difficulties in word analysis, fluency, and comprehension; and (4) assist the teacher in making individualized instructional decisions based on the assessment results.

Information on how reading instruments will be evaluated can be found in the *TEA Criteria for the Evaluation of Reading Instruments* section of this notice.

2023-2027 Commissioner's List of Approved Grade 7 Reading Instruments. The list is expected to be made available in Spring 2023 so that school districts and open-enrollment charter schools may order instruments for the 2023-2024 school year. Instruments selected for the commissioner's list will remain on the list for four years unless the approved

instrument is no longer available from the publisher. A publisher that substantially revises its reading instrument during the four-year approval period or no longer provides support for the approved version of the instrument will have the approved instrument removed from the list.

### *TEA Criteria for the Evaluation of Reading Instruments*

1. The instrument must be intended for use with students at the beginning of Grade 7 and in alignment with the Grades 6 and 7 Texas Essential Knowledge and Skills (TEKS). Grade 7 tools may be limited to Grade 7 readiness measures (screening) or may assess readiness and track progress throughout the school year (progress monitoring). Screening measures are brief assessments of skills that are important early indicators of competence in later grades. These provide information on grade-level skills at the beginning of Grade 7. Progress monitoring refers to brief measures that are conducted on a routine basis to provide information on what students are learning and rates of improvement throughout the grade level. Progress monitoring measures should be brief, and teachers should be able to conduct them at least three times across a school year and learn which students are or are not demonstrating adequate progress. The results of measures should be predictive of comprehensive standardized measures.

2. The instrument must use a standardized measure to assess student performance. This means the assessment has a common set of questions, tasks, and materials, and the student's score is based on a normative sample of students.

3. The length of time needed to administer the instrument, plus any other instruments necessary to assess all relevant domains, must be less than 60 minutes per student. That is, the total assessment time for evaluation of all relevant domains at each grade level must not exceed 60 minutes per administration.

4. The instrument must be individually administered, and a domain score for each individual student must be provided.

5. The instrument must include a list of technology required for the individual administration of the assessment. A paper version must be provided for administration and made available to districts at their request.

6. The instrument must directly assess reading skills, preferably as they are specified in the TEKS. Instruments that only measure reading-related skills (e.g., accuracy and error) are insufficient as measures of reading proficiency.

7. In order to be considered for review, the reading instruments must measure at least three domains of development, including reading comprehension, word analysis, and fluency. Assessments that measure more than three domains are encouraged.

8. The instrument should have a scoring structure that yields a separate score for each domain listed in Table 1. For this review, an instrument is only considered to assess a domain if it provides a score for that domain. See Table 1 for the recommended and required domains for Grade 7. The scoring of the assessment should also include suggestions for a small grouping of students based on intervention need; suggestions for interventions based on data; updated suggestions for small grouping when students master their intervention(s); and suggestions for tier 2 instructional support for students who are identified as struggling readers.

Table 1: Required and Recommended Domains for each Grade.

Domain	Grade 7
Phonics/Word Analysis (PH/WA)	Required
Text Comprehension (CO) – Reading	Required
Fluency	Required
Vocabulary	Recommended

9. Administration of the instrument by a classroom teacher must be allowable. Specifically, the qualifications for those who administer and interpret the instrument (as specified in the publisher's guidelines) should be within the coursework and/or licenses typically completed by teachers certified to teach middle school in Texas public schools. Administration procedures requiring timing, the establishment of basals and ceilings, complex judgments, and/or subjective ratings that require the special training of a diagnostician are inappropriate for teacher administration. Initial training to teachers regarding the administration of the instrument must be made available to staff and include additional or ongoing support options available to districts for the successful implementation of the instrument.

10. If the instrument is norm-referenced, it must have an appropriate national norming sample, in terms of the sample size and the groups represented. Norm-referenced tests must be representative of the population of Texas students in the grade for which the measure is intended (Grade 7). Criterion-referenced decisions about criterion mastery, non-mastery, risk, and impairment have special requirements for reliability and validity. See Guidelines 11 and 12 that follow.

11. At a minimum, the instrument must possess adequate reliability as demonstrated by independent research. For tests built using classical test theory, this should include internal consistency and alternate form and/or test-retest reliability data as appropriate for the measure's purpose and intended use. For tests developed using item response models, suitable psychometric data from the test development process should be submitted, including but not limited to the standard error of measurement, indices of item discrimination and difficulty, and total test information. Classifications resulting from criterion-referenced tests must be shown to be reliable. Instruments that depend on examiner ratings must demonstrate appropriate forms of inter-rater reliability.

12. Decisions based on test results must be supported by validity evidence established by independent research. Evidence of construct, content, criterion validity (concurrent or predictive), and discriminant and convergent validity are appropriate, depending on the purpose and intended uses of the measure. Studies of test dimensionality (e.g., factor analysis), differential item functioning, or predictive utility involving multiple measures should be provided wherever available. Classifications resulting from criterion-referenced tests must be shown to be valid and must demonstrate both sensitivity and specificity.

13. Normative and technical data for the instrument must be aligned to the current TEKS.

14. Assessments in English and other languages should be submitted separately. (Complete one form for each language assessment.)

Please note: All submissions will be reviewed using the *TEA Criteria for the Evaluation of Reading Instruments* as an outline for evaluation; thus, it is highly recommended that all submissions directly address each guideline. Further, online or electronic tests submitted for evaluation must include online access information (e.g., web address, login, password) and/or an installable copy of the software; in addition, a paper version of the submission must be received by the deadline. Submissions must include the name, direct line phone number, and email address of a primary contact person who can be contacted in the event reviewers need to ask questions or request more information pertaining to the submission. Delays in responding to reviewers' questions may result in an incomplete review; products with incomplete reviews will not be considered for inclusion on the Commissioner's List of Approved Grade 7 Reading Instruments.

Publishers may submit an optional Notice of Intent to Apply by 5:00 p.m. (Central Time) on December 5, 2022. To be considered for inclusion on the 2023-2027 Commissioner's List of Approved Grade 7 Reading Instruments, proposals must be submitted to the Texas Education Agency using the Grade 7 reading instrument application form. The completed application must be submitted by email to [curriculum@tea.texas.gov](mailto:curriculum@tea.texas.gov) (please include Grade 7 reading instrument in the subject line) or by mail to 1701 N. Congress Avenue, Austin, Texas, 78701 (Attention: Curriculum Division) by 12:00 p.m. (Central Time), December 30, 2022. Additional information, including the Grade 7 reading instrument application form and Notice of Intent to Apply, is available online at <https://tea.texas.gov/academics/subject-areas/english-language-arts-and-reading>.

For inclusion on the 2023-2027 Commissioner's List. In previous calls, reading instruments approved for inclusion on the Commissioner's Lists of Reading Instruments for Texas public school districts and open-enrollment charter schools remained on the list for four years from the date of approval. Due to policy changes, all reading instruments on the 2014-2018 Commissioner's List of Reading Instruments will expire at the end of the 2022-2023 school year, regardless of the approval date. To be included on the 2023-2027 Commissioner's List of Approved Grade 7 Reading Instruments, all vendors must submit their reading instrument materials according to the guidelines provided in this notice.

Further Information. For clarifying information, contact the TEA Curriculum Standards and Student Support Division at (512) 463-9581 or curriculum@tea.texas.gov.

TRD-202204583

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: November 16, 2022



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 29, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **December 29, 2022**. 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: Alleyton Resource Company, LLC; DOCKET NUMBER: 2020-0390-AIR-E; IDENTIFIER: RN102576683; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: concrete batch plant; 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 §106.4(c) and §106.13, Permit by Rule (PBR) Registration Number 41236, and THSC, §382.085(b), by failing to maintain all emissions control equipment in good condition and operated properly during operation of the facility; 30 TAC §106.8(c)(1) and (2)(B) and §106.13, PBR Registration Number 41236, and THSC, §382.085(b), by failing to maintain a copy of each PBR under which the facility is operating and failing to maintain records containing sufficient information to demonstrate compliance with all applicable general requirements and PBR conditions; and 30 TAC §106.13 and §106.201(1), PBR Registration Number 41236, and THSC, §382.085(b), by failing to

sprinkle all stockpiles with water and/or dust-suppressant chemicals as necessary to achieve maximum control of dust emissions; PENALTY: \$7,563; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Avalon Point Water Services, LLC; DOCKET NUMBER: 2022-0181-PWS-E; IDENTIFIER: RN104011432; LOCATION: Lakehills, Bandera County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(B)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; PENALTY: \$250; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Bishok and Amrit, LLC dba Lone Star Dollar Saver 7; DOCKET NUMBER: 2022-0815-PST-E; IDENTIFIER: RN102265899; LOCATION: Wichita Falls, Wichita 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 for releases at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Casco Hauling and Excavating Company; DOCKET NUMBER: 2021-1309-MSW-E; IDENTIFIER: RN103053062; LOCATION: Houston, Harris County; TYPE OF FACILITY: Type VI landfill; RULES VIOLATED: 30 TAC §30.213(a), by failing to employ at least one licensed individual to supervise or manage the operations of a Municipal Solid Waste (MSW) facility; 30 TAC §305.70(k) and §330.121(b) and (c), by failing to submit an application to modify the facility's permit to comply with the 2004 rule amendment revisions and complete a no-notice permit modification to comply with the 2006 rule amendment revisions; 30 TAC §328.54(c), by failing to obtain prior written approval from the TCEQ before storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; 30 TAC §330.125(b), by failing to record and retain records required in the operating record; 30 TAC §330.125(e) and MSW Permit Number 1403 and Site Operating Plan (SOP), Section VI Other Considerations, Safety, by failing to maintain personnel training records at the facility; and 30 TAC §330.127(1) and MSW Permit Number 1403 and SOP, Section VII Site Management, by failing to update the SOP to reflect the current description of functions and minimum qualifications for each category of key personnel to be employed at the facility and for supervisory personnel in the chain of command; PENALTY: \$38,543; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$15,417; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: City of La Marque; DOCKET NUMBER: 2021-0952-MWD-E; IDENTIFIER: RN101917284; LOCATION: La Marque, Galveston County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010410003, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$97,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$97,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: LS Tavern, LLC dba Lone Star Tavern, LLC; DOCKET NUMBER: 2022-0947-PWS-E; IDENTIFIER: RN104375100; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system; 30 TAC §290.46(n)(1), by failing to maintain at the public water system 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; and 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; PENALTY: \$1,263; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(7) COMPANY: MIDWAY WATER UTILITIES, INCORPORATED; DOCKET NUMBER: 2022-0784-MWD-E; IDENTIFIER: RN105132401; LOCATION: Gordonville, Grayson 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 WQ0014783001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, by failing to comply with permitted effluent limitations; PENALTY: \$16,875; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Nueces County Water Control and Improvement District 3; DOCKET NUMBER: 2022-0874-PWS-E; IDENTIFIER: RN101428233; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), 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: \$3,500; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(9) COMPANY: Texas Water Utilities, L.P.; DOCKET NUMBER: 2022-0888-PWS-E; IDENTIFIER: RN101255818; LOCATION: Avinger, Marion County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), 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: \$3,375; ENFORCEMENT COORDINATOR: Nick Lohret, (512) 239-4495; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: TotalEnergies Petrochemicals and Refining USA, Incorporated; DOCKET NUMBER: 2021-0972-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(1), 111.111(a)(1)(B), 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.18(c)(1), New Source Review (NSR) Permit Number 3908B, Special Conditions (SC) Numbers 1 and 10.C, Federal Operating Permit (FOP) Number O1293, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions and failing to operate the flare with no visible emissions; 30 TAC §§101.20(1), 115.722(d), 116.115(c), and 122.143(4), 40 CFR §60.18(c)(2), NSR Permit Number 3908B,

SC Numbers 1 and 10.B, FOP Number O1293, GTC and STC Number 14, and THSC, §382.085(b), by failing to prevent unauthorized emissions and failing to operate the flare with a flame present at all times; 30 TAC §§101.20(1) and (2), 113.130, 115.352(4), 115.783(5), 116.115(c), 116.715(a), and 122.143(4), 40 CFR §§60.482-6(a)(1), 60.482-6a(a)(1), 61.242-6(a)(1), and 63.167(a)(1), NSR Permit Numbers 3908B and 21538, SC Numbers 5.E and 18.E, FOP Number O1293, GTC and STC Number 14, and THSC §382.085(b), by failing to equip each open-ended valve or line with a cap, blind flange, plug, or a second valve; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 3908B, SC Number 1, FOP Number O1293, GTC and STC, by failing to comply with the maximum allowable emissions rates; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 21538, SC Number 1, FOP Number O1293, GTC and STC Number 14, by failing to prevent unauthorized emissions; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1293, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$148,163; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$70,140; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202204533

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: November 10, 2022

◆ ◆ ◆  
Enforcement Orders

An agreed order was adopted regarding One World Ventures, LLC dba One World Grocery 1, Docket No. 2020-0562-PST-E on November 15, 2022, assessing \$3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jennifer Peltier, 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 Austin Independent School District, Docket No. 2021-0355-EAQ-E on November 15, 2022, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, 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 Pabs brothers inc dba Mobil Gas Town, Docket No. 2021-0380-PST-E on November 15, 2022, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 Haldor Topsoe, Inc., Docket No. 2021-0398-AIR-E on November 15, 2022, assessing \$4,001 in administrative penalties with \$800 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, 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 GROVE WATER SUPPLY CORPORATION, Docket No. 2021-0882-PWS-E on November 15, 2022, assessing \$1,300 in administrative penalties with \$260 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 Heyl Homes, Inc., Docket No. 2021-0923-WQ-E on November 15, 2022, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, 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 Avinash Gupta and Alphabetz Montessori Bulverde LLC, Docket No. 2021-1086-EAQ-E on November 15, 2022, assessing \$6,500 in administrative penalties with \$1,300 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, 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 EXXON MOBIL CORPORATION, Docket No. 2021-1109-AIR-E on November 15, 2022, assessing \$3,375 in administrative penalties with \$675 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 POTAC, LLC, Docket No. 2021-1194-AIR-E on November 15, 2022, assessing \$4,650 in administrative penalties with \$930 deferred. 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 TEXACO TEXAS ONE INVESTMENTS INC dba Texaco Food Mart 2011, Docket No. 2021-1524-PST-E on November 15, 2022, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 Mahajan Shah, LLC dba Deep Food Mart, Docket No. 2022-0100-PST-E on November 15, 2022, assessing \$4,058 in administrative penalties with \$811 deferred. Information concerning any aspect of this order may be obtained by contacting Horus Garcia, 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 TJ Properties, L.C. aka TJ Properties, LLC, Docket No. 2022-0113-PWS-E on November 15, 2022, assessing \$810 in administrative penalties with \$162 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.

An agreed order was adopted regarding Michael Troy Taylor, Docket No. 2022-0206-PST-E on November 15, 2022, assessing \$3,937 in administrative penalties with \$787 deferred. Information concerning any aspect of this order may be obtained by contacting Sushil Modak, 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 WOODCREEK WATER CORPORATION OF LIBERTY COUNTY, Docket No. 2022-0219-PWS-E on November 15, 2022, assessing \$1,800 in administrative penalties with \$360 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coor-

inator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LITTLE SAM INC. dba Little Sam 5, Docket No. 2022-0228-PST-E on November 15, 2022, assessing \$5,575 in administrative penalties with \$1,115 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, 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 Sunoco Retail LLC dba Fast Break 9 Docket No. 2022-0261-PST-E on November 15, 2022, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, 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 FIRST LAREDO STORE INC dba Tejano Mart 518, Docket No. 2022-0301-PST-E on November 15, 2022, assessing \$3,719 in administrative penalties with \$743 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, 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 Southside Independent School District, Docket No. 2022-0314-PST-E on November 15, 2022, assessing \$4,875 in administrative penalties with \$975 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, 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 Estela Turner dba Cerro Alto Water System, Docket No. 2022-0328-PWS-E on November 15, 2022, assessing \$713 in administrative penalties with \$142 deferred. Information concerning any aspect of this order may be obtained by contacting America Ruiz, 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 Everman ISD, Docket No. 2022-0362-PST-E on November 15, 2022, assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, 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 Chase Bailey dba Landshark Burgers, Docket No. 2022-0364-PWS-E on November 15, 2022, assessing \$1,063 in administrative penalties with \$212 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 Oscar Orduno, Inc., Docket No. 2022-0400-AIR-E on November 15, 2022, assessing \$1,875 in administrative penalties with \$375 deferred. Information concerning any aspect of this order may be obtained by contacting Kate Dacy, 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 City of Mount Calm, Docket No. 2022-0421-PWS-E on November 15, 2022, assessing \$1,050 in administrative penalties with \$210 deferred. 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 CHALK BLUFF WATER SUPPLY CORPORATION, Docket No. 2022-0464-PWS-E on November 15, 2022, assessing \$2,050 in administrative penalties with \$410 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.

A field citation was adopted regarding Scott Brooks, Docket No. 2022-0804-WOC-E on November 15, 2022, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Devin Mendoza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding CONSTRUCTION ZONE OF DFW, L.L.C., Docket No. 2022-0819-WQ-E on November 15, 2022, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding GALVESTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT 8, Docket No. 2022-0826-WQ-E on November 15, 2022, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202204588

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 16, 2022



## Enforcement Orders

An agreed order was adopted regarding Pilgrim's Pride Corporation, Docket No. 2019-1440-IWD-E on November 16, 2022 assessing \$58,587 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, 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 Gary Goetz, Docket No. 2019-1610-MLM-E on November 16, 2022 assessing \$11,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, 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 City of Ore City, Docket No. 2019-1763-MWD-E on November 16, 2022 assessing \$23,187 in administrative penalties with \$4,637 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, 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 City of Bertram, Docket No. 2020-0676-MWD-E on November 16, 2022 assessing \$13,125 in administrative penalties with \$2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda,

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 City of Commerce, Docket No. 2020-1201-MWD-E on November 16, 2022 assessing \$68,249 in administrative penalties with \$13,649 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, 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 Indorama Ventures Oxides LLC, Docket No. 2020-1274-AIR-E on November 16, 2022 assessing \$37,250 in administrative penalties with \$7,450 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 Valero Energy Partners LP, Docket No. 2021-0340-AIR-E on November 16, 2022 assessing \$67,500 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 Chevron Phillips Chemical Company LP, Docket No. 2021-0411-AIR-E on November 16, 2022 assessing \$19,500 in administrative penalties with \$3,900 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 Peaceful Lane Village, LLC and Wild Mountain Holdings, LLC, Docket No. 2021-0662-PWS-E on November 16, 2022 assessing \$16,110 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, 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 Victoria's Platinum Properties, LLC, Docket No. 2021-0697-PWS-E on November 16, 2022 assessing \$4,686 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ecko Beggs, 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 Frankston Rural Water Supply Corporation, Docket No. 2021-0716-PWS-E on November 16, 2022 assessing \$18,616 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 Aqua Utilities, Inc., Docket No. 2021-0752-PWS-E on November 16, 2022 assessing \$13,710 in administrative penalties with \$2,742 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 XTO Holdings, LLC, Docket No. 2021-0757-PWS-E on November 16, 2022 assessing \$5,600 in administrative penalties with \$5,600 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 Lake Livingston Water Supply Corporation, Docket No. 2021-0841-PWS-E on November 16, 2022 assessing \$28,017 in administrative penalties with \$5,603 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 Johns Manville, Docket No. 2021-0889-AIR-E on November 16, 2022 assessing \$93,750 in administrative penalties with \$18,750 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 Enterprise Products Operating LLC, Docket No. 2021-0935-AIR-E on November 16, 2022 assessing \$7,521 in administrative penalties with \$1,504 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 Fiesta Mart, L.L.C. dba Fiesta Mart 76, Docket No. 2021-0956-PST-E on November 16, 2022 assessing \$9,417 in administrative penalties with \$1,883 deferred. Information concerning any aspect of this order may be obtained by contacting Sushil Modak, 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 City of Post, Docket No. 2021-0978-PWS-E on November 16, 2022 assessing \$140,529 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 Arnold Oil Company Fuels, LLC dba Arnold Oil Fuels, Docket No. 2021-1044-MLM-E on November 16, 2022 assessing \$17,501 in administrative penalties with \$3,500 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, 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 ExxonMobil Oil Corporation, Docket No. 2021-1055-AIR-E on November 16, 2022 assessing \$28,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kate Dacy, 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 RBRK INC dba RACE RUNNER 2, Docket No. 2021-1069-PST-E on November 16, 2022 assessing \$11,352 in administrative penalties with \$2,270 deferred. Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, 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 Salvation Army, Docket No. 2021-1132-MWD-E on November 16, 2022 assessing \$7,875 in administrative penalties with \$1,575 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, 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 Lucy G. Garza, Docket No. 2021-1449-PST-E on November 16, 2022 assessing \$9,528 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, 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 Global Fiberglass Solutions of Texas, LLC, Docket No. 2022-0065-IHW-E on November 16, 2022 assessing \$13,200 in administrative penalties with \$2,640 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey 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 MULTI-COUNTY WATER SUPPLY CORPORATION, Docket No. 2022-0180-PWS-E on November 16, 2022 assessing \$3,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202204597

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 16, 2022



Notice of Hearing Highway 24 Transfer Station SOAH Docket No. 582-23-03902 TCEQ Docket No. 2022-1253-MSW MSW Permit No. 2411

#### APPLICATION.

Transfer Station Solutions, LLC, P.O. Box 6427, Paris, Texas 75461 has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize construction and operation of a municipal solid waste transfer station.

The facility is proposed to be located at 3491 Highway 24, Campbell, Texas 75422 in Hunt County, Texas. The TCEQ received this application on August 18, 2021. 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: <<https://arcg.is/11KmuD>>. For exact location, refer to application.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Commerce Public Library, 1210 Park Street, Commerce, Hunt County, Texas 75428. The permit application may be viewed online at <https://www.scsengineers.com/state/hwy-24-transfer-station/hwy-24-transfer-station-permit-application/>.

#### DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published on May 5, 2022. On September 20, 2022, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

## CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom video conference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - December 19, 2022

### To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 161 907 7388

Password: TCEQ392

or

### To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 907 7388

Password: 3009227

**Visit the SOAH website for registration at: <http://www.soah.texas.gov/> or call SOAH at (512) 475-4993.**

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 361, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 330; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov) or in printed format upon request to SOAH."**

## INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov). The mailing address for the TCEQ is P.O. Box 13087, Austin, Texas 78711-3087.

Further information may also be obtained from Transfer Station Solutions, LLC, at the address stated above or by calling Ryan Kuntz, P.E., at (817) 571-2288.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: November 9, 2022

TRD-202204593

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 16, 2022



## Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill

Notice issued on November 16, 2022

Proposed Permit No. 62048

Application. Baylor University, One Bear Place #97111, Waco, Texas 76798 has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62048). The proposed development concerns a tract of land of approximately 16 acres located at 1504 South University Parks Drive, Waco, Texas 76706 and consists of an enclosed two-story football operations center, with a total footprint of about 105,000 square feet, and associated outdoor practice field, driveways and parking areas, and support utilities. The development permit application is available for viewing and copying at Jesse H. Jones Library, 1301 South Second Street, Waco, Texas 76798 and may be viewed online at <http://www.scsengineers.com/state/>. The following link to an electronic map of the site or facility general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1rH1LS>. For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. 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 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.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

Executive Director Action. The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments, requests, and petitions must be submitted either electronically at <http://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 permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040.

General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Further information may also be obtained from Mr. Patrick J. Carley, P.E. at the address stated above or by calling Mr. Jeff Arrington, P.E. at (817) 358-6111.

TRD-202204594

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 16, 2022



### Notice of Water Quality Application

The following notice was issued on November 10, 2022:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE NOTICE ISUANCE DATE.

#### INFORMATION SECTION

Consideration of the application by **Broumley Dairy, LLC** for a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003395000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to modify the dairy production area by adding an anaerobic digester and the associated separation equipment, constructing two freestall barns, and reconfiguring the retention control structure (RCS) drainage area by removing pen areas. The design calculations for retention control structure (RCS) #1 were revised, which changed the RCS required capacity from 67.84 to 66.31 acre-feet. In addition, LMU #10 - 6 acres has been removed from the permitted site, Well #2 has now been plugged, and Well #11 has been located after due diligence. The facility maps have been updated to show the new property boundary after the removal of LMU #10, the correct location of Well #11, and the proposed production area layout. The total land application area will decrease from 496 to 490 acres. The authorized maximum capacity of 4,100 head total dairy cattle, of which 3,500 head are milking cows, will not change. The facility is located at 360 County Road 240, Hico in Erath County, Texas.

TRD-202204589

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 16, 2022



### Notice of Water Quality Application

The following notice was issued on November 16, 2022:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE NOTICE ISUANCE DATE.

#### INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment of Texas Pollutant Discharge Elimination System Permit No. WQ0004606000 issued to Cheniere Land Holdings LLC, which operates CLH DMPA Facility, a dredge material placement area (DMPA) facility, to add water quality-based effluent limitations for total mercury and reporting requirements for total copper. The existing permit authorizes discharge seepage water from the CLH DMPA/Sludge Placement Area (SPA) seepage water collection system, stormwater from the closed DMPA area, dredge decant water from maintenance dredging, stormwater from the construction and operation of the planned stage 3 development, and previously monitored effluent (wick drain water and stormwater from active waste management unit areas (the SPA) from internal Outfall 103) on an intermittent and flow-variable basis via Outfall 003; seepage water from the CLH DMPA/SPA seepage water collection system, stormwater from the closed DMPA area, and stormwater from the construction and operation of the planned stage 3 development on an intermittent and flow-variable basis via Outfalls 005, 006, and 007; wastewater from the Raw Water Lake (RWL), Decant Pond, and similar impoundments; seepage from the CLH DMPA/SPA seepage collection system; and wick drain water at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 008; and seepage water from the CLH DMPA/SPA seepage water collection system, stormwater from the closed DMPA area, stormwater from the construction and operation of the planned stage 3 development, and previously monitored effluent (stormwater from active waste management unit areas from internal Outfalls 109 and 110) on an intermittent and flow-variable basis via Outfalls 009 and 010. The facility is located on the south side of State Highway 361, adjacent to the intersection with State Highway 35 and approximately one mile southeast of the City of Gregory, in San Patricio County, Texas 78359.

TRD-202204592

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 16, 2022



### Notice of Water Rights Application

Notice Issued November 16, 2022

APPLICATION NO. 21-3207A; Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1, P.O. Box 170, Natalia, Texas 78059, Applicant, seeks authorization to extend the time to commence and complete modification of a dam and reservoir (Chacon Reservoir), on Chacon Creek, tributary of San Miquel Creek, tributary of the Frio River, Nueces River Basin. More information on the application and how to participate in the permitting process is given below. The application was received on April 26, 2022. Additional information and fees were received on August 22, 2022. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 29, 2022.

The Executive Director has determined that 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 authorization for the additional storage capacity 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 modifica-

tion of Chacon Reservoir. The application, technical memorandum and Executive Director's draft Order are available for viewing on the TCEQ web page at: [https://www.tceq.texas.gov/permitting/water\\_rights/wr-permitting/view-wr-pend-apps](https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps)

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. 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. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

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;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the 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 Order and will 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 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 3207 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202204591

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 16, 2022

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**Texas Health and Human Services Commission**

Public Notice - Methodology for Determining Caseload Reduction Credit for the Temporary Assistance for Needy Families (TANF) Program for Federal Fiscal Year 2023

The Texas Health and Human Services Commission (HHSC) announces its intent to seek comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) Program caseload reduction credit for Federal Fiscal Year (FFY) 2023. HHSC will base the methodology on caseload reduction occurring from FFY 2005 to FFY 2022. This methodology and the resulting estimated caseload reduction credit will be submitted for approval to the United States Department of Health and Human Services, Administration for Children and Families.

Section 407(b)(3) of the Social Security Act provides for a TANF caseload reduction credit, which gives a state credit for reducing its TANF caseload between a base year and a comparison year. To receive the credit, a state must complete and submit a report that, among other things, describes the methodology and the supporting data that the state used to calculate its caseload reduction estimates. See 45 C.F.R. §261.41(b)(5). Prior to submitting the report, the state must provide the public with an opportunity to comment on the estimate and methodology. See 45 C.F.R. §261.41(b)(6).

As the state agency that administers the TANF program in Texas, HHSC believes it is eligible for a caseload reduction credit and has developed the requisite estimate and methodology. HHSC hereby notifies the public of the opportunity to submit comments.

HHSC will post the methodology and the estimated caseload reduction credit on the HHSC website for FFY 2023 at <https://hhs.texas.gov/about-hhs/records-statistics/data-statistics/temporary-assistance-needy-families-tanf-statistics> by November 25, 2022. The public comment period begins November 25, 2022, and ends December 9, 2022.

**Written Comments.** Written comments may be sent by U.S. mail, fax, or email.

**U.S. Mail**

Texas Health and Human Services Commission Attention: Hilary Davis 909 W. 45th Street Bldg. 2, MC 2115 Austin, Texas 78751. Phone number for package delivery: (512) 206-5556

**Fax Attention:** Access and Eligibility Services - Program Policy, Hilary Davis

Fax Number: (512) 206-5141

**Email** [Hilary.Davis@hhs.texas.gov](mailto:Hilary.Davis@hhs.texas.gov)

TRD-202204562

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 14, 2022

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**Department of State Health Services**

Licensing Actions for Radioactive Materials

During the second half of September 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ANGLETON	ISOTHERAPEUTICS GROUP LLC	L05969	ANGLETON	48	09/19/22

ARLINGTON	TEXAS HEALTH ARLINGTON MEMORIAL HOSPITAL	L02217	ARLINGTON	124	09/21/22
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER	L06335	AUSTIN	42	09/20/22
AUSTIN	ST DAVIDS HEART & VASCULAR PLLC DBA AUSTIN HEART	L04623	AUSTIN	104	09/19/22
AUSTIN	ARA ST DAVIDS IMAGING LP	L05862	AUSTIN	116	09/20/22
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	242	09/19/22
BAYTOWN	CHEVRON PHILLIPS CHEMICAL COMPANY LP	L00962	BAYTOWN	56	09/28/22
BRAZORIA	CHEVRON PHILLIPS CHEMICAL COMPANY LP	L07130	BRAZORIA	02	09/20/22
BROWNWOOD	HENDRICK MEDICAL CENTER BROWNWOOD	L02322	BROWNWOOD	71	09/20/22
CORPUS CHRISTI	CHRISTUS SPOHN HEALTH SYSTEM CORPORATION DBA CHRISTUS SPOHN HOSPITAL CORPUS CHRISTI - SHORELINE & SOUTH	L02495	CORPUS CHRISTI	143	09/26/22
CYPRESS	KPH CONSOLIDATION INC DBA HCA HOUSTON HEALTHCARE NORTH CYPRESS	L06988	CYPRESS	07	09/20/22
DALLAS	TEXAS ONCOLOGY PA	L04878	DALLAS	71	09/19/22

DALLAS	METHODIST HOSPITALS OF DALLAS	L00659	DALLAS	147	09/27/22
DENTON	NORTH TEXAS CANCER CENTER LP	L05945	DENTON	17	09/23/22
FREEPORT	BLUE CUBE OPERATIONS LLC	L06926	FREEPORT	07	09/19/22
HOUSTON	QUARTET ENGINEERS PLLC	L06879	HOUSTON	08	09/28/22
HOUSTON	JUBILANT DRAXIMAGE INC DBA JUBILANT RADIOPHARMA	L06944	HOUSTON	10	09/19/22
HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WEST HOSPITAL	L06358	HOUSTON	13	09/23/22
HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WILLOWBROOK HOSPITAL	L05472	HOUSTON	72	09/21/22
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L03772	HOUSTON	173	09/30/22
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L01168	HOUSTON	196	09/16/22
HUMBLE	RADIOMEDIX INC	L06990	HUMBLE	13	09/21/22
LONGVIEW	CHRISTUS GOOD SHEPHERD MEDICAL CENTER DBA CHRISTUS GOOD SHEPHERD MEDICAL CENTER	L06902	LONGVIEW	11	09/27/22
MARBLE FALLS	SCOTT & WHITE HOSPITAL - MARBLE FALLS DBA BAYLOR SCOTT & WHITE MEDICAL CENTER - MARBLE FALLS	L06722	MARBLE FALLS	09	09/26/22

PASADENA	KARAN S BHALLA MD PLLC	L07018	PASADENA	01	09/26/22
PORT ARTHUR	BASF TOTAL PETROCHEMICALS LLC	L05914	PORT ARTHUR	12	09/20/22
SHERMAN	NORTH TEXAS COMPREHENSIVE CARDIOLOGY PLLC	L06797	SHERMAN	04	09/19/22
SWEENY	CHEVRON PHILLIPS CHEMICAL COMPANY LP	L06771	SWEENY	04	09/16/22
TEXARKANA	BRIM HEALTHCARE OF TEXAS LLC	L06242	TEXARKANA	07	09/23/22
THE WOODLANDS	THE METHODIST HOSPITAL DBA METHODIST DEBAKEY HEART & VASCULAR CENTER	L07075	THE WOODLANDS	03	09/30/22
THROUGHOUT TX	NQS INSPECTION LTD	L06262	CORPUS CHRISTI	22	09/27/22
THROUGHOUT TX	HPC INDUSTRIAL SERVICES LLC	L06155	DEER PARK	09	09/28/22
THROUGHOUT TX	PROBE TECHNOLOGY SERVICES INC	L05112	FORT WORTH	40	09/30/22
THROUGHOUT TX	VERSA INTEGRITY GROUP INC	L06669	HOUSTON	36	09/16/22
THROUGHOUT TX	H V J ASSOCIATES INC	L03813	HOUSTON	71	09/23/22
THROUGHOUT TX	BAKER HUGHES OILFIELD OPERATIONS LLC	L00446	HOUSTON	201	09/27/22
THROUGHOUT TX	MIDWEST NDT SERVICES LLC	L07043	PHARR	07	09/30/22
THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION (STC)	L06880	SUGAR LAND	12	09/23/22
TOMBALL	ARVIND M PAI MD PA	L06008	TOMBALL	13	09/16/22
VICTORIA	VICTORIA OF TEXAS LP	L01630	VICTORIA	55	09/16/22



RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BURNET	WILLIAM H ENGINEERING LLC	L06463	BURNET	05	09/15/22
FORT WORTH	TEXAS HEALTH HARRIS METHODIST HOSPITAL ALLIANCE	L06484	FORT WORTH	04	09/27/22
FORT WORTH	TEXAS HEALTH HARRIS METHODIST HOSPITAL FORT WORTH	L01837	FORT WORTH	163	09/26/22
HOUSTON	HOUSTON THROID AND ENDOCRINE SPECIALIST PLLC	L06464	HOUSTON	01	09/27/22
HOUSTON	DELGADO CARDIOVASCULAR ASSOCIATES PA	L06830	HOUSTON	02	09/21/22
HOUSTON	CARDIAC INTERVENTION SPECIALISTS PA	L06466	HOUSTON	05	09/26/22
HOUSTON	RLS (USA) INC	L05517	HOUSTON	33	09/16/22
ROANOKE	DUININCK INC	L03957	ROANOKE	25	09/22/22
THROUGHOUT TX	DESERT NDT LLC	L06462	ABILENE	55	09/19/22

TRD-202204581  
 Cynthia Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: November 16, 2022

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 Licensing Actions for Radioactive Materials

During the first half of October 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ARLINGTON	CARDIOLOGY SPECIALISTS OF NORTH TEXAS PLLC	L07005	ARLINGTON	03	10/07/22
ARLINGTON	HEARTPLACE PA	L06336	ARLINGTON	16	10/05/22
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS NORTH AUSTIN MEDICAL CENTER	L04910	AUSTIN	110	10/12/22
AUSTIN	NXP USA INC DBA NXP SEMICONDUCTORS USA INC	AUSTIN	L05347	19	10/06/22
BEDFORD	TEXAS ONCOLOGY PA	L05545	BEDFORD	76	10/11/22
BROWNSVILLE	JAIME L SILVA MD PA	L05245	BROWNSVILLE	11	10/12/22
CORPUS CHRISTI	CARDINAL HEALTH 414 LLC DBA CARDINAL HEALTH NUCLEAR PHARMACY SERVICES	L04043	CORPUS CHRISTI	61	10/11/22
CORPUS CHRISTI	ARCTIC TESTING AND INSPECTION LLC	L07065	LA PORTE	3	10/11/22
DALLAS	15770 NORTH DALLAS PARKWAY SUITE 400	L05447	DALLAS	17	10/11/22
DESOTO	VISHU LAMMATA MD PA	L05311	DESOTO	17	10/03/22
FORT WORTH	UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER FORT WORTH	L02518	FORT WORTH	57	10/11/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

GEORGETOWN	RADIATION DETECTION COMPANY	L06647	GEORGETOWN	05	10/03/22
HOUSTON	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	160	10/05/22
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM	L01168	HOUSTON	197	10/11/22
IRVING	AMEN CLINICS LLC	L07087	IRVING	01	10/12/22
IRVING	BAYLOR MEDICAL CENTER AT IRVING DBA BAYLOR SCOTT & WHITE MEDICAL CENTER - IRVING	L02444	IRVING	123	10/11/22
KERMIT	ATLAS SAND COMPANY LLC	L07149	KERMIT	01	10/03/22
LAKE JACKSON	THE DOW CHEMICAL COMPANY TEXAS INNOVATION CENTER - APB	L00451	LAKE JACKSON	113	10/13/22
LUBBOCK	LUBBOCK COUNTY HOSPITAL DISTRICT OF LUBBOCK COUNTY TEXAS	L04719	LUBBOCK	173	10/06/22
MONT BELVIEU	BELVIEU ENVIRONMENTAL FUELS LLC	L04679	MONT BELVIEU	10	10/05/22
ORANGE	INV NYLON CHEMICALS AMERICAS LLC	L05777	ORANGE	22	10/07/22
PASADENA	CELANESE LTD	L01130	PASADENA	83	10/06/22
PORT ARTHUR	THE PREMCOR REFINING GROUP INC DBA VALERO PORT ARTHUR REFINERY	L04871	PORT ARTHUR	27	10/05/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

SAN ANTONIO	UT MEDICINE SAN ANTONIO	L06737	SAN ANTONIO	08	10/11/22
SAN ANTONIO	BHS PHYSICIANS NETWORK INC DBA HEART & VASCULAR INSTITUTE OF TEXAS	L06750	SAN ANTONIO	23	10/12/22
THROUGHOUT TX	TEXAS DEPARTMENT OF TRANSPORTATION	L00197	AUSTIN	201	10/07/22
THROUGHOUT TX	WEATHERFORD INTERNATIONAL LLC	L00747	BENBROOK	119	10/07/22
THROUGHOUT TX	WEATHERFORD INTERNATIONAL LLC	L04286	BENBROOK	132	10/07/22
THROUGHOUT TX	FLYING A PUMPING SERVICES LLC	L07134	CISCO	01	10/05/22
THROUGHOUT TX	WEAVER CONSULTANTS GROUP LLC	L06395	FORT WORTH	12	10/07/22
THROUGHOUT TX	INSIGHT HEALTH CORP DBA RAYUS RADIOLOGY	L05504	HOUSTON	28	10/11/22
THROUGHOUT TX	IRISNDT	L06435	HOUSTON	33	10/10/22
THROUGHOUT TX	SIEMENS MEDICAL SOLUTIONS USA INC	L05884	IRVING	12	10/07/22
THROUGHOUT TX	PRECISION NDT LLC	L07054	MIDLAND	07	10/11/22
THROUGHOUT TX	BEYOND ENGINEERING AND TESTING LLC	L06924	MIDLAND	09	10/06/22
THROUGHOUT TX	BRAUN INTERTEC CORPORATION	L06643	SAN ANTONIO	09	10/06/22
TYLER	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER	L04117	TYLER	70	10/03/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

WALLER	NRG MANUFACTURING INC	L06550	WALLER	07	10/04/22
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RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BURLESON	TEXAS HEALTH HUGULEY INC	L06514	BURLESON	09	10/12/22
EL PASO	EL PASO CHILDRENS HOSPITAL CORPORATION	L06452	EL PASO	02	10/11/22
MCKINNEY	BAYLOR MEDICAL CENTERS AT GARLAND AND MCKINNEY	L06470	MCKINNEY	17	10/12/22
NEW BRAUNFELS	MISSION CARDIOVASCULAR CONSULTANTS PA DBA NEW BRAUNFELS CARDIOLOGY	L05463	NEW BRAUNFELS	15	10/14/22
THROUGHOUT TX	RABA-KISTNER INC	L01571	SAN ANTONIO	99	10/12/22

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
CORPUS CHRISTI	N-SPEC QUALITY SERVICES INCORPORATED	L05113	CORPUS CHRISTI	46	10/12/22
HOUSTON	GREATER HOUSTON HEART SPECIALISTS PA	L05666	HOUSTON	14	10/11/22

TRD-202204582

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**Texas Department of Insurance**

**Company Licensing**

Application for First Nonprofit Insurance Company, a foreign fire and/or casualty company, to change its name to Park National Insurance Company. The home office is in Wilmington, Delaware.

Application for incorporation in the state of Texas for Metafish Technology Insurance Company, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Application for Settlers Life Insurance Company, a foreign life, accident and/or health company, to change its name to Everly Life Insurance Company. The home office is in Topeka, Kansas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202204584

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: November 16, 2022

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**Legislative Budget Board**

**Tax Relief Amendment Implementation - Limit on Growth of Certain State Appropriations**

**Legal References**

The Texas Constitution, Article VIII, Section 22(a), restriction on rate of growth of appropriations, commonly referred to as the tax spending limit, was established by the passage of a constitutional amendment in 1978. It states that:

In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

This provision does not alter, amend, or repeal the Texas Constitution, Article III, Section 49a, known as the pay-as-you-go provision.

To implement this provision of the Texas Constitution, the Sixty-sixth Legislature, 1979, passed Article 9, Chapter 302, Laws 1979 (the Texas Government Code, Chapter 316), which placed with the Legislative Budget Board the responsibility for approval of a limitation on the growth of certain state appropriations. A part of the procedure for approving the limitation is set forth in Sections 316.003 and 316.004 as follows:

Section. 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations.

Section. 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit

testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

These items of information are identified as follows in the Texas Government Code, Section 316.002:

1. the estimated rate of growth of the state's economy from the current biennium to the next biennium;
2. the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and
3. the amount of state tax revenues not dedicated by the constitution that could be appropriated for the next biennium within the limit established by the estimated rate of growth of the state's economy.

In this memorandum, each item of information is discussed in this same order.

**Estimated Rate of Growth of the State's Economy**

A definition of the "estimated rate of growth of the state's economy" is set in the Texas Government Code, Section 316.002(b), in the following words:

(b) Except as provided by Subsection (c), the board shall determine the estimated rate of growth of the state's economy by dividing the estimated Texas total personal income for the next biennium by the estimated Texas total personal income for the current biennium. Using standard statistical methods, the board shall make the estimate by projecting through the biennium the estimated Texas total personal income reported by the United States Department of Commerce or its successor in function.

(c) If a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee established by Section 316.005, the board may use that definition in calculating the limit on appropriations.

The U.S. Commerce Department's Bureau of Economic Analysis defines state personal income as follows:

...the income received by persons from all sources, that is, from participation in production, from both government and business transfer payments, and from government interest. Personal income is the sum of wage and salary disbursements, supplements to wages and salaries, proprietors' income, rental income of persons, personal dividend income, personal interest income, and transfer payments, less contributions for social insurance.

Table 1 shows the U.S. Commerce Department's personal income account for Texas for calendar year 2021. The largest component of Texas personal income is wage and salary disbursements, estimated at \$861.4 billion during calendar year 2021. Salary and wage disbursements are added with supplements to wages and salaries, primarily employer contributions to private pensions and welfare funds, and proprietors' income to arrive at total earnings by place of work. Texas total earnings by place of work reached an estimated \$1,221.4 billion in calendar year 2021.

In deriving Texas total personal income, adjustments are made to total earnings by place of work. Personal and employee contributions for social insurance, principally Social Security payroll taxes paid by employees and self-employed individuals, are deducted. A place-of-residence adjustment also is made to reflect the earnings of workers who cross state borders to live or work. Dividends, interest, and rent income are then added, along with transfer payments. The major types of transfer payments include Social Security, various retirement and unemployment insurance benefits, welfare, and disability and health insurance payments. Texas total personal income is estimated to be \$1,767.7 billion for calendar year 2021.

The U.S. Department of Commerce reports personal income estimates by calendar quarter and year. Because the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present these data on a biennial basis. The Legislative Budget Board uses the data for the first three calendar quarters of a year plus the fourth quarter of the preceding year to represent the state's fiscal year. A biennium is the sum of two fiscal years. Table 2 shows the historical record of the rate of growth in Texas personal income for the past 20 completed biennia, using the data published by the U.S. Department of Commerce.

### Forecasting Texas Personal Income

In reviewing standard statistical techniques for forecasting or projecting Texas personal income, the Legislative Budget Board has obtained the latest economic forecasts from the following sources, listed alphabetically: (1) Moody's Analytics, (2) Perryman Group, (3) S&P Global, (4) Texas A&M University - Department of Economics, and (5) Texas Comptroller of Public Accounts. These forecasts are based on econometric models developed and maintained by the forecasting services listed.

Although each forecasting service approaches the development of economic projections differently, several characteristics are common to the econometric models from which the Texas total personal income estimates are derived. First, each model assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models typically entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors of the economy. Previous memoranda published on the constitutional limit include additional discussion of the forecasting methods used and can be found in the following issues of the *Texas Register*: 5 TexReg 4272, 7 TexReg 3727, 9 TexReg 5219, 11 TexReg 4590, 13 TexReg 4599, 15 TexReg 6876, 17 TexReg 7702, 19 TexReg 9053, 21 TexReg 10919, 23 TexReg 11472, 25 TexReg 11735, 27 TexReg 10977, 29 TexReg 10612, 31 TexReg 9641, 33 TexReg 9109, 35 TexReg 10081, 37 TexReg 9031, 39 TexReg 9391, 41 TexReg 9360, 43 TexReg 7571, and 45 TexReg 8620.

Table 3 shows details of the Texas personal income growth rates of the various forecasting services for the 2024-25 biennium over the 2022-23 biennium. These forecasts range from 9.48 percent to 14.57 percent.

The personal income growth rates shown in Table 3, or any more recent forecasts if available, will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one, or any combination of the growth rates, when adopting a Texas personal income growth rate for the 2024-25 biennium.

Table 4 shows the sources and dates for the Texas personal income growth rates presented in Table 3.

### Appropriations from State Tax Revenue Not Dedicated by the Constitution 2022-23 Biennium

The amount of appropriations from state tax revenue that are not dedicated by the constitution in the 2022-23 biennium, the base biennium, is the second item of information to be determined by the Legislative Budget Board. As of November 16, 2022, the Legislative Budget Board (LBB) staff estimates this amount to be \$101,582,185,996. This item multiplied by the estimated rate of growth of Texas personal income from the 2022-23 biennium to the 2024-25 biennium produces the limitation on appropriations for the 2024-25 biennium pursuant to the Texas Constitution, Article VIII, Section 22.

### Calculating the 2024-25 Limitation

The limitation on appropriations of state tax revenue that is not dedicated by the state constitution in the 2024-25 biennium, the third item of information, may be illustrated by selecting a growth rate and applying it to the 2022-23 biennial appropriations base. A change to the 2022-23 biennial appropriations base would result in a corresponding change to the 2024-25 biennial limit.

### Method of Calculating 2024-25 Appropriations from State Tax Revenue Not Dedicated by the Constitution

As previously stated, LBB staff estimates the amount of appropriations from state tax revenue that are not dedicated by the constitution in the 2022-2023 biennium to be \$101,582,185,996. This section details the sources of information used in this calculation.

Total appropriations for the 2022-23 biennium include those made by the Eighty-seventh Legislature, Regular Session, 2021, in Senate Bill 1; by the Eighty-seventh Legislature, Second Called Session, 2021, in House Bill 5 and House bill 9; by the Eighty-seventh Legislature, Third Called Session, 2021, in Senate Bill 8; and other legislation affecting appropriations. Any subsequent appropriations made by the Eighty-eighth Legislature, 2023, for the 2022-23 biennium also would be included in total appropriations.

Table 5, Section B, shows General Revenue Funds appropriations, which is the method of finance for general-purpose spending. General Revenue Funds appropriations are financed with revenues in the following General Revenue Funds: General Revenue Fund (Fund No. 0001), Available School Fund (Fund No. 0002), Technology and Instructional Materials Fund (Fund No. 0003), Foundation School Fund (Fund No. 0193), and Tobacco Settlement Fund (Fund No. 5040). Section B shows the total amount of General Revenue Funds appropriations, the amount of appropriations financed from constitutionally dedicated tax revenue, the amount financed from nontax revenue and the remainder--the amount financed from tax revenue that is not dedicated by the constitution--which is the amount subject to the limitation.

#### I. General Revenue-Related Funds

A. Appropriations are classified in this table as the following: (1) "estimated to be" line item appropriations, and (2) sum-certain line item appropriations.

##### 1. "Estimated to Be" Line Item Appropriations:

Each of these items under the subheading "estimated to be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2022 amounts are based on actual 2022 expenditures. Most amounts for fiscal year 2023 are taken from Senate Bill 1, Eighty-seventh Legislature, Regular Session, 2021.

##### 2. Sum-certain Line Item Appropriations:

As calculated in Table 6, the amount shown for "Total Sum Certain Line Item Appropriations" is the difference between total appropriations and the items listed separately as "estimated to be appropriations." General Revenue Funds appropriations in Table 6 include those made by the Eighty-seventh Legislature, Regular Session, 2021, in Senate Bill 1; by the Eighty-seventh Legislature, Second Called Session, 2021, in House Bill 5 and House bill 9; by the Eighty-seventh Legislature, Third Called Session, 2021, in Senate Bill 8; and other legislation affecting appropriations.

B. Source of Funding - General Revenue-Related: Table 5, Part B, shows that of the \$118,180,850,900 of General Revenue Fund appropriations, \$92,825,708,111 is subject to the limitation because it is financed from state tax revenue that is not dedicated by the Constitution.



Constitutionally dedicated state tax revenues deposited into General Revenue Funds are estimated to total \$9,742,327,325 during the 2022-23 biennium. Appropriations from General Revenue Funds financed from nontax revenue are estimated at \$15,612,815,463 for the 2022-23 biennium. Revenue analysis in this calculation applies actual fiscal year 2022 revenue collections and the most recent revenue estimates by the Comptroller of Public Accounts for fiscal year 2023.

## II. Appropriations from Funds Outside of General Revenue

Certain tax revenues are deposited into funds and accounts outside of the General Revenue Funds. Appropriations from these funds and accounts financed with state tax revenue that are not dedicated by the constitution are included in this calculation.

The state imposes a sales and use tax on boats and boat motors, of which 95.0 percent is deposited into the General Revenue Funds and the remaining 5.0 percent is deposited into General Revenue-Dedicated Account No. 0009, Game, Fish, and Water Safety. The state imposes an insurance companies maintenance tax, which is deposited into General Revenue-Dedicated Account No. 0036, Texas Department of Insurance.

A portion of the motor vehicles sales tax, franchise tax, and cigarette tax is deposited into the Property Tax Relief Fund (Fund No. 0304). Similarly, sales tax revenue collected by marketplace providers on the sales of taxable items made through the marketplace is deposited to the Tax Reduction and Excellence in Education Fund (Fund No. 0305). The state transfers revenue in the General Revenue Funds to the Economic Stabilization Fund (Fund No. 0599) based on the amount of severance tax collections during the previous year. Most of the transferred revenue is tax revenue.

General Revenue-Dedicated Account No. 5066, Rural Volunteer Fire Department Insurance, includes deposits of taxes on the sales of fire-works. Part of the sales tax and the motor vehicles sales tax is deposited into General Revenue-Dedicated Account No. 5071, Emissions Reduction Plan. In addition, General Revenue-Dedicated Account No. 5144, Physician Education Loan Repayment, includes deposits of tobacco tax revenue.

Additionally, certain unappropriated General Revenue-Dedicated balances are used to certify General Revenue Fund appropriations as a result of funds consolidation. When General Revenue Fund appropriations exceed General Revenue Fund revenues, General Revenue-Dedicated balances are considered when determining how much General Revenue Fund appropriations are subject to the spending limit. To the extent that those General Revenue-Dedicated balances contain tax revenues not dedicated by the Constitution, the General Revenue-Dedicated balances are subject to the limit when appropriated.

### Grand Total

A grand total of \$127,578,542,711 in 2022-23 biennial appropriations is included in this analysis. Of this amount, \$9,742,327,325 is financed out of taxes dedicated by the state constitution. Another \$16,254,029,390 is financed out of nontax revenue. The remaining \$101,582,185,996 is financed out of state tax revenue that is not dedicated by the state constitution. This amount serves as the base for calculating the limitation on 2024-25 biennial appropriations from state tax revenue that is not dedicated by the constitution, as required by the Texas Constitution Article VIII, Section 22.

## IMPLEMENTATION OF THE LIMIT ON GROWTH OF CONSOLIDATED GENERAL REVENUE APPROPRIATIONS

### Legal References

The Texas Government Code, Chapter 316, restriction on the rate of growth of consolidated general revenue appropriations, referred to as

the CGR limit, was established by the passage of Senate Bill 1336, during the 87th Regular Session of the Texas Legislature. It states that:

"The rate of growth of consolidated general revenue appropriations in a state fiscal biennium may not exceed the estimated average biennial rate of growth of this state's population during the state fiscal biennium preceding the biennium for which appropriations are made and during the state fiscal biennium for which appropriations are made, adjusted by the estimated average biennial rate of monetary inflation in this state during the same period..."

This provision does not alter, amend, or repeal the Texas Constitution, Article III, Section 49a limit, referred to as the pay-as-you-go provision, or the Texas Constitution, Article VIII, Section 22 limit, referred to as the tax spending limit.

Prior to passage of SB 1336, the Article VIII, Section 22 limit was referred to simply as "the spending limit"; however, the Article VIII, Section 22 limit will now be referred to as the tax spending limit to differentiate it from the CGR limit.

Senate Bill 1336 placed with the Legislative Budget Board the responsibility for approval of a limitation on the growth of consolidated general revenue appropriations. A part of the procedure for approving the limitation is set forth in Sections 316.003 and 316.004 as follows:

Section. 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations.

Section. 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

These items of information related to the CGR limit are identified as follows in the Texas Government Code, Section 316.002:

1. the limit on the rate of growth of consolidated general revenue appropriations for that state fiscal biennium, as compared to the previous state fiscal biennium;
2. the estimated average biennial rate of growth of this state's population during the state fiscal biennium preceding the biennium for which appropriations are made and during the state fiscal biennium for which appropriations are made;
3. the estimated average biennial rate of monetary inflation during the state fiscal biennium preceding the biennium for which appropriations are made and during the state fiscal biennium for which appropriations are made;
4. the level of consolidated general revenue appropriations for the current state fiscal biennium; and
5. the limit on the amount of consolidated general revenue appropriations that could be appropriated for the next state fiscal biennium.

In this memorandum, each item of information is discussed in this same order.

### Limit on the Rate of Growth of Consolidated General Revenue Appropriations

The methodology for calculating the limit on the rate of growth for the CGR limit is set in the Texas Government Code, Section 316.002(a)(2), in the following words:

- (2) the limit on the rate of growth of consolidated general revenue appropriations for that state fiscal biennium, as compared to the previous state fiscal biennium, by subtracting one from the product of:

(A) the sum of one and the estimated average biennial rate of growth of this state's population during the state fiscal biennium preceding the biennium for which appropriations are made and during the state fiscal biennium for which appropriations are made; and

(B) the sum of one and the estimated average biennial rate of monetary inflation during the state fiscal biennium preceding the biennium for

which appropriations are made and during the state fiscal biennium for which appropriations are made.

Mathematically, the formula described by the statute looks like:

$$CGR \text{ growth rate} = \left( \left( 1 + \frac{p_t + p_{t+1}}{2} \right) * \left( 1 + \frac{i_t + i_{t+1}}{2} \right) \right) - 1$$

$p_t$  = biennial Texas population growth rate for current biennium

$p_{t+1}$  = biennial Texas population growth rate for upcoming biennium

$i_t$  = biennial monetary inflation growth rate for current biennium

$i_{t+1}$  = biennial monetary inflation growth rate for upcoming biennium

#### Estimated Rate of Texas Population Growth

The statute does not define the state's population, rather Texas Government Code, Section 316.001(e) directs the LBB to determine the rate of growth of the state's population as follows:

(e) The Legislative Budget Board shall determine the rates described by Subsection (c) using the most recent information available from sources the board considers reliable, including the United States Bureau of Labor Statistics Consumer Price Index and the Texas Demographic Center.

The U.S. Census Bureau defines the state's population as follows:

The resident population includes all people currently residing in the state on a specific date. The population estimate at any given time point starts with a population base (e.g. the last decennial census or the previous point in the time series), adds births, subtracts deaths, and adds net migration (both international and domestic).

The Texas Demographic Center (previously the Texas State Data Center) was initiated in 1980 to establish a state level liaison to the U.S. Census Bureau for better dissemination of Texas census data. In the mid-1980s, the Texas Population Estimates and Projections Program was established with the overall objective of providing annual estimates of the population of Texas counties and places and biennial projections of the population of the state and counties. The Texas Population Estimates Program produces annual estimates of the total populations of counties and places in the state and estimates of county populations by age, sex, and race/ethnicity. The Texas Population Projections Program produces projections of the population of the state and all counties in the state by age, sex and race/ethnicity.

Table 7 displays the most recent breakdown of the Texas population estimate from the Texas Demographic Center. Table 9 shows historical growth rates of Texas population over that last 20 biennia.

#### Estimated Rate of Monetary Inflation

The statute does not define monetary inflation, rather Texas Government Code, Section 316.001(e) directs the LBB to determine the rate of monetary inflation as follows:

(e) The Legislative Budget Board shall determine the rates described by Subsection (c) using the most recent information available from sources the board considers reliable, including the United States Bureau of Labor Statistics Consumer Price Index and the Texas Demographic Center.

The U.S. Bureau of Labor Statistics defines the Consumer Price Index as follows:

The **Consumer Price Index (CPI)** is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. Indexes are available for the U.S. and various geographic areas. Average price data for select utility, automotive fuel, and food items are also available. Prices for the goods and services used to calculate the CPI are collected in 75 urban areas throughout the country and from about 23,000 retail and service establishments. Data on rents are collected from about 50,000 landlords or tenants. The weight for an item is derived from reported expenditures on that item as estimated by the Consumer Expenditure Survey.

Table 8 shows the U.S. Bureau of Labor Statistic's Consumer Price Index broken down by the weights applied to each of the large expenditure categories for the most recent month available. As an example, the largest weighted expenditure in the Consumer Price Index is consumer expenditures on shelter.

The U.S. Bureau of Labor Statistic's reports the Consumer Price Index on a monthly basis. Because the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present these data on a biennial basis. The Legislative Budget Board uses the average of the Consumer Price Index over the 24 months of a biennium to represent the rate of monetary inflation during the state's fiscal biennium. Table 9 shows the historical record of the rate of growth in monetary inflation for the past 20 completed biennia, using the data published by the U.S. Bureau of Labor Statistics.

#### Forecasting Texas Population and Monetary Inflation

In reviewing standard statistical techniques for forecasting or projecting Texas population and monetary inflation, the Legislative Budget Board has obtained the latest economic forecasts from the following sources, listed alphabetically: (1) Moody's Analytics, (2) Perryman

Group, (3) S&P Global, (4) Texas A&M University - Department of Economics, and (5) Texas Comptroller of Public Accounts. These forecasts are based on econometric models developed and maintained by the forecasting services listed. In addition, the Legislative Budget Board has obtained the most recent population projections from the Texas Demographic Center.

Although each forecasting service approaches the development of economic projections differently, several characteristics are common to the econometric models from which the Texas population and monetary inflation estimates are derived. First, each model assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models typically entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors of the economy.

Table 10 shows details of the Texas population and monetary inflation growth rates of the various forecasting services for the average of the 2024-25 biennium over the 2022-23 biennium and the 2022-23 biennium over the 2020-21 biennium. These forecasts range from 2.07 percent to 2.62 percent for Texas population and from 9.38 percent to 10.17 percent for monetary inflation.

The Texas population and monetary inflation growth rates shown in Table 10, or any more recent forecasts if available, will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one, or any combination of the growth rates, when adopting a Texas population growth rate or monetary inflation growth rate for the 2024-25 biennium.

Table 11 shows the sources and dates for the Texas population and monetary inflation growth rates presented in Table 10.

#### **Consolidated General Revenue Appropriations 2022-23 Biennium**

The amount of consolidated general revenue appropriations in the 2022-23 biennium, the base biennium, is the fourth item of information to be determined by the Legislative Budget Board. As of November 16, 2022, the Legislative Budget Board (LBB) staff estimates this amount to be \$124,165,562,000. Table 12 details the calculation of this amount.

#### **Calculating the 2024-25 Limitation**

The limitation on consolidated general revenue appropriations in the 2024-25 biennium, the fifth item of information, may be illustrated by selecting a growth rate, adding one, and multiplying it by the 2022-23 adjusted biennial appropriations base. A change to the 2022-23 adjusted biennial appropriations base would result in a corresponding change to the 2024-25 biennial limit.

#### **Method of Calculating 2022-23 Consolidated General Revenue Appropriations**

As previously stated, LBB staff estimates the amount of consolidated general revenue appropriations in the 2022-23 biennium to be \$124,165,562,000. This section details the sources of information used in this calculation.

Texas Government Code, Section 316.001 (a) defines "consolidated general revenue appropriations" as follows:

(a) For purposes of this subchapter, "consolidated general revenue appropriations" means appropriations from:

(1) the general revenue fund in the state treasury;

(2) a dedicated account in the general revenue fund in the state treasury; or

(3) a general revenue-related fund in the state treasury as identified in the biennial statement required of the comptroller under Section 49a, Article III, Texas Constitution.

Table 13 shows consolidated general revenue appropriations classified as the following: (1) "estimated to be" line-item appropriations, and (2) sum-certain line-item appropriations.

#### **1. "Estimated to Be" Line-Item Appropriations:**

Each of these items under the subheading "estimated to be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2022 amounts are based on actual 2022 expenditures. Most amounts for fiscal year 2023 are taken from Senate Bill 1, Eighty-seventh Legislature, Regular Session, 2021; Senate Bill 1605, Eighty-seventh Legislature, Regular Session, 2021; and House Bill 5 and House Bill 9, Eighty-seventh Legislature, Second Called Session, 2021, Senate Bill 8, Eighty-seventh Legislature, Third Called Session, 2021, and other legislation affecting appropriations.

#### **2. Sum-certain Line-Item Appropriations:**

As calculated in Table 13, the amount shown for "Total Sum Certain Line-Item Appropriations" is the difference between total appropriations and the items listed separately as "estimated to be appropriations." Consolidated general revenue appropriations in Table 13 include those made by Senate Bill 1, Eighty-seventh Legislature, Regular Session, 2021; Senate Bill 1605, Eighty-seventh Legislature, Regular Session, 2021; and House Bill 5 and House Bill 9, Eighty-seventh Legislature, Second Called Session, 2021, Senate Bill 8, Eighty-seventh Legislature, Third Called Session, 2021, and other legislation affecting appropriations.

Texas Government Code, Section 316.001 (d) states that two types of appropriations are to be excluded from the computation of consolidated general revenue appropriations.

(d) For purposes of this subchapter, the following appropriations must be excluded from computations used to determine whether appropriations exceed the amount authorized by Subsection (c):

(1) an appropriation for a purpose that provides tax relief; or

(2) an appropriation to pay costs associated with recovery from a disaster declared by the governor under Section 418.014.

Appropriations made for these two purposes are classified as either one-time or recurring. One-time appropriations are those assumed to have no ongoing cost in future state fiscal biennium. Conversely, recurring appropriations are expected to have ongoing costs in future state fiscal biennium. One-time appropriations are excluded from the computation of consolidated general revenue appropriations for the current and upcoming state fiscal biennium. Since recurring appropriations are already included in the current biennium's appropriation calculation, only changes from the current biennial level are excluded from the computation of consolidated general revenue appropriations for the upcoming state fiscal biennium. Finally, for appropriations to pay costs associated with recovery from a disaster, only appropriations made after the date the disaster is declared and before the date the disaster declaration ends are excluded from the computation of consolidated general revenue appropriations. Table 14 shows appropriations excluded from the computation of consolidated general revenue appropriations for the 2022-23 biennium.

Total consolidated general revenue appropriations for the 2022-23 biennium include those made by Senate Bill 1, Eighty-seventh Legislature, Regular Session, 2021; Senate Bill 1605, Eighty-seventh Leg-

islature, Regular Session, 2021; and House Bill 5 and House Bill 9, Eighty-seventh Legislature, Second Called Session, 2021, Senate Bill 8, Eighty-seventh Legislature, Third Called Session, 2021, and other legislation affecting appropriations. Any subsequent appropriations made by the Eighty-eighth Legislature, 2023, for the 2022-23 biennium also would be included in total appropriations.

**Grand Total**

Table 15 shows the calculation of the total adjusted biennial appropriation included in limitation base. A grand total of \$121,000,192,084 in 2022-23 biennial consolidated general revenue appropriations is included in this analysis. This amount serves as the base for calculating

the limitation on 2024-25 consolidated general revenue appropriations as required by the Texas Government Code, Section 316.001. This item multiplied by the average estimated rate of growth of Texas population and monetary inflation from the 2020-21 biennium to the 2022-23 biennium and the 2022-23 biennium to the 2024-25 biennium produces the limitation on consolidated general revenue appropriations for the 2024-25 biennium pursuant to the Texas Government Code, Section 316.001.

**TABLE 1**  
**U.S. DEPARTMENT OF COMMERCE PERSONAL**  
**INCOME ACCOUNT FOR TEXAS, CALENDAR YEAR 2021**  
**In Millions of Current Dollars**

<b>Earnings by Place of Work</b>	<b>Amount</b>	<b>Percent of Total</b>
Wage and Salary Disbursements	\$ 861,408	70.5%
Supplements to Wages and Salaries	172,992	14.2%
Proprietors' Income	<u>186,981</u>	<u>15.3%</u>
Total Earnings by Place of Work	\$1,221,381	100.0%
 <b>Derivation of Total Personal Income</b>		
Earnings by Place of Work (from above)	\$1,221,381	
Less: Personal Contributions for Social Insurance	(66,220)	
Less: Employee Contributions for Social Insurance	(55,952)	
Less: Adjustment for Residence	<u>(2,174)</u>	
Equals: Net Earnings by Place of Residence	\$1,097,035	62.1%
Plus: Dividends, Interest and Rent	321,300	18.2%
Plus: Personal Current Transfer Receipts	<u>349,346</u>	<u>19.8%</u>
Total Personal Income	\$1,767,682	100.0%

Note: Totals may not add due to rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, October 2022.

**TABLE 2**  
**BIENNIUM-TO-BIENNIUM GROWTH RATES IN TEXAS PERSONAL INCOME**  
**1982-83 TO 2020-21 BIENNIA**

<b>Base Biennium</b>	<b>Target Biennium</b>	<b>Growth Rate</b>	<b>Percent Increase</b>
1980-81	1982-83	1.257	25.7
1982-83	1984-85	1.172	17.2
1984-85	1986-87	1.087	8.7
1986-87	1988-89	1.094	9.4
1988-89	1990-91	1.141	14.1
1990-91	1992-93	1.137	13.7
1992-93	1994-95	1.125	12.5
1994-95	1996-97	1.156	15.6
1996-97	1998-99	1.175	17.5
1998-99	2000-01	1.160	16.0
2000-01	2002-03	1.071	7.1
2002-03	2004-05	1.104	10.4
2004-05	2006-07	1.179	17.9
2006-07	2008-09	1.122	12.2
2008-09	2010-11	1.068	6.8
2010-11	2012-13	1.144	14.4
2012-13	2014-15	1.105	10.5
2014-15	2016-17	1.039	3.9
2016-17	2018-19	1.131	13.1
2018-19	2020-21	1.114	11.4

**TABLE 3**  
**ESTIMATED GROWTH RATES FOR TEXAS PERSONAL INCOME**  
**USING FIVE ECONOMETRIC MODELS**  
**2022-23 BIENNIUM TO 2024-25 BIENNIUM**

<b>Source of Forecast</b>	<b>2024-25 Texas Personal Income Growth Rate</b>
1. Moody's Analytics	14.57%
2. Perryman Group	10.22%
3. S&P Global	10.04%
4. Texas A&M University, Department of Economics	14.19%
5. Texas Comptroller of Public Accounts	9.48%

**TABLE 4**  
**SUMMARY OF SOURCES AND METHODS FOR**  
**TEXAS PERSONAL INCOME GROWTH RATES FOR THE**  
**2024-25 BIENNIUM**

<b>Source of Forecast</b>	<b>Type of Forecast</b>	<b>Date of Forecast</b>
1. Moody's Analytics	Econometric	November 2022
2. Perryman Group	Econometric	November 2022
3. S&P Global	Econometric	November 2022
4. Texas A&M University, Department of Economics	Econometric	November 2022
5. Texas Comptroller of Public Accounts	Econometric	November 2022

Source: Compiled by the Legislative Budget Board, November 2022.

**TABLE 5**  
 2022-23 BIENNIAL ADJUSTED APPROPRIATIONS  
 INCLUDED IN THE CALCULATION OF  
 THE LIMITATION BASE

General Revenue Related Funds Section A. Appropriations	2022 Expenditures/ 2023 Appropriations
1. "Estimated To Be" Line Item Appropriations in General Appropriations Act, 87th Legislature	
(a) Fiscal Programs - Comptroller of Public Accounts A.1.1. Strategy: Miscellaneous Claims	20,764,352
(b) Fiscal Programs - Comptroller of Public Accounts A.1.2. Reimbursement - Beverage Tax	524,065,985
(c) Fiscal Programs - Comptroller of Public Accounts A.1.4. County Taxes - University Lands	17,516,534
(d) Fiscal Programs - Comptroller of Public Accounts A.1.6. Unclaimed Property	617,095,048
(e) Funds Appropriated to the Comptroller for Social Security and BRP A.1.1. Strategy: State Match - Employer & A.1.2 Benefit Replacement Pay (COBJ 7043 & 7050)	1,382,333,289
(f) Employees Retirement System A. Goal: Administer Retirement Program & B. Goal: Provide Health Program	3,420,016,916
(g) Secretary of State B.1.5. Strategy: Financing Voter Registration	1,524,089
(h) Department of State Health Services C.1.4. Strategy: TEXAS.GOV	620,896
(i) Health and Human Services Commission Medicaid Program Income No. 705 (Rev Code 3639)	338,210,115
(j) Health and Human Services Commission Vendor Drug Rebates—Medicaid No. 706 (Rev Code 3638)	1,463,457,967
(k) Health and Human Services Commission Premium Co-Payments, Low Income Children No. 3643 (Rev Code 3643)	2,530,057
(l) Health and Human Services Commission Vendor Drug Rebates—Public Health No. 8046 (Rev Code 3640)	11,446,599
(m) Health and Human Services Commission Experience Rebates-CHIP No. 8054 (Rev Code 3649)	8,267,235
(n) Health and Human Services Commission Vendor Drug Rebates-CHIP No. 8070 (Rev Code 3649)	10,724,370
(o) Health and Human Services Commission Cost Sharing - Medicaid Clients No. 8075 (Rev Code 3643)	610,792
(p) Health and Human Services Commission Vendor Drug Rebates-Supplemental Rebates No. 8081 (Rev Code 3565)	103,028,085
(q) Health and Human Services Commission H.4.1. Strategy: TEXAS.GOV	49,079
(r) Texas Education Agency B.3.6. Strategy: Certification Exam Administration	28,111,904

(s)	Teacher Retirement System	4,489,428,149
	A.1.1. Strategy: TRS - Public Education Retirement	
(t)	Teacher Retirement System	502,871,413
	A.1.2. Strategy: TRS - Higher Education Retirement	
(u)	Teacher Retirement System	897,571,478
	A.2.1. Strategy: Retiree Health - Statutory Funds	
(v)	Optional Retirement Program	233,098,521
	A.1.1. Strategy: Optional Retirement Program	
(w)	Supreme Court of Texas	2,742,065
	A.1.2. Strategy: Appellate Justice Salaries	
(x)	Court of Criminal Appeals	2,808,603
	A.1.2. Strategy: Appellate Judge Salaries	
(y)	The Fourteen Courts of Appeals	22,331,688
	A.1.2. Strategy: Appellate Justice Salaries	
(z)	Office of the State Prosecuting Attorney	304,014
	A.1.2. Strategy: State Prosecutor Salary	
(aa)	Judiciary Section, Comptroller's Division	128,220,129
	A.1.1. Strategy: District Judges, A.1.4 Local Admin Judge Supplement, & A.1.7 MDL Salary and Benefit	
(ab)	Judiciary Section, Comptroller's Division	31,085,784
	B.1.1. Strategy: District Attorneys: Salaries, B.1.2 Professional Prosecutors: Salaries, & B.1.3 Felony Prosecutors: Salaries	
(ac)	Judiciary Section, Comptroller's Division	13,282,912
	C. Goal: Co.-Level Judges Salary Supplements	
(ad)	Judiciary Section, Comptroller's Division	15,343,494
	D.1.1. Strategy: Asst Prosecutor Longevity Pay, D.1.2 County Attorney Supplement, D.1.3 Witness Expenses, D.1.5 Death Penalty Representation, D.1.7 Juror Pay & D.1.8 Indigent Inmate Defense	
(ae)	Department Of Housing And Community Affairs	21,940
	E.1.4. Strategy: TEXAS.GOV	
(af)	Behavioral Health Executive Council	345,663
	A.1.2. Strategy: TEXAS.GOV	
(ag)	Board Of Chiropractic Examiners	33,655
	A.1.2. Strategy: TEXAS.GOV	
(ah)	Texas State Board Of Dental Examiners	426,736
	A.2.2. Strategy: TEXAS.GOV	
(ai)	Funeral Service Commission	86,314
	A.1.2. Strategy: TEXAS.GOV	
(aj)	Board Of Professional Geoscientists	39,586
	A.1.2. Strategy: TEXAS.GOV	
(ak)	Department Of Insurance	6,144
	A.1.3. Strategy: TEXAS.GOV	
(al)	Department Of Licensing And Regulation	1,325,153
	A.1.5. Strategy: TEXAS.GOV	
(am)	Texas Board of Nursing	1,146,136
	A.1.2. Strategy: TEXAS.GOV	
(an)	Optometry Board	45,660



	A.1.2. Strategy: TEXAS.GOV	
(ao)	Optometry Board	9,092
	A.1.3. Strategy: National Practitioner Data Bank	
(ap)	Board Of Pharmacy	462,075
	A.1.2. Strategy: TEXAS.GOV	
(aq)	Executive Council Of Physical Therapy & Occupational Therapy Examiners	342,152
	A.1.2. Strategy: TEXAS.GOV	
(ar)	Board Of Plumbing Examiners	285,908
	A.1.2. Strategy: TEXAS.GOV	
(as)	Board Of Veterinary Medical Examiners	70,461
	A.1.2. Strategy: TEXAS.GOV	
(at)	Multiple Agencies: Earned Federal Funds Sec. 13.11. Definition, Appropriation, Reporting and Audit of Earned Federal Funds	136,956,740
(au)	Adjustment for FY 2023 Health and Human Services Appropriations linked to the Revised Certification Revenue Estimate	349,469,933
(av)	Adjustment for Texas Education Agency, Property Tax Relief Fund Revenue	(540,537,269)
(aw)	Adjustment for Texas Education Agency, Tax Reduction and Excellence in Education Fund Revenue	(915,900,000)
(ax)	Adjustment for Texas Education Agency, Attendance Credit Revenue	(437,283,013)
(ay)	Adjustment for Teacher Retirement System, Settle-up for TRS-Care	15,022,277
(az)	Adjustment for Miscellaneous Claims	35,249,104
(ba)	Adjustment for Vetoed Appropriations	(315,879,593)
	Subtotal, "Estimated to Be" Line Items (Expended/ Appropriated)	<u>\$12,621,206,416</u>
2.	Sum-certain Line-Item Appropriations (Appropriated)	101,906,375,826
(a)	House Bill 5, 87th Legislature Second Called Session	1,425,661,655
(b)	House Bill 9, 87th Legislature Second Called Session	1,802,607,003
(c)	Senate Bill 8, 87th Legislature Third Called Session	425,000,000
	Subtotal, Sum-certain Line-Item Appropriations (Appropriated)	<u>\$105,559,644,484</u>
	Total General Revenue Related Fund Appropriations, <i>adjusted for 2022 estimated amounts</i>	<u>\$118,180,850,900</u>

Section B. Source of Funding - General Revenue Related

	Total <u>Appropriations</u>	Constitutionally Dedicated State <u>Tax Revenues</u>	Non Tax <u>Revenues</u>	State Tax Revenue Not Dedicated by the <u>Constitution</u>
1. Occupation Taxes	\$7,360,320,889	\$7,360,320,889	\$0	\$0
2. Motor Fuel Taxes	1,915,026,601	1,877,025,601	-	38,001,000
3. Education Revenues	8,147,074,359	-	8,147,074,359	-
4. Insurance Maintenance Tax	288,783,483	-	-	288,783,483
5. Hotel Tax	69,541,023	-	-	69,541,023
6. Sporting Good Sales Tax	504,980,835	504,980,835	-	350,697,267
7. Beginning GR Balance	596,425,951	-	48,924,419	547,501,532
8. Appropriations from Other Revenue	99,298,697,759	-	7,416,816,685	91,881,881,074
<b>SUBTOTAL(General Revenue Related)</b>	<b><u>\$118,180,850,900</u></b>	<b><u>\$9,742,327,325</u></b>	<b><u>\$15,612,815,463</u></b>	<b><u>\$92,825,708,111</u></b>
Appropriations from Funds Outside of GR				
1. Account 0009 – Game, Fish, and Water Safety	\$215,913,647	\$0	\$206,951,228	\$8,962,419
2. Account 0036 – Texas Department of Insurance Operating	292,460,494	-	284,439,667	8,020,827
3. Fund 0304 – Property Tax Relief Fund	5,866,063,269	-	87,075,820	5,778,987,449
4. Fund 0305 – Tax Reduction and Excellence in Education Fund	2,712,100,000	-	-	2,712,100,000
5. Fund 0599 – Economic Stabilization Fund	-	-	-	-
6. Account 5066 – Rural Volunteer Fire Department Insurance	3,686,650	-	-	3,686,650
7. Account 5071 – Emissions Reduction Plan	2,242,767	-	1,493,095	749,672
8. Account 5144 - Physician Education Loan Repayment Program	29,534,984	-	-	29,534,154,617
9. Reduction in Certifiable GR-D Balances	275,690,000	-	61,254,117	214,435,883
<b>GRAND TOTAL</b>	<b><u>\$127,578,542,711</u></b>	<b><u>\$9,742,327,325</u></b>	<b><u>\$16,254,029,390</u></b>	<b><u>\$101,582,185,996</u></b>

**TABLE 6**  
 CALCULATION OF "SUM CERTAIN LINE ITEMS APPROPRIATIONS"  
 FOR THE 2022-23 BIENNIUM

<b>General Revenue Funds "Recap" Amount</b>	\$58,175,304,231	\$58,192,873,547	\$116,368,177,778
Less "Estimated to Be" Items:			
<b>Fiscal Programs - Comptroller of Public Accounts</b>			
<b>Fiscal Programs - Comptroller of Public Accounts</b>			
A.1.1. Strategy: Miscellaneous Claims (SB1, Article I-24)	13,000,000	13,000,000	26,000,000
<b>Fiscal Programs - Comptroller of Public Accounts</b>			
A.1.2. Reimbursement - Beverage Tax (SB1, Article I-24)	241,632,000	241,632,000	483,264,000
<b>Fiscal Programs - Comptroller of Public Accounts</b>			
A.1.4. County Taxes - University Lands (SB1, Article I-24)	10,072,220	10,072,222	20,144,442
<b>Fiscal Programs - Comptroller of Public Accounts</b>			
A.1.6. Unclaimed Property (SB1, Article I-24)	287,990,891	287,990,892	575,981,783
<b>Funds Appropriated to the Comptroller for Social Security and BRP</b>			
A.1.1. Strategy: State Match - Employer & A.1.2 Benefit Replacement Pay (COBJ 7043 & 7050) (SB1, Article I-31)	672,977,028	680,087,474	1,353,064,502
<b>Employees Retirement System</b>			
A. Goal: Administer Retirement Program & B. Goal: Provide Health Program (SB1, Article I-37)	1,940,712,246	1,962,753,215	3,903,465,461
<b>Secretary of State</b>			
B.1.5. Strategy: Financing Voter Registration (SB1, Article I-92)	4,777,500	1,000,000	5,777,500
<b>Department of State Health Services</b>			
C.1.4. Strategy: TEXAS.GOV (SB1, Article II-23)	388,417	388,417	776,834
<b>Health and Human Services Commission</b>			
Medicaid Program Income No. 705 (Rev Code 3639) (SB1, Article II-37)	18,000,000	18,000,000	36,000,000
<b>Health and Human Services Commission</b>			
Vendor Drug Rebates—Medicaid No. 706 (Rev Code 3638)	691,915,502	695,526,588	1,387,442,090

(SB1, Article II-37)

**Health and Human Services Commission**

Premium Co-Payments, Low Income Children No. 3643 (Rev Code 3643) 1,253,116 1,277,621 2,530,737  
(SB1, Article II-37)

**Health and Human Services Commission**

Vendor Drug Rebates–Public Health No. 8046 (Rev Code 3640) 6,048,000 6,048,000 12,096,000  
(SB1, Article II-37)

**Health and Human Services Commission**

Experience Rebates–CHIP No. 8054 (Rev Code 3649) 150,000 150,000 300,000  
(SB1, Article II-37)

**Health and Human Services Commission**

Vendor Drug Rebates–CHIP No. 8070 (Rev Code 3649) 4,988,519 5,967,225 10,955,744  
(SB1, Article II-37)

**Health and Human Services Commission**

Cost Sharing - Medicaid Clients No. 8075 (Rev Code 3643) 200,000 200,000 400,000  
(SB1, Article II-37)

**Health and Human Services Commission**

Vendor Drug Rebates–Supplemental Rebates No. 8081 (Rev Code 3565) 44,740,131 44,969,451 89,709,582  
(SB1, Article II-37)

**Health and Human Services Commission**

H.4.1. Strategy: TEXAS.GOV 35,681 35,681 71,362  
(SB1, Article II-40)

**Texas Education Agency**

B.3.6. Strategy: Certification Exam Administration 15,937,606 15,937,605 31,875,211  
(SB1, Article III-2)

**Teacher Retirement System**

A.1.1. Strategy: TRS - Public Education Retirement 2,183,320,080 2,306,108,069 4,489,428,149  
(SB1, Article III-39)

**Teacher Retirement System**

A.1.2. Strategy: TRS - Higher Education Retirement 261,285,630 272,220,427 533,506,057  
(SB1, Article III-39)

**Teacher Retirement System**

A.2.1. Strategy: Retiree Health - Statutory Funds 444,342,316 453,229,162 897,571,478  
(SB1, Article III-39)

**Optional Retirement Program**

A.1.1. Strategy: Optional Retirement Program 129,470,599 130,272,197 259,742,796

(SB1, Article III-44)

**Supreme Court of Texas**

A.1.2. Strategy: Appellate Justice Salaries 1,481,904 1,481,904 2,963,808  
(SB1, Article IV-1)

**Court of Criminal Appeals**

A.1.2. Strategy: Appellate Judge Salaries 1,492,977 1,507,103 3,000,080  
(SB1, Article IV-1)

**The Fourteen Courts of Appeals**

A.1.2. Strategy: Appellate Justice Salaries 11,579,871 11,837,618 23,417,489  
(SB1, Article IV-various)

**Office of the State Prosecuting Attorney**

A.1.2. Strategy: State Prosecutor Salary 158,530 158,710 317,240  
(SB1, Article IV-29)

**Judiciary Section, Comptroller's Division**

A.1.1. Strategy: District Judges, A.1.4 Local Admin Judge Supplement, & A.1.7 MDL Salary and Benefit 67,317,450 67,646,325 134,963,775  
(SB1, Article I-32)

**Judiciary Section, Comptroller's Division**

B.1.1. Strategy: District Attorneys: Salaries, B.1.2 Professional Prosecutors: Salaries, & B.1.3 Felony Prosecutors: Salaries 16,533,097 16,721,691 33,254,788  
(SB1, Article IV-33)

**Judiciary Section, Comptroller's Division**

C. Goal: Co.-Level Judges Salary Supplements 6,701,131 6,785,131 13,486,262  
(SB1, Article IV-33)

**Judiciary Section, Comptroller's Division**

D.1.1. Strategy: Asst Prosecutor Longevity Pay, D.1.2 County Attorney Supplement, D.1.3 Witness Expenses, D.1.5 Death Penalty Representation, D.1.7 Juror Pay & D.1.8 Indigent Inmate Defense 8,129,064 7,091,698 15,220,762  
(SB1, Article IV-33)

**Department Of Housing And Community Affairs**

E.1.4. Strategy: TEXAS.GOV 19,120 19,120 38,240  
(SB1, Article VII-2)

**Behavioral Health Executive Council**

A.1.2. Strategy: TEXAS.GOV 136,000 136,000 272,000  
(SB1, Article VIII-4)

**Board Of Chiropractic Examiners**

A.1.2. Strategy: TEXAS.GOV 20,850 20,850 41,700  
(SB1, Article VIII-6)

**Texas State Board Of Dental Examiners**

A.2.2. Strategy: TEXAS.GOV (SB1, Article VIII-8)	225,000	225,000	450,000
<b>Funeral Service Commission</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-9)	46,500	46,500	93,000
<b>Board Of Professional Geoscientists</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-11)	25,000	25,000	50,000
<b>Department Of Insurance</b>			
A.3.2. Strategy: TEXAS.GOV (SB1, Article VIII-17)	3,200	3,000	6,200
<b>Department Of Licensing And Regulation</b>			
A.1.5. Strategy: TEXAS.GOV (SB1, Article VIII-26)	650,000	650,000	1,300,000
<b>Texas Board of Nursing</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-33)	594,902	594,903	1,189,805
<b>Optometry Board</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-36)	21,690	21,690	43,380
<b>Optometry Board</b>			
A.1.3. Strategy: National Practitioner Data Bank (SB1, Article VIII-36)	9,092	9,092	18,184
<b>Board Of Pharmacy</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-38)	251,106	251,106	502,212
<b>Executive Council Of Physical Therapy &amp; Occupational Therapy Examiners</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-40)	159,600	159,600	319,200
<b>Board Of Plumbing Examiners</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-42)	155,000	155,000	310,000
<b>Board Of Veterinary Medical Examiners</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-55)	40,000	40,000	80,000
<b>Multiple Agencies: Earned Federal Funds</b>			
Sec. 13.11. Definition, Appropriation, Reporting and Audit of Earned Federal Funds (SB1, Article IX-)	55,051,599	55,308,500	110,360,099

Subtotal, Estimated Appropriations	<u>\$7,144,040,165</u>	<u>\$7,317,761,787</u>	<u>\$14,461,801,952</u>
Total Sum-certain Line-Item Appropriations	<u>\$51,031,264,066</u>	<u>\$50,875,111,760</u>	<u>\$101,906,375,826</u>

**TABLE 7**  
**TEXAS POPULATION ESTIMATES, 2019**  
**BY CATEGORY**

	<b>Total Population</b>	<b>% Of Total</b>
<b>Statewide</b>	<b>29,001,602</b>	<b>-</b>
<b>By Age</b>		
<18	7,369,488	25.4%
18-24	2,927,424	10.1%
25-44	8,081,648	27.9%
45-64	6,853,826	23.6%
65+	3,769,216	13.0%
<b>By Sex</b>		
Male	14,405,398	49.7%
Female	14,596,204	50.3%
<b>By Race</b>		
White (non-Hispanic)	12,034,112	41.5%
Black	3,439,413	11.9%
Hispanic	11,446,898	39.5%
Asian	1,429,669	4.9%
Other	651,510	2.2%

*Source: Texas Demographic Center*

**TABLE 8**  
**U.S. BUREAU OF LABOR STATISTICS**  
**CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (U.S. CITY AVERAGE),**  
**BY EXPENDITURE CATEGORY, AUGUST 2022**

<b>Expenditure category</b>	<b>Relative Importance</b>
<b>All items</b>	<b>100.000</b>
<b>Food at home</b>	<b>8.475</b>
Cereals and bakery products	1.098
Meats, poultry, fish, and eggs	1.905
Dairy and related products	0.804
Fruits and vegetables	1.413
Nonalcoholic beverages and beverage materials	0.973
Other food at home	2.283
<b>Food away from home<sup>(1)</sup></b>	<b>5.160</b>
<b>Energy commodities</b>	<b>4.565</b>
Fuel oil <sup>(1)</sup>	0.156
Motor fuel	4.336
Gasoline (all types)	4.238
<b>Energy services</b>	<b>3.679</b>
Electricity	2.688
Utility (piped) gas service	0.992
<b>Commodities less food and energy commodities</b>	<b>21.288</b>
Apparel	2.433
New vehicles	4.049
Used cars and trucks	4.008
Medical care commodities <sup>(1)</sup>	1.478
Alcoholic beverages	0.869
Tobacco and smoking products <sup>(1)</sup>	0.517
<b>Services less energy services</b>	<b>56.833</b>
Shelter	32.470
Rent of primary residence	7.304
Owners' equivalent rent of residences <sup>(2)</sup>	23.837
Medical care services	6.864
Physicians' services <sup>(1)</sup>	1.807
Hospital services <sup>(3)</sup>	2.146
Transportation services	5.860
Motor vehicle maintenance and repair <sup>(1)</sup>	1.052
Motor vehicle insurance	2.431
Airline fares	0.615

(1) Not seasonally adjusted.

(2) Indexes on a December 1982=100 base.

(3) Indexes on a December 1996=100 base.

Source: U.S. Bureau of Labor Statistics



**TABLE 9**  
**BIENNIUM-TO-BIENNIUM GROWTH RATES IN CPI and Population**  
**1982-83 TO 2020-21 BIENNIA**

<b>Base Biennium</b>	<b>Target Biennium</b>	<b>CPI % Change</b>	<b>Population % Change</b>
1980-81	1982-83	15.7%	6.9%
1982-83	1984-85	7.9%	3.9%
1984-85	1986-87	5.9%	2.8%
1986-87	1988-89	7.9%	0.9%
1988-89	1990-91	10.1%	2.9%
1990-91	1992-93	7.3%	4.3%
1992-93	1994-95	5.7%	4.5%
1994-95	1996-97	5.6%	4.2%
1996-97	1998-99	4.0%	4.2%
1998-99	2000-01	5.7%	3.8%
2000-01	2002-03	4.4%	3.4%
2002-03	2004-05	5.1%	3.3%
2004-05	2006-07	6.7%	4.5%
2006-07	2008-09	5.6%	4.1%
2008-09	2010-11	2.8%	3.6%
2010-11	2012-13	4.7%	3.3%
2012-13	2014-15	2.7%	3.6%
2014-15	2016-17	2.0%	3.3%
2016-17	2018-19	4.4%	2.5%
2018-19	2020-21	4.0%	1.9%

**TABLE 10**  
**ESTIMATED GROWTH RATES FOR CPI AND TEXAS POPULATION**  
**2020-21 BIENNIUM TO 2022-23 BIENNIUM**  
**AVERAGED WITH**  
**2022-23 BIENNIUM TO 2024-25 BIENNIUM**

<b>Source of Forecast</b>	<b>Average 2022-23 and 2024-25 CPI Growth Rate</b>
1. Moody's Analytics	9.38%
2. Perryman Group	9.84%
3. S&P Global	9.72%
4. Texas A&M University, Department of Economics	10.17%
5. Texas Comptroller of Public Accounts	9.55%

<b>Source of Forecast</b>	<b>Average 2022-23 and 2024-25 Texas Population Growth Rate</b>
1. Moody's Analytics	2.33%
2. Perryman Group	2.07%
3. S&P Global	2.38%
4. Texas Comptroller of Public Accounts	2.38%
5. Texas Demographic Center	2.62%

**TABLE 11**  
**SUMMARY OF SOURCES AND METHODS FOR**  
**CONSUMER PRICE INDEX AND TEXAS POPULATION GROWTH RATES FOR THE**  
**2024-25 BIENNIUM**

<b>Source of Forecast</b>	<b>Type of Forecast</b>	<b>Date of Forecast</b>
1. Moody's Analytic	Econometric	November, 2022
2. Perryman Group	Econometric	November, 2022
3. S&P Global	Econometric	November, 2022
4. Texas A&M University, Department of Economics	Econometric	November, 2022
5. Texas Comptroller of Public Accounts	Econometric	November 2022
6. Texas Demographic Center	Projection	November, 2022

Source: Compiled by the Legislative Budget Board, November 2022.

**TABLE 12**  
 2022-23 BIENNIAL ADJUSTED APPROPRIATIONS  
 INCLUDED IN THE CALCULATION OF  
 THE LIMITATION BASE

2022 "Estimated To Be" General Revenue and General Revenue-Dedicated Appropriations

Consolidated General Revenue Funds	2022 Expenditures/ 2023 Appropriations
A. Appropriations	
1. "Estimated To Be" Line Item Appropriations in General Appropriations Act, 87th Legislature	
(a) Fiscal Programs - Comptroller of Public Accounts	
A.1.1. Strategy: Miscellaneous Claims	20,764,352
(b) Fiscal Programs - Comptroller of Public Accounts	
A.1.2. Reimbursement - Beverage Tax	524,065,985
(c) Fiscal Programs - Comptroller of Public Accounts	
A.1.4. County Taxes - University Lands	17,516,534
(d) Fiscal Programs - Comptroller of Public Accounts	
A.1.6. Unclaimed Property	617,095,048
(e) Funds Appropriated to the Comptroller for Social Security and BRP	
A.1.1. Strategy: State Match - Employer & A.1.2 Benefit Replacement Pay (COBJ 7043 & 7050)	1,574,672,666
(f) Employees Retirement System	
A. Goal: Administer Retirement Program & B. Goal: Provide Health Program	3,696,075,397
(g) Secretary of State	
B.1.5. Strategy: Financing Voter Registration	1,524,089
(h) Department of State Health Services	
C.1.4. Strategy: TEXAS.GOV	620,896
(i) Health and Human Services Commission	
Medicaid Program Income No. 705 (Rev Code 3639)	338,210,115
(j) Health and Human Services Commission	
Vendor Drug Rebates—Medicaid No. 706 (Rev Code 3638)	1,463,457,967
(k) Health and Human Services Commission	
Premium Co-Payments, Low Income Children No. 3643 (Rev Code 3643)	2,530,057
(l) Health and Human Services Commission	
Vendor Drug Rebates—Public Health No. 8046 (Rev Code 3640)	11,446,599
(m) Health and Human Services Commission	
Experience Rebates-CHIP No. 8054 (Rev Code 3649)	8,267,235
(n) Health and Human Services Commission	
Vendor Drug Rebates-CHIP No. 8070 (Rev Code 3649)	10,724,370
(o) Health and Human Services Commission	
Cost Sharing - Medicaid Clients No. 8075 (Rev Code 3643)	610,792
(p) Health and Human Services Commission	
Vendor Drug Rebates-Supplemental Rebates No. 8081 (Rev Code 3565)	103,028,085
(q) Health and Human Services Commission	
H.4.1. Strategy: TEXAS.GOV	49,079
(r) Texas Education Agency	
B.3.6. Strategy: Certification Exam Administration	28,111,904
(s) Teacher Retirement System	

	A.1.1. Strategy: TRS - Public Education Retirement Teacher Retirement System	4,489,428,149
(t)	A.1.2. Strategy: TRS - Higher Education Retirement Teacher Retirement System	502,871,413
(u)	A.2.1. Strategy: Retiree Health - Statutory Funds Optional Retirement Program	897,571,478
(v)	A.1.1. Strategy: Optional Retirement Program Institutions of Higher Education	314,456,983
(w)	Board Authorized Tuition Increases Account No. 704 and Other Educational and General Income Account No. 770	2,102,606,690
(x)	Supreme Court of Texas	
	A.1.2. Strategy: Appellate Justice Salaries	2,742,065
(y)	Court of Criminal Appeals	
	A.1.2. Strategy: Appellate Judge Salaries	2,808,603
(z)	The Fourteen Courts of Appeals	
	A.1.2. Strategy: Appellate Justice Salaries	22,331,688
(aa)	Office of the State Prosecuting Attorney	
	A.1.2. Strategy: State Prosecutor Salary	304,014
(ab)	Judiciary Section, Comptroller's Division	
	A.1.1. Strategy: District Judges, A.1.4 Local Admin Judge Supplement, & A.1.7 MDL Salary and Benefit	128,220,129
(ac)	Judiciary Section, Comptroller's Division	
	B.1.1. Strategy: District Attorneys: Salaries, B.1.2 Professional Prosecutors: Salaries, & B.1.3 Felony Prosecutors: Salaries	31,085,784
(ad)	Judiciary Section, Comptroller's Division	
	C. Goal: Co.-Level Judges Salary Supplements	13,282,912
(ae)	Judiciary Section, Comptroller's Division	
	D.1.1. Strategy: Asst Prosecutor Longevity Pay, D.1.2 County Attorney Supplement, D.1.3 Witness Expenses, D.1.5 Death Penalty Representation, D.1.7 Juror Pay & D.1.8 Indigent Inmate Defense	15,343,494
(af)	Department Of Housing And Community Affairs	
	E.1.4. Strategy: TEXAS.GOV	21,940
(ag)	Lottery Commission	
	A.1.6. Strategy: Lottery Operator Contract(s)	280,249,105
(ah)	Lottery Commission	
	A.1.11. Strategy: Retailer Commission	47,700,050
(ai)	Behavioral Health Executive Council	
	A.1.2. Strategy: TEXAS.GOV	345,663
(aj)	Board Of Chiropractic Examiners	
	A.1.2. Strategy: TEXAS.GOV	33,655
(ak)	Texas State Board Of Dental Examiners	
	A.2.2. Strategy: TEXAS.GOV	426,736
(al)	Funeral Service Commission	
	A.1.2. Strategy: TEXAS.GOV	86,314
(am)	Board Of Professional Geoscientists	
	A.1.2. Strategy: TEXAS.GOV	39,586
(an)	Department Of Insurance	
	A.1.3. Strategy: TEXAS.GOV	852,119

(ao)	Department Of Licensing And Regulation A.1.5. Strategy: TEXAS.GOV	1,325,153
(ap)	Texas Board of Nursing A.1.2. Strategy: TEXAS.GOV	1,146,136
(aq)	Optometry Board A.1.2. Strategy: TEXAS.GOV	45,660
(ar)	Optometry Board A.1.3. Strategy: National Practitioner Data Bank	9,092
(as)	Board Of Pharmacy A.1.2. Strategy: TEXAS.GOV	462,075
(at)	Executive Council Of Physical Therapy & Occupational Therapy Examiners A.1.2. Strategy: TEXAS.GOV	342,152
(au)	Board Of Plumbing Examiners A.1.2. Strategy: TEXAS.GOV	285,908
(av)	Racing Commission A.2.1. Strategy: Texas Bred Incentive Program	5,420,540
(aw)	Racing Commission B.1.2. Strategy: TEXAS.GOV	22,309
(ax)	Board Of Veterinary Medical Examiners A.1.2. Strategy: TEXAS.GOV	70,461
(ay)	Multiple Agencies: Earned Federal Funds Sec. 13.11. Definition, Appropriation, Reporting and Audit of Earned Federal Funds	136,956,740
(az)	Adjustment for FY 2023 Health and Human Services Appropriations linked to the Revised Certification Revenue Estimate	349,469,933
(ba)	Adjustment for Texas Education Agency, Property Tax Relief Fund Revenue	(540,537,269)
(bb)	Adjustment for Texas Education Agency, Tax Reduction and Excellence in Education Fund Revenue	(915,900,000)
(bc)	Adjustment for Texas Education Agency, Attendance Credit Revenue	(437,283,013)
(bd)	Adjustment for Teacher Retirement System, Settle-up for TRS-Care	15,022,277
(be)	Adjustment for Miscellaneous Claims	35,249,104
(bf)	Adjustment for Vetoed Appropriations	(315,879,593)
	Subtotal, "Estimated to Be" Line Items (Expended/ Appropriated)	<u>15,607,807,405</u>
2.	Sum-certain Line Item Appropriations (Appropriated)	104,902,523,437
(a)	House Bill 5 Supplemental General Revenue and General Revenue Dedicated Funds Appropriations, 87th Legislature Second Called Session	1,427,624,155
(c)	House Bill 9, 87th Legislature Second Called Session	1,802,607,003
(d)	Senate Bill 8, 87th Legislature Third Called Session	425,000,000
	Subtotal, Sum-certain Line Item Appropriations (Appropriated)	<u>108,557,754,595</u>
	Total Consolidated General Revenue Related Fund Appropriations, <i>adjusted for 2022 estimated amounts</i>	<u>124,165,562,000</u>

**TABLE 13**  
 CALCULATION OF "SUM CERTAIN LINE ITEMS APPROPRIATIONS"  
 FOR THE 2022-23 BIENNIUM

<b>General Revenue Funds "Recap" Amount</b>	\$58,175,304,231	\$58,192,873,547	\$116,368,177,778
<b>General Revenue-Dedicated Funds "Recap" Amount</b>	3,278,958,008	3,036,261,589	6,315,219,597
<b>Consolidated General Revenue Funds "Recap" Amount</b>	61,454,262,239	61,229,135,136	122,683,397,375
Less "Estimated to Be" Items:			
<b>Fiscal Programs - Comptroller of Public Accounts</b>			
A.1.1. Strategy: Miscellaneous Claims (SB1, Article I-24)	13,000,000	13,000,000	26,000,000
<b>Fiscal Programs - Comptroller of Public Accounts</b>			
A.1.2. Reimbursement - Beverage Tax (SB1, Article I-24)	241,632,000	241,632,000	483,264,000
<b>Fiscal Programs - Comptroller of Public Accounts</b>			
A.1.4. County Taxes - University Lands (SB1, Article I-24)	10,072,220	10,072,222	20,144,442
<b>Fiscal Programs - Comptroller of Public Accounts</b>			
A.1.6. Unclaimed Property (SB1, Article I-24)	287,990,891	287,990,892	575,981,783
<b>Funds Appropriated to the Comptroller for Social Security and BRP</b>			
A.1.1. Strategy: State Match - Employer & A.1.2 Benefit Replacement Pay (COBJ 7043 & 7050) (SB1, Article I-31)	769,383,454	778,248,180	1,547,631,634
<b>Employees Retirement System</b>			
A. Goal: Administer Retirement Program & B. Goal: Provide Health Program (SB1, Article I-37)	2,088,809,749	2,113,838,861	4,202,648,610
<b>Secretary of State</b>			
B.1.5. Strategy: Financing Voter Registration (SB1, Article I-92)	4,777,500	1,000,000	5,777,500
<b>Department of State Health Services</b>			
C.1.4. Strategy: TEXAS.GOV (SB1, Article II-23)	388,417	388,417	776,834

**Health and Human Services Commission**

Medicaid Program Income No. 705 (Rev Code 3639) (SB1, Article II-37)	18,000,000	18,000,000	36,000,000
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**Health and Human Services Commission**

Vendor Drug Rebates—Medicaid No. 706 (Rev Code 3638) (SB1, Article II-37)	691,915,502	695,526,588	1,387,442,090
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**Health and Human Services Commission**

Premium Co-Payments, Low Income Children No. 3643 (Rev Code 3643) (SB1, Article II-37)	1,253,116	1,277,621	2,530,737
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**Health and Human Services Commission**

Vendor Drug Rebates—Public Health No. 8046 (Rev Code 3640) (SB1, Article II-37)	6,048,000	6,048,000	12,096,000
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**Health and Human Services Commission**

Experience Rebates-CHIP No. 8054 (Rev Code 3649) (SB1, Article II-37)	150,000	150,000	300,000
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**Health and Human Services Commission**

Vendor Drug Rebates-CHIP No. 8070 (Rev Code 3649) (SB1, Article II-37)	4,988,519	5,967,225	10,955,744
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**Health and Human Services Commission**

Cost Sharing - Medicaid Clients No. 8075 (Rev Code 3643) (SB1, Article II-37)	200,000	200,000	400,000
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**Health and Human Services Commission**

Vendor Drug Rebates-Supplemental Rebates No. 8081 (Rev Code 3565) (SB1, Article II-37)	44,740,131	44,969,451	89,709,582
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**Health and Human Services Commission**

H.4.1. Strategy: TEXAS.GOV (SB1, Article II-40)	35,681	35,681	71,362
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**Texas Education Agency**

B.3.6. Strategy: Certification Exam Administration (SB1, Article III-2)	15,937,606	15,937,605	31,875,211
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**Teacher Retirement System**

A.1.1. Strategy: TRS - Public Education Retirement (SB1, Article III-39)	2,183,320,080	2,306,108,069	4,489,428,149
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**Teacher Retirement System**

A.1.2. Strategy: TRS - Higher Education Retirement (SB1, Article III-39)	261,285,630	272,220,427	533,506,057
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**Teacher Retirement System**

A.2.1. Strategy: Retiree Health - Statutory Funds (SB1, Article III-39)	444,342,316	453,229,162	897,571,478
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**Optional Retirement Program**

A.1.1. Strategy: Optional Retirement Program (SB1, Article III-44)	184,262,933	186,856,298	371,119,231
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**Institutions of Higher Education**

Board Authorized Tuition Increases Account No. 704 and Other Educational and General Income Account No. 770 (SB1, Article III-various)	1,187,822,471	1,188,178,360	2,376,000,831
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**Supreme Court of Texas**

A.1.2. Strategy: Appellate Justice Salaries (SB1, Article IV-1)	1,481,904	1,481,904	2,963,808
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**Court of Criminal Appeals**

A.1.2. Strategy: Appellate Judge Salaries (SB1, Article IV-1)	1,492,977	1,507,103	3,000,080
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**The Fourteen Courts of Appeals**

A.1.2. Strategy: Appellate Justice Salaries (SB1, Article IV-various)	11,579,871	11,837,618	23,417,489
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**Office of the State Prosecuting Attorney**

A.1.2. Strategy: State Prosecutor Salary (SB1, Article IV-29)	158,530	158,710	317,240
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**Judiciary Section, Comptroller's Division**

A.1.1. Strategy: District Judges, A.1.4 Local Admin Judge Supplement, & A.1.7 MDL Salary and Benefit (SB1, Article I-32)	68,297,450	68,987,991	137,285,441
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**Judiciary Section, Comptroller's Division**

B.1.1. Strategy: District Attorneys: Salaries, B.1.2 Professional Prosecutors: Salaries, & B.1.3 Felony Prosecutors: Salaries (SB1, Article IV-33)	16,838,097	16,721,691	33,559,788
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**Judiciary Section, Comptroller's Division**

C. Goal: Co.-Level Judges Salary Supplements (SB1, Article IV-33)	8,786,731	9,080,731	17,867,462
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**Judiciary Section, Comptroller's Division**

D.1.1. Strategy: Asst Prosecutor Longevity Pay, D.1.2 County Attorney Supplement, D.1.3 Witness Expenses, D.1.5 Death Penalty Representation, D.1.7 Juror Pay & D.1.8 Indigent Inmate Defense (SB1, Article IV-33)	8,240,483	7,091,699	15,332,182
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**Department Of Housing And Community Affairs**

E.1.4. Strategy: TEXAS.GOV (SB1, Article VII-2)	19,120	19,120	38,240
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**Lottery Commission**

A.1.6. Strategy: Lottery Operator Contract(s) (SB1, Article VII-8)	131,598,201	128,798,105	260,396,306
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**Lottery Commission**

A.1.11. Strategy: Retailer Commission (SB1, Article VII-8)	31,675,300	31,675,300	63,350,600
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**Behavioral Health Executive Council**

A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-4)	136,000	136,000	272,000
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**Board Of Chiropractic Examiners**

A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-6)	20,850	20,850	41,700
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**Texas State Board Of Dental Examiners**

A.2.2. Strategy: TEXAS.GOV (SB1, Article VIII-8)	225,000	225,000	450,000
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**Funeral Service Commission**

A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-9)	46,500	46,500	93,000
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<b>Board Of Professional Geoscientists</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-11)	25,000	25,000	50,000
<b>Department Of Insurance</b>			
A.3.2. Strategy: TEXAS.GOV (SB1, Article VIII-17)	398,900	398,900	797,800
<b>Department Of Licensing And Regulation</b>			
A.1.5. Strategy: TEXAS.GOV (SB1, Article VIII-26)	650,000	650,000	1,300,000
<b>Texas Board of Nursing</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-33)	594,902	594,903	1,189,805
<b>Optometry Board</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-36)	21,690	21,690	43,380
<b>Optometry Board</b>			
A.1.3. Strategy: National Practitioner Data Bank (SB1, Article VIII-36)	9,092	9,092	18,184
<b>Board Of Pharmacy</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-38)	251,106	251,106	502,212
<b>Executive Council Of Physical Therapy &amp; Occupational Therapy Examiners</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-40)	159,600	159,600	319,200
<b>Board Of Plumbing Examiners</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-42)	155,000	155,000	310,000
<b>Racing Commission</b>			
A.2.1. Strategy: Texas Bred Incentive Program (SB1, Article VIII-43)	3,130,000	3,130,000	6,260,000
<b>Racing Commission</b>			

B.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-44)	13,323	13,324	26,647
<b>Board Of Veterinary Medical Examiners</b>			
A.1.2. Strategy: TEXAS.GOV (SB1, Article VIII-55)	40,000	40,000	80,000
<b>Multiple Agencies: Earned Federal Funds</b>			
Sec. 13.11. Definition, Appropriation, Reporting and Audit of Earned Federal Funds (SB1, Article IX-66)	55,051,599	55,308,500	110,360,099
Subtotal, Estimated Appropriations	<u>8,801,453,442</u>	<u>8,979,420,496</u>	<u>17,780,873,938</u>
Total Sum-certain Line Item Appropriations	<u>52,652,808,797</u>	<u>52,249,714,640</u>	<u>104,902,523,437</u>

**TABLE 14**  
**2022-23 BIENNIAL APPROPRIATIONS**  
**EXCLUDED FROM THE LIMITATION BASE**

1.	Appropriations for a purpose that provides tax relief (one-time)	
	No one-time appropriations that provide for tax relief have been made in the 2022-23 biennium	
2.	Appropriations to pay for costs with recovery from a disaster declared by the Governor	
(a)	Office of Court Administration, Texas Judicial Council	32,486,125
	A.1.1 Court Administration, A.1.2 Information Technology, D.1.1 Texas Indigent Defense Commission	
(b)	Texas Military Department	301,007,231
	A.1.1 State Active Duty Disaster	
(c)	Department of Public Safety	133,506,725
	B.1.3 Extraordinary Operations	
(d)	Department of Public Safety	3,411,000
	B.1.3 Extraordinary Operations	
(e)	Department of Public Safety	17,872,349
	B.1.3 Extraordinary Operations	
(f)	Texas Department of Criminal Justice	23,700,000
	C.1.1 Correctional Security Operations, F.1.4 Board Oversight Programs	
(g)	Texas Commission on Jail Standards	214,785
	A.1.1 Inspection and Enforcement	
(h)	Trusteed Programs within the Office of the Governor	1,020,290,860
	A.1.1 Disaster Funds	
(i)	Trusteed Programs within the Office of the Governor	3,765,000
	B.1.3 Border Prosecutions	
(j)	Department of State Health Services	5,450,976
	A.1.1 Public Health Preparedness and Coordinated Services	
(k)	Department of State Health Services	10,901,952
	A.1.1 Public Health Preparedness and Coordinated Services	
(l)	Trusteed Programs within the Office of the Governor	250,000,000
	A.1.1 Disaster Funds	
(m)	Trusteed Programs within the Office of the Governor	246,539,722
	A.1.1 Disaster Funds	
(n)	Trusteed Programs within the Office of the Governor	359,673,191
	A.1.1 Disaster Funds	
(o)	Trusteed Programs within the Office of the Governor	180,000,000
	B.1.1 Criminal Justice	
(p)	Trusteed Programs within the Office of the Governor	110,000,000
	A.1.1 Disaster Funds	
(q)	Texas Education Agency	15,000,000
	A.1.1 FSP – Equalized Operations	
(r)	Texas Education Agency	5,000,000
	A.2.2 Achievement of Students at Risk	

(s)	Texas Education Agency	35,000,000
	A.1.1 FSP Equalized Operations	
(t)	Texas Education Agency	396,000,000
	A.1.1 FSP Equalized Operations	
(u)	Texas Division of Emergency Management	10,000,000
	A.1.3 Recovery and Mitigation	
(v)	Department of State Health Services	2,400,000
	A.1.1 Public Health Preparedness and Coordination	
(w)	Department of State Health Services	400,000
	A.1.1 Public Health Preparedness and Coordination	
(x)	Department of State Health Services	2,100,000
	A.1.1 Public Health Preparedness and Coordination	
(y)	Health and Human Services Commission	500,000
	E.1.3 Disaster Assistance	
(z)	Health and Human Services Commission	150,000
	E.1.3 Disaster Assistance	
	Total 2022-23 Appropriations Excluded from the Limitation Base	<u>3,165,369,916</u>

**TABLE 15**  
2022-23 BIENNIAL APPROPRIATIONS  
INCLUDED IN THE CALCULATION OF  
THE CGR LIMITATION BASE

2022-23 Consolidated General Revenue Appropriations	124,165,562,000
<i>Less</i> Total 2022-23 Appropriations Excluded from the Limitation Base	3,165,369,916
2022-23 Consolidated General Revenue Appropriations Included in the Limitation Base	<u>121,000,192,084</u>

*- Amounts for the 2022–23 biennium include adjustments pursuant to Senate Bill 1, Eighty-seventh Legislature, Regular Session, 2021; Senate Bill 1605, Eighty-seventh Legislature, Regular Session, 2021; House Bill 5 and House Bill 9, Eighty-seventh Legislature, Second Called Session, 2021; and Senate Bill 8, Eighty-seventh Legislature, Third Called Session, 2021..*

*- Biennial appropriations are calculated on actual amounts before rounding. Therefore, totals may not sum due to rounding.*

*Source: Legislative Budget Board.*

TRD-202204601

Stewart Shallow  
General Counsel  
Legislative Budget Board  
Filed: November 16, 2022

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Recovery of Universal Service Funding**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on November 3, 2022, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. to Recover Funds from the TUSF under PURA §56.025 and 16 TAC §26.406 For Calendar Year 2019, Docket Number 54313.

The Application: Valley Telephone Cooperative, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Valley Telephone Cooperative for 2019. Valley Telephone Cooperative requests that the Commission allow recovery of funds from the TUSF in the amount of \$1,741,179.93 for 2019 to replace the projected reduction in FUSF revenue.

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 54313.

TRD-202204534  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 10, 2022

◆ ◆ ◆  
**Notice of Application for Recovery of Universal Service Funding**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on November 14, 2022, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Big Bend Telephone Company, Inc. to Recover Funds from the TUSF under PURA §56.025 and 16 TAC §26.406 for Calendar Year 2021, Docket Number 54337.

The Application: Big Bend Telephone Company, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Big Bend Telephone Company for 2021. Big Bend Telephone Company requests that the Commission allow recovery of funds from the TUSF in the amount of \$1,665,104.80 for 2021 to replace the projected reduction in FUSF revenue.

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 54337.

TRD-202204577  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 15, 2022

◆ ◆ ◆  
**Notice of Petition for Rulemaking**

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on November 15, 2022, to initiate a rulemaking to amend 16 Texas Administrative Code §25.365.

Project and Number: Petition of the Aspire Power Ventures, LP for Rulemaking to Amend 16 TAC §25.365. Project Number 54342.

Summary of Petition: Aspire Power Ventures, LP (APV) filed a petition for rulemaking to amend §25.365 related to the role, duty, and authority of the Independent Market Monitor (IMM). APV proposed the Commission update the rule related to the authority and obligations of the ERCOT IMM to address the realities of the modern ERCOT market and to give the IMM more precise guidance regarding its role in protecting the ERCOT market from manipulation. APV stated that the current rule does not adequately scope the role of the IMM or properly define the markets that should be examined for market manipulation and improper trading behavior. APV asserts that the rule be amended to expressly require market power reports and analyses for each wholesale market product traded in ERCOT.

The deadline to file comments in this project is December 8, 2022. Comments may be filed through the interchange on the commission's website. Interested persons may contact the commission at (512) 936-7120 or (toll-free) (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Project Number 54342.

TRD-202204586  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 16, 2022

◆ ◆ ◆  
**Public Notice of Request for Comments**

**PUC PROJECT NO. 54335**

**REVIEW OF MARKET REFORM ASSESSMENT PRODUCED BY ENERGY AND ENVIRONMENTAL ECONOMICS, INC. (E3)**

In May 2022, the Public Utility Commission of Texas (commission) contracted Energy and Environmental Economics, Inc. (E3) for consulting services related to analysis, development, and implementation of market design and market structure changes in Electric Reliability Council of Texas (ERCOT) wholesale market. E3 performed a quantitative and qualitative review of a range of proposed market designs and produced the report titled Assessment of Market Reform Options to Enhance Reliability of the ERCOT System. The commission requests comments on questions regarding Project No. 54335, *Review of Market Reform Assessment Produced by Energy and Environmental Economics, Inc. (E3)*

Comments may be filed through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by NOON on December 15, 2022.

All comments should reference Project No. 54335. Comments are limited to 25 pages. Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments.

1. The E3's report observes that the Performance Credit Mechanism (PCM) has no prior precedent for implementation; does this fact present a significant obstacle to its operation for the ERCOT market?
2. Would the PCM design incentivize generation performance, retention, and market entry consistent with the Legislature's and the commission's goal to meet demand during times of net peak load and extreme power consumption conditions? Why or why not?
3. What is the appropriate reliability standard to achieve the goals stated in Question 2? Is 1-in-10 loss of load expectation (LOLE) a reasonable standard to set, or should another standard be used, such as expected unserved energy (EUE). If recommending a different standard, at what level should the standard be set (e.g., how many MWh of EUE per year)?
4. The E3 report examines 30 hours of highest reliability risk over a year. Is 30 the appropriate number of hours for this purpose? Should the reliability risk focus on a different measure?
5. Over what period should the hours of highest reliability risk be determined? A year, a season, a month, or some other interval? At what point in time should that determination be made?
6. Would a voluntary forward market for generation offers and a mandatory residual settlement process for Load Serving Entity procurement provide additional generation revenue sufficient to incentivize resource availability in a way that improves reliability?
7. Does a centrally cleared market through ERCOT sufficiently mitigate the risk of market power abuse? Should additional tools be considered?
8. If the commission adopts a market design with a multi-year implementation timeline, is there a need for a short-term "bridge" product

or service, like the Backstop Reliability Service (BRS), to maintain system reliability equivalent to a 1-in-10 LOLE or another reliability standard? If so, what product or service should be considered?

9. If implementing a short-term design as a "bridge" delays the ultimate solution, should it be considered? Is there an alternative to a bridge solution that could be implemented immediately, using existing products, such as a long-term commitment to buy the additional 5,630 MW of Ancillary services necessary to achieve the 1-in-10 LOLE reliability standard?
10. What is the impact of the PCM on consumer costs?
11. What is the fastest and most efficient manner to build a "bridge" product or service, such as the BRS, in order to start sending market signals for investment in new and dispatchable generation, while a multi-year market design is implemented by ERCOT? Please provide specific steps.
12. In what ways could the Dispatchable Energy Credit design be modified through quantity and resource eligibility requirements, e.g., new technology such as small modular nuclear reactors, in such a way that it incentivizes new and dispatchable generation?

Questions concerning this project should be referred to Ben Hague-wood at [Ben.Haguewood@puc.texas.gov](mailto:Ben.Haguewood@puc.texas.gov). Deaf and hard of hearing individuals with text telephone (TTY) may contact the Commission through Relay Texas by dialing 7-1-1.

TRD-202204567

Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 15, 2022





## 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 47 (2022) is cited as follows: 47 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 “47 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 47 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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