

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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §351.3, §351.6

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §351.3, concerning Recognition of Out-of-State License of Military Service Members and Military Spouses, and new §351.6, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans, in Texas Administrative Code Title 1, Chapter 351, Subchapter A. The amendment of §351.3 and new rule §351.6 are adopted with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5596). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendment and new rule implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023, which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Amended §351.3 allows military service members who are currently licensed in good standing by another jurisdiction to engage in a business or occupation in Texas if the other jurisdiction has licensing requirements substantially equivalent to the requirements for the license in Texas. New §351.6 creates an alternative licensing process for military service members, military spouses, and military veterans. Both rules establish requirements and procedures authorized or required by Texas Occupations Code Chapter 55 and do not modify or alter rights that may be provided under federal law.

The amendment to §351.3 replaces "military spouse" in the title with "military service members and military spouses" and otherwise makes the rule applicable to military service members in addition to military spouses. The proposed amendment also adds a requirement that HHSC verify the licensure and issue a verification letter recognizing the licensure within 30 days of the date a military service member or military spouse submits the information required by the rule. The amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the verification letter.

New §351.6 establishes alternative licensing for military service members, military spouses, and military veterans. Alternative licensing is appropriate when the military service member, military spouse, or military veteran is currently licensed in good standing with another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in Texas or held the same license in Texas within the preceding five years. The new rule provides that HHSC has 30 days from the date a military service member, military spouse, or military veteran submits an application for alternative licensing to process the application and issue a license to a qualified applicant.

COMMENTS

The 21-day comment period ended October 20, 2023.

During this period, HHSC received one comment regarding the proposed rules from an individual commenter. A summary of the comment relating to the rules and HHSC's response follows.

Comment: An individual stakeholder commented that the military spouse waiver fee should apply to retired military spouses as well as retired servicemen/women.

Response: HHSC declines to revise §351.3 or §351.6 because both rules incorporate the definitions found in Texas Occupations Code §55.001. With respect to military spouses, these statutory definitions limit the applicability of both rules to persons married to military service members who are on active duty.

HHSC made changes to §351.3(e)(3) and §351.6(f) to be consistent with 25 TAC §1.81, Recognition of Out-of-State License of a Military Service Member and Military Spouse, and §1.91, Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

STATUTORY AUTHORITY

The amendment and new rule are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by HHSC for the administration of Texas Health and Safety Code Chapter 1001.

§351.3. Recognition of Out-of-State License of Military Service Members and Military Spouses.

(a) For the purposes of this section, the definitions found in Texas Occupations Code §55.001 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses to engage in a business or occupation which the Texas Health and Human Services Commission (HHSC) issues to an individual under authority granted by the laws of the State of Texas. A more specific rule concerning recognition of out-of-state licenses of military service members and military spouses may also apply but only to the extent the more specific rule does not conflict with this rule. Any conflicts between this rule and the more specific rule are resolved in favor of this rule.

(c) A military service member or military spouse may engage in a business or occupation as if licensed in the State of Texas without obtaining the applicable license in Texas if the military service member or military spouse:

(1) is currently licensed in good standing with another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state;

(2) notifies HHSC in writing of the military service member's or military spouse's intent to practice in this state;

(3) submits to HHSC proof of the military service member's or military spouse's residency in this state and a copy of the military service member's or military spouse's military identification card; and

(4) receives a verification letter from HHSC that:

(A) HHSC has verified the military service member's or military spouse's license in another jurisdiction; and

(B) the military service member or military spouse is authorized to engage in the business or occupation in accordance with Texas Occupations Code §55.0041 and rules for that business or occupation.

(d) HHSC will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another state's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state:

(1) whether the other state requires an applicant to pass an examination that demonstrates competence in the field to obtain the license;

(2) whether the other state requires an applicant to meet any experience qualifications to obtain the license;

(3) whether the other state requires an applicant to meet any education qualifications to obtain the license; and

(4) the other state's license requirements, including the scope of work authorized to be performed under the license issued by the other state.

(e) The military service member or military spouse must submit:

(1) a written request to HHSC for recognition of the military service member's or military spouse's license issued by the other state; no fee will be required;

(2) any form and additional information regarding the license issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(3) proof of residency in this state, which may include a copy of the permanent change-of-station order for the military service member;

(4) a copy of the military service member's or military spouse's identification card; and

(5) proof the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in Texas.

(f) HHSC has 30 days from the date a military service member or military spouse submits the information required by subsection (e) of this section to:

(1) verify that the member or spouse is licensed in good standing in a jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license under the statutes and regulations of this state; and

(2) issue a verification letter recognizing the licensure as the equivalent license in this state.

(g) The verification letter will expire three years from date of issuance or when the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is no longer stationed at a military installation in Texas, whichever comes first. The verification letter may not be renewed.

(h) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the verification described by subsection (f) of this section. A similar event includes the death of the military service member or the military service member's discharge from the military.

(i) A replacement letter may be issued after receiving a request for a replacement letter in writing or on a form, if any, required by the rules of the specific program or division within HHSC that licenses the business or occupation; no fee will be required.

(j) The military service member or military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code chapters and all relevant Texas Administrative Code provisions.

(k) HHSC may withdraw or modify the verification letter for reasons including the following:

(1) the military service member or military spouse fails to comply with subsection (j) of this section; or

(2) the military service member's or military spouse's licensure required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

§51.6. Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

(a) For the purposes of this section, the definitions found in Texas Occupations Code §55.001 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses to engage in a business or occupation which the Texas Health and Human Services Commission (HHSC) issues to an individual under authority granted by the laws of the State of Texas. A more specific rule concerning alternative licensing for military service members, military spouses, and military veterans may also apply but only to the extent the more specific rule does not conflict with this rule. Any conflicts between this rule and the more specific rule are resolved in favor of this rule.

(c) Notwithstanding any other rule, HHSC may issue a license to an applicant who is a military service member, military spouse, or military veteran if the military service member, military spouse, or military veteran:

(1) is currently licensed in good standing with another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state; or

(2) held the same license in Texas within the preceding five years.

(d) HHSC may waive any requirement to obtaining a license for an applicant described by subsection (c) of this section after reviewing the applicant's credentials.

(e) If an applicant described by subsection (c) of this section must demonstrate competency to meet the requirements for obtaining the license, HHSC may accept alternate forms of competency including:

(1) proof of a passing score for any national exams required to obtain the occupational license;

(2) if specific professional experience is required, proof of duration or hours that meet the professional experience requirement; and

(3) if specific training hours are required for obtaining the license, proof of verified hours related to training experience.

(f) If required by the specific program or division within HHSC that licenses the business or occupation, a military service member or military spouse must provide proof of residency in this state, which may include a copy of the permanent change-of-station order for the military service member or any other documentation HHSC deems appropriate to verify residency.

(g) HHSC has 30 days from the date a military service member, military spouse, or military veteran submits an application for alternative licensing to process the application and issue a license to an applicant who qualifies for the license.

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 9, 2023.

TRD-202304128

Karen Ray

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Texas Health and Human Services Commission

Effective date: December 1, 2023

Proposal publication date: September 29, 2023

For further information, please call: (512) 574-2228



CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 9. AMBULANCE SERVICES

1 TAC §§354.1111, 354.1113, 354.1115

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1111, concerning Definitions; §354.1113, concerning Additional Claim Information Requirements; and §354.1115, concerning Authorized Ambulance Services. Section 354.1111

and §354.1115 are adopted with changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3955). These rules will be republished. Section 354.1113 is adopted without changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3955). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to implement legislation related to Medicaid ambulance services as directed by Senate Bill 1, Article II, Rider 42, 87th Legislature, Regular Session, 2021. The adoption implements emergency triage, treat, and transport (ET3) services to allow Medicaid-enrolled ambulance providers to address health care needs assessed as non-emergency, but medically necessary, by initiating and facilitating appropriate treatment in place at the scene; initiating and facilitating appropriate treatment in place via telemedicine or telehealth; and transporting a Medicaid recipient to an alternative non-hospital destination, such as a primary care physician office or an urgent care clinic. The adoption allows ET3 services similar to those put in place with the Centers for Medicare & Medicaid Services' ET3 Pilot project. The adoption amendments also update and clarify language in the rules.

COMMENTS

The 31-day comment period ended August 21, 2023.

During this period, HHSC received comments regarding the proposed rules from one stakeholder. Comments were received from Texas EMS Alliance. A summary of the comments relating to the rules and HHSC's responses follow.

Comment: Texas EMS Alliance commented that while the definition in §354.1111(9) of "nonemergency transport" includes valid examples, such as scheduled appointments and discharges from a medical facility, the language describing the Medicaid recipient's medical condition that would make nonemergency transport appropriate should be changed from "such that the use of an ambulance is medically required, e.g., bed confinement, and alternate means of transport are medically contraindicated" to "such that the use of an ambulance is medically required, e.g., bed confinement or alternate means of transport are medically contraindicated." The commenter explained that while it would be rare, it is possible for a patient who is not bed confined to still require stretcher transport, such as a patient who is dependent on a ventilator.

Response: HHSC respectfully declines to make the suggested change. The Medicaid recipient's medical condition must be such that both the use of an ambulance is medically required and alternate means of transport are medically contraindicated. Bed confinement is cited as an example of when the use of an ambulance is medically required.

Comment: Texas EMS Alliance also commented that emergency medical services providers would provide treatment as described in §354.1115(2)(A),(B), or (C), but not all three for the same response. The commenter suggested changing the last word in §354.1115(2)(B) to "or."

Response: HHSC disagrees and respectfully declines to make the suggested change. HHSC's decision to use "and" instead of "or" is because ambulance providers may be reimbursed for all of the ET3 services listed in §354.1115(2)(A), (B), and (C). The rule is not intended to specify that §354.1115(2)(A), (B), and (C) must be provided as part of the same treatment event in order for the provider to be reimbursed.

Minor editorial changes were made to §354.1111(5)(B) and (C) and §354.1115(2)(B) and (C) to use "initiating and facilitating" in the description of treatment in place.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resource Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

§354.1111. Definitions.

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

(1) Ambulance provider--A provider of ambulance services who:

(A) is enrolled as an ambulance provider in the Texas Medicaid Program to provide ambulance services for Medicaid recipients;

(B) is licensed with the Department of State Health Services, Emergency Medical Services Division;

(C) is enrolled in Medicare;

(D) agrees to accept assignment on all Medicare/Medicaid claims; and

(E) agrees to provide these services according to state and local laws, regulations, and guidelines governing ambulance services.

(2) Appropriate facility--The nearest medical facility that is equipped to provide medical care for the illness or injury of the Medicaid recipient involved. It is the institution, equipment, personnel, and capability to provide the services necessary to support the required medical care that determine whether a facility is appropriate.

(3) Designee--The contractor responsible for reimbursing Medicaid providers of ambulance transport services for Medicaid recipients.

(4) Emergency medical condition--A medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances, or symptoms of substance abuse) such that a prudent layperson with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

(A) placing the recipient's health (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(5) Emergency triage, treat and transport (ET3) services--ET3 services are emergency ground ambulance services and include:

(A) transporting Medicaid recipients to alternative destination sites other than an emergency department, including primary care physician offices and urgent care clinics;

(B) initiating and facilitating appropriate treatment in place at the scene; or

(C) initiating and facilitating appropriate treatment in place via telemedicine or telehealth.

(6) Emergency transport--Transport provided by an ambulance provider for a Medicaid recipient whose condition meets the definition of an emergency medical condition. Facility-to-facility transports are appropriate as emergencies if the required treatment for the emergency medical condition is not available at the first facility.

(7) HHSC--The Texas Health and Human Services Commission or its designee.

(8) Medically necessary--When the condition of the Medicaid recipient meets the definition of emergency medical condition or meets the requirements for nonemergency transport.

(9) Nonemergency transport--Transport provided by an ambulance provider for a Medicaid recipient to or from a scheduled medical appointment, to or from another licensed facility for treatment, or to the recipient's home after discharge from a hospital. Nonemergency transport is appropriate when the Medicaid recipient's medical condition is such that the use of an ambulance is medically required, e.g., bed confinement, and alternate means of transport are medically contraindicated.

§354.1115. Authorized Ambulance Services.

In addition to the requirements stated in this section, a provider must comply with §354.1001 of this subchapter (relating to Claim Information Requirements), and §354.1113 of this division (relating to Additional Claim Information Requirements).

(1) Emergency ambulance transportation. HHSC will reimburse a Medicaid-enrolled ambulance provider for the emergency transport of a Medicaid recipient with an emergency medical condition in accordance with the following criteria.

(A) Transport must be to an appropriate facility. If the transport is made to a facility other than an appropriate facility, payment is limited to the amount that would be payable to an appropriate facility.

(B) Transport by air or boat ambulance is reimbursable if the time and distance required to reach an appropriate facility make the transport by ground ambulance impractical or would endanger the life or safety of the recipient. If the recipient's medical condition does not meet the emergency air or boat criteria, but does meet the emergency ground transportation criteria, the payment to the provider is limited to the amount that would be payable at the emergency ground transportation rate.

(2) Emergency triage, treat and transport (ET3) services. HHSC may reimburse a Medicaid-enrolled ambulance provider responding to a call initiated by an emergency response system and upon arrival at the scene the ambulance provider determines the recipient's needs are nonemergent, but medically necessary. ET3 services may be reimbursed for:

(A) transporting Medicaid recipients to alternative destination sites other than an emergency department;

(B) initiating and facilitating treatment in place at the scene; and

(C) initiating and facilitating treatment in place via telemedicine or telehealth.

(3) Nonemergency ambulance transportation. HHSC may reimburse a Medicaid-enrolled ambulance provider for nonemergency transport when the following requirements are met:

(A) A physician, nursing facility, health care provider, or other responsible party, must obtain prior authorization from HHSC when an ambulance is used to transport a recipient in circumstances not involving an emergency.

(i) Except as provided by clause (iii) of this subparagraph, a request for prior authorization must be evaluated by HHSC based on the recipient's medical needs and may be granted for a length of time appropriate to the recipient's medical condition;

(ii) Except as provided by clause (iii) of this subparagraph, a response to a request for prior authorization must be made by HHSC not later than 48 hours after receipt of the request; and

(iii) A request for prior authorization must be granted immediately by HHSC and must be effective for a period of not more than 180 days from the date of issuance if the request includes a written statement from a physician that:

(I) states that alternative means of transporting the recipient are contraindicated; and

(II) is dated not earlier than the 60th day before the date on which the request for authorization is made.

(B) If the request is for authorization of ambulance transportation for only one day in circumstances not involving an emergency, a physician, nursing facility, health care provider, or other responsible party must obtain authorization from HHSC no later than the next business day following the day of transport;

(C) If the request is for authorization of ambulance transportation for more than one day in circumstances not involving an emergency, a physician, nursing facility, health care provider, or other responsible party must obtain a single authorization before an ambulance is used to transport a recipient;

(D) A person denied payment for ambulance services rendered is entitled to payment from the nursing facility, health care provider, or other responsible party that requested the services if:

(i) payment under the Medicaid program is denied because of lack of prior authorization; and

(ii) the person provides the nursing facility, health care provider, or other responsible party with a copy of the bill for which payment was denied.

(E) HHSC must be available to evaluate requests for authorization under this section not less than 12 hours each day, excluding weekends and state holidays.

(4) Hearings. For information about recipient fair hearings, refer to HHSC's fair hearing rules, Chapter 357 of this title (relating to Hearings).

(5) Provider appeal. An ambulance provider denied payment for services rendered because of failure to obtain prior authorization, or because a request for prior authorization was denied, is entitled to appeal the denial of payment to HHSC. A denial of a claim may be appealed by a provider under HHSC's appeals procedures contained in the Texas Medicaid Provider Procedures Manual and §354.1003 of this subchapter (relating to Time Limits for Submitted Claims).

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 7, 2023.

TRD-202304103

Karen Ray

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Texas Health and Human Services Commission

Effective date: November 27, 2023

Proposal publication date: July 21, 2023

For further information, please call: (512) 438-4651



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER C. PREVIOUS PARTICIPATION AND EXECUTIVE AWARD REVIEW AND ADVISORY COMMITTEE

10 TAC §§1.301 - 1.303

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §1.301 Definitions and Previous Participation Reviews for Multifamily Awards and Ownership Transfers, §1.302 Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and §1.303 Executive Award and Review Advisory Committee (EARAC), without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5240). The rules will not be republished.

The purpose of the repeal is to make changes that result from passage of HB 3591 (83rd Regular Legislature) which removed §2306.1112 from our statutes, thereby eliminating EARAC.

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

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

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

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

1. The repeal does not create or eliminate a government program but relates to changes to existing guidance for program subrecipients.

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

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

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

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

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 the state's economy.

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

The Department has evaluated the 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 changed sections would be an updated and more germane rule compliant with legislative actions taken by the 83rd Texas Legislature. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held from September 22, 2023, to October 23, 2023, to receive input on the proposed action. No comment on the repeal was received.

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

Except as described herein the repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2023.

TRD-202304181

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: November 30, 2023

Proposal publication date: September 22, 2023

For further information, please call: (512) 485-3959

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10 TAC §§1.301 - 1.303

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter C, Previous Participation Review of Department Awards, §1.301 Definitions and Previous Participation Reviews for Multifamily Awards and Ownership Transfers, §1.302 Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and §1.303 Executive Director Review, with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5241). The rules will be republished.

The purpose of the rule is to make changes that result from passage of HB 3591 (83rd Regular Legislature) which removed §2306.1112 from our statutes, thereby eliminating EARAC. From the draft version released, several administrative revisions have been made relating to a change from reference to only NSPIRE to include other inspection methods that may have been used when considering past performance.

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

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

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

Mr. Bobby Wilkinson has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relate to changes to existing regulations applicable to Department subrecipients.
2. The new sections 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 new sections do not require additional future legislative appropriations.
4. The new sections will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new sections will not expand, limit, or repeal an existing regulation.
7. The new sections will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new sections 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 has evaluated the new sections and determined that the actions will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new sections 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 new sections as to their possible effects on local economies and has determined that for the first five years the new sections 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 new sections are in effect, the public benefit anticipated as a result of the new sections would be an updated and more germane rule compliant with legislative actions taken by the 83rd Texas Legislature. There will not be economic costs to individuals required to comply with the new 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 new sections are in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from September 22, 2023, to October 23, 2023, to receive input on the proposed action. One comment on the new sections was received from Texas Housers.

COMMENT: Texas Housers proposes removing §1.301(c)(4). Texas Housers believes that failure to provide Fair Housing Disclosure notice should be considered when conducting a previous participation review. It is our understanding that the Fair Housing Disclosure Notice requirement is satisfied by providing the Tenant Rights and Resources Guide. This document has integral information for tenants, and failure to provide this should not be tolerated.

STAFF RESPONSE: The section referenced by Texas Housers relates to a list of items that will not be considered when conducting a previous participation review; on that list the item suggested for removal is events of noncompliance entitled "Failure to provide Fair Housing Disclosure notice." Staff notes that regardless of whether the item is taken into consideration during a previous participation review, the Compliance Division does still require the item to be corrected by a property if identified. There is now a Tenant's Rights and Resources Guide that must be provided to every tenant and staff monitors for this form in every tenant file we review, so the Department is diligently ensuring that low-income Texans are provided this Fair Housing

Disclosure information. Staff also checks any instances of outstanding noncompliance during onsite reviews and seeks to get any previous outstanding noncompliance corrected during the most recent review. Also, any outstanding noncompliance is referred to the Enforcement Division. No changes are being made in response to this comment.

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

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

§1.301. Definitions and Previous Participation Reviews for Multifamily Awards and Ownership Transfers.

(a) Purpose and Applicability. The purpose of this rule is to provide the procedures used by the Department to comply with Tex. Gov't Code §§2306.057, and 2306.6713 which require the Compliance Division to assess the compliance history of the Applicant and any Affiliate, the compliance issues associated with the proposed or existing Development, and provide such assessment to the Board. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c) and Texas Grant Management Standards (TxGMS), where applicable.

(b) Definitions. The following definitions apply only as used in this subchapter. Other capitalized terms used in this section have the meaning assigned in the specific chapters and rules of this title that govern the program associated with the request, or assigned by federal or state laws.

(1) Actively Monitored Development--A Development that within the last three years has been monitored by the Department, either through a NSPIRE inspection or prior onsite monitoring inspection other than NSPIRE, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. NSPIRE inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(2) Affiliate--Persons are Affiliates of each other or are "affiliated" if they are under common Control by each other or by one or more third parties. "Control" is as defined in §11.1 of this title (relating to General items relating to Pre-Application, Definitions, Threshold Requirements and Competitive Scoring). For Applications for Multifamily Direct Grants/Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Grants/Loans or 811 PRA, for purposes of assurance that the Affiliate is not on the Federal Suspended or Debarred Listing, Affiliate is also defined as required by 2 CFR Part 180 and 2 CFR Part 2424.

(3) Applicant--In addition to the definition of applicant in §11.1 of this title, in this subchapter, the term applicant includes Persons requesting approval to acquire a Department monitored Development.

(4) Combined Portfolio--Actively Monitored Developments within the Control of Persons affiliated with the Application as identified by the Previous Participation Review and as limited by subsection (c) of this section.

(5) Corrective Action Period--The timeframe during which an Owner may correct an Event of Noncompliance, as permitted in §10.602 or §10.803 of this title (relating to Notice to Owners and Corrective Action Periods and Compliance and Events of Noncompliance, respectively), including any permitted extension or deficiency period.

(6) Events of Noncompliance--Any event for which an Actively Monitored Development may be found to be in noncompliance

for monitoring purposes as further provided for in §10.803 of this title or in the table provided at §10.625 of this title (relating to Events of Noncompliance).

(7) Monitoring Event--An onsite or desk monitoring review, an NSPIRE inspection, prior onsite monitoring inspection other than NSPIRE, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division or other reviewing area provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include, but not be limited to, responding to a tenant complaint.

(8) National Standards for the Physical Inspection of Real Estate (NSPIRE)--As developed by the Real Estate Assessment Center of HUD.

(9) Person--"Person" is as defined in 10 TAC Chapter 11 (relating Qualified Allocation Plan (QAP)). For Applications for Multifamily Direct Grants/Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Grants/Loans or 811 PRA, for purposes of assurance that the Applicant or Affiliate is not on the Federal Suspended or Debarred Listing, Person is also defined and includes Principal as required by 2 CFR Part 180 and 2 CFR Part 2424.

(10) Single Audit--As used in this rule, the term relates specifically to an audit required by 2 CFR §200.501 or the Texas Single Audit Circular.

(c) Items Not Considered. When conducting a previous participation review the items in paragraphs (1) - (10) of this subsection will not be taken into consideration:

(1) Events of Noncompliance, Findings, Concerns, and Deficiencies (as described in 10 TAC §6.2, 10 TAC §7.2, 10 TAC §10.625, 10 TAC §10.803 and 10 TAC §20.3 or by Contract) that were corrected over three years from the date the Event is closed;

(2) Events of Noncompliance with an "out of compliance date" prior to the Applicant's period of Control if the event(s) is currently corrected;

(3) Events of Noncompliance with an "out of compliance date" prior to the Applicant's period of Control if the event(s) is currently uncorrected and the Applicant has had Control for less than one year, or if the Owner is still within the timeframe of a Department-approved corrective action from the Department's Enforcement Committee;

(4) The Event of Noncompliance "Failure to provide Fair Housing Disclosure notice";

(5) The Event of Noncompliance "Program Unit not leased to Low income Household" sometimes referred to as "Household Income above income limit upon initial Occupancy" for units at Developments participating in U.S. Department of Housing and Urban Development programs (or used as HOME Match) or U.S. Department of Agriculture, if the household resided in the unit prior to an allocation of Department resources and Federal Regulations prevent the Owner from correcting the issue, provided that the household is below the program's upper income limit and otherwise qualifies for the Unit;

(6) The Event of Noncompliance "Casualty loss" if the restoration period has not expired;

(7) Events of Noncompliance that the Applicant believes can never be corrected and the Department agrees in writing that such item should not be considered;

(8) Events of Noncompliance corrected within their Corrective Action Period;

(9) Events of failure to respond within the Corrective Action Period which have been fully corrected prior to January 1, 2019, will not be taken into consideration under subsection (e)(2)(C) and (3)(C) of this section;

(10) Events of Noncompliance precluded from consideration by Tex. Gov't Code §2306.6719(e); and

(11) Except for Applications for Multifamily Direct Grants/Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Grants/Loans or 811 PRA, Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the responsibility for the Development's compliance has been delegated to another participant in the project (defined as a member of the Development Team), and the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term "Combined Portfolio" used in this section does not include those properties with such documentation. The Department may require additional information to support the Control Form including but not limited to partnership agreements or other legal documents.

(d) Applicant Process. Persons affiliated with an Application or an Ownership Transfer request must complete the Department's Uniform Previous Participation Review Form and respond timely to staff inquiries regarding apparent errors or omissions, but for Applications no later than the Administrative Deficiency deadline. For an Ownership Transfer request, a recommendation will be delayed until the required forms or responsive information is provided.

(e) Determination of Compliance Status. Through a review of the form, Department records, and the compliance history of the Affiliated multifamily Developments, staff will determine the applicable category for the Application or Ownership Transfer request using the criteria in paragraphs (1) - (3) of this subsection. Combined Portfolios will not be designated as a Category 3 if both Applicants are considered a Category 2 when evaluated separately. For example, if each Applicant is a Category 2 and their Combined Portfolio is a Category 3, the Application will be considered a Category 2.

(1) Category 1. An Application will be considered a Category 1 if the Actively Monitored Developments in the Combined Portfolio have no issues that are currently uncorrected, all Monitoring Events were responded to during the Corrective Action Period, and the Application does not meet any of the criteria of Category 2 or 3.

(2) Category 2. An Application will be considered a Category 2 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period totals at least three but is less than 50% of the number of Actively Monitored Developments in the Combined Portfolio; or

(B) There are uncorrected Events of Noncompliance but the number of Events of Noncompliance is 10% or less than the number of Actively Monitored Developments in the Combined Portfolio. Corrective action uploaded to the Department's Compliance Monitoring and Tracking System (CMTS) or submitted during the seven day period referenced in subsection (f) of this section will be reviewed and the Category determination may change as appropriate; or

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event; however, the number of times is less than 25% of the number of Actively Monitoring Developments in the Combined Portfolio; or

(D) The Applicant is required to have a Single Audit and a relevant issue was identified in the Single Audit (e.g. Notes to the Financial Statements), or the required Single Audit is past due.

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of Actively Monitored Developments in the Combined Portfolio;

(B) The number of Events of Noncompliance that are currently uncorrected total 10% or more than the number of Actively Monitored Developments in the Combined Portfolio. Corrective action uploaded to CMETS or submitted during the seven day period referenced in subsection (f) of this section will be reviewed and the Category determination may change as appropriate;

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event and the number of times is equal to or greater than 25% of the number of Actively Monitored Developments in the Combined Portfolio;

(D) Any Development Controlled by the Applicant has been the subject of an agreed final order entered by the Board and the terms have been violated;

(E) Any Person subject to previous participation review failed to meet the terms and conditions of a prior condition of approval imposed by the Executive Director, the Governing Board, voluntary compliance agreement, or court order;

(F) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable documents for any Development currently Controlled by the Applicant or that was Controlled by the Applicant at the time the payment was due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(G) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(H) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(I) Fees or other amounts owed to the Department by any Person subject to previous participation review are 30 days or more past due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(J) Despite past condition(s) agreed upon by any Person subject to previous participation review to improve their compliance operations, three or more new Events of Noncompliance have since been identified by the Department, and have not been resolved during the corrective action period;

(K) Any Person subject to previous participation review has or had Control of a TDHCA funded Development that has gone through a foreclosure; or

(L) Any Person subject to previous participation review or the proposed incoming owner is currently debarred by the Department or currently on the federal debarred and suspended listing.

(f) Compliance Notification to Applicant. The Compliance Division will notify Applicants of their compliance status from the categories identified in paragraphs (1) to (4) of this subsection.

(1) Previously approved. If the Executive Director or the Board previously approved the compliance history of an Applicant, with or without conditions (including approvals resulting from a Dispute under §1.303(g) of this subchapter such conditions have not been violated, and no new Events of Noncompliance have occurred since the last approval, the compliance history will be deemed acceptable without further review or discussion and recommended as approved or approved with the same prior conditions. For 4% Housing Tax Credit Applications (without other Department resources), where it has been determined by staff that the Determination Notice can be issued administratively, and for which the Board previously approved a set of conditions associated with a prior Application of the Applicant's, and those same conditions are to be applied to the new 4% Application by Program or Compliance, or if an Application only has underwriting conditions, then the new 4% Application does not need to be approved by the Executive Director and is not required to be presented to the Board.

(2) Category 1. The compliance history of Category 1 applications will be deemed acceptable (for Compliance purposes only) without further review or discussion.

(3) Category 2 and Category 3. Category 2 and 3 Applicants will be informed by the Compliance Division that the Application is a Category 2 or 3 and provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to the Executive Director.

(4) The Department will not make an award or approve an Ownership Transfer to any entity who has an Affiliate, Board member, or a Person identified in the Application that is currently on the Federal Debarred and Suspended Listing. An Applicant or entity requesting an Ownership Transfer will be notified of the debarred status and will be given the opportunity (subject to other Department rules) to remove and replace the Affiliate, Board member, or Person so that the transfer or award may proceed.

(g) Compliance Recommendation to Executive Director for Awards.

(1) After taking into consideration the information received during the seven-day period, Category 2 Applications will be recommended for approval or approval with conditions (for compliance purposes only). Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this subchapter. The Applicant will be notified if their award is recommended for approval with conditions.

(2) After taking into consideration the information received during the seven-day period, Category 3 applications will be recommended for approval, approval with conditions (for compliance purposes only) or denial. Any recommendation for an award or ownership transfer with conditions will utilize the conditions identified in

§1.303 of this subchapter. The Applicant will be notified if their award is recommended for denial or approval with conditions.

(3) An Applicant that will be recommended for denial or awarded with conditions will be informed of their right to file a Dispute under §1.303 of this subchapter.

(4) In the case of 4% Housing Tax Credit Applications where it has been determined by staff that the Determination Notice can be issued administratively, Category 2 and 3 applications being approved with conditions that are specifically listed in §1.303 of this subchapter and that have been previously approved by the Board for the Applicant, do not require approval of the Executive Director or the Board unless the Applicant is requesting to Dispute the Compliance Recommendation.

(h) Compliance Recommendation for Ownership Transfers. After taking into consideration the information received during the seven-day period the results will be reported to the Executive Director with a recommendation of approval, approval with conditions, or denial. If the Executive Director determines that the request should be denied, or approved with conditions and the requesting entity disagrees, the matter may be appealed to the Board under §1.7 of this title (relating to Appeals).

§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter.

(a) Purpose and applicability. This section applies to program awards not covered by §1.301 of this subchapter (relating to Previous Participation Reviews for Multifamily Awards and Ownership Transfers). With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a Contract or through a Reservation Agreement a previous participation review will be performed in conjunction with the presentation of award actions to the Department's Board.

(b) Capitalized terms used in this subchapter herein have the meaning assigned in the specific chapters and rules of this title that govern the program associated with the request, or assigned by federal or state laws. For this section, the word Applicant means the entity that the Department's Board will consider for an award of funds or a Contract. As used in this section, the term Single Audit relates specifically to the audit required by 2 CFR §200.501 or the Texas Single Audit Act.

(c) Upon Department request, Applicant will be required to submit:

(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information has been submitted in accordance with §1.22 of this subchapter (relating to Providing Contact Information to the Department), and if applicable with §6.6 of this title (relating to Subrecipient Contact Information and Required Notifications);

(2) A list of any multifamily Developments owned or Controlled by the Applicant that are monitored by the Department;

(3) Identification of all Department programs that the Applicant has participated in within the last three years;

(4) An Audit Certification Form for the Applicant or entities identified by the Applicant's Single Audit, or a certification that the form has been submitted to the Department in accordance with §1.403 of this chapter (relating to Single Audit Requirements). If a Single Audit is only required by the State Single Audit Act and not by a federal requirement, a copy of the State Single Audit must be submitted to the Department;

(5) In addition to direct requests for information from the Applicant, information is considered to be requested for purposes of

this section if the requirement to submit such information is made in a NOFA or Application for funding; and

(6) Applicants will be provided a reasonable period of time, but not less than seven calendar days, to provide the requested information.

(d) The Applicant's/Affiliate's financial obligations to the Department will be reviewed to determine if any of the following conditions exist:

(1) The Applicant or Affiliate entities identified by the Applicant's Single Audit owes an outstanding balance in accordance with §1.21 of this chapter (relating to Action by Department if Outstanding Balances Exist), and a repayment plan has not been executed between the Subrecipient and the Department or the repayment plan has been violated;

(2) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department; or

(3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department.

(e) The Single Audit of an Applicant, or Affiliate entities identified by the Applicant's Single Audit, subject to a Single Audit, and not currently contracting for funds with the Department will be reviewed. In evaluating the Single Audit, the Department will consider both audit findings, and management responses in its review to identify concerns that may affect the organization's ability to administer the award. The Department will notify the Applicant of any Deficiencies, findings or other issues identified through the review of the Single Audit that requires additional information, clarification, or documentation, and will provide a deadline to respond.

(f) The Compliance Division will make a recommendation of award, award with conditions, or denial based on:

(1) The information provided by the Applicant;

(2) Information contained in the most recent Single Audit;

(3) Issues identified in subsection (d) of this section;

(4) The Deficiencies, Findings and Concerns identified during any monitoring visits conducted within the last three years (whether or not the Findings were corrected during the Corrective Action Period); and

(5) The Department's record of complaints concerning the Applicant.

(g) Compliance Recommendation to the Executive Director.

(1) If the Applicant has no history with Department programs, and Compliance staff has not identified any issues with the Single Audit or other required disclosures, the Application will be deemed acceptable (for Compliance purposes) without further review or discussion.

(2) An Applicant with no history of monitoring Findings, Concerns, and/or Deficiencies or with a history of monitoring Findings, Concerns, and/or Deficiencies that have been awarded without conditions subsequent to those identified Findings, Concerns, and/or Deficiencies, will be deemed acceptable without further review or discussion for Compliance purposes, if there are no new monitoring Findings, Concerns, or Deficiencies or complaint history, and if the Compliance Division determines that the most recent Single Audit or other required disclosures indicate that there is no significant risk to the Department funds being considered for award.

(3) The Compliance Division will notify the Applicant when an intended recommendation is an award with conditions or denial. Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this subchapter. The Applicant will be provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this subchapter, or propose other conditions for consideration by the Board.

(4) After review of materials submitted by the Applicant during the seven day period, the Compliance Division will make a final recommendation regarding the award. If recommending denial or award with conditions, the Applicant will be notified of their right to file a dispute under §1.303 of this subchapter.

(h) Consistent with §1.403 of Subchapter D of this chapter, (relating to Single Audit Requirements), the Department may not enter into a Contract or extend a Contract with any Applicant who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency except as required by law, and in the case of certain programs, funds may be reserved for the Applicant or the service area covered by the Applicant.

(i) Except as required by law, the Department will not enter into a Contract with any Applicant or entity who has an Affiliate, Board member, or person identified in the Application that is currently debarred by the Department or is currently on the Federal Suspended or Debarred Listing. Applicants will be notified of the debarred status of an Affiliate, Board Member or Person and will be given an opportunity to remove and replace that Affiliate, Board Member or Person so that funding may proceed. However, individual Board Member's participation in other Department programs is not required to be disclosed, and will not be taken into consideration by the Executive Director.

(j) Previous Participation reviews will not be conducted for Contract extensions. However, if the Applicant is delinquent in submission of its Single Audit, the Contract will not be extended except as required by law, unless the submission is made, and the Single Audit has been reviewed and found acceptable by the Department.

(k) For CSBG funds required to be distributed to Eligible Entities by formula, the recommendation of the Compliance Division will only take into consideration subsection (i) of this section.

(l) Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve, although federal and state requirements will still be affirmed, including but not limited to Single Audit, debarment and suspension, litigation disclosures, and §1.21 of this chapter (relating to Action by the Department if Outstanding Balances Exist).

§1.303. *Executive Director Review.*

(a) **Authority and Purpose.** The Executive Director will make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. The Department utilizes this process to consider funding and allocation recommendations to the Board related to other programs, and to consider an awardee under the requirements of 2 CFR §200.331(b) and (c) and TxGMS, which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs and as described in §1.403 of Subchapter D of this chapter (relating to Single Audit Requirements). It is also the purpose of this rule to provide for the considerations and processes of award approvals, and to address actions of the Board relating to the Executive Director's recommendations. Capitalized terms used in this section herein have

the meaning assigned in the specific chapters and rules of this title that govern the program associated with the request, or assigned by federal or state laws.

(b) Award Recommendation Process.

(1) A positive recommendation by the Executive Director represents a determination that, at the time of the recommendation and based on available information, the Department has not identified a rule or statutory-based impediment that would prohibit the Board from making an award.

(2) A positive recommendation may have conditions placed on it. Conditions placed on an award will be limited to those conditions noted in subsection (e) of this section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of proposed conditions. If the Applicant does not concur with the applicability of one or more of the conditions, it will be provided an opportunity to dispute the conditions as described in subsection (g) of this section, regarding Disputes.

(4) Category 3 applicants that will be recommended for denial will be notified and informed of their right to dispute the negative recommendation as described in subsection (g) of this section, regarding Disputes.

(5) Applications for 4% credits that do not include other resources from TDHCA and that are only being issued a Determination Notice are not considered awards for purposes of this rule and do not require approval by the Executive Director prior to issuance of such Notice, even if being presented to the Board in relation to public comment or possible requests for waivers.

(c) Conditions to an award may be placed on a single Development, a Combined Portfolio, or a portion of a Combined Portfolio if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in subsection (e) of this section may be customized to provide specificity regarding affected Developments, Persons or dates for meeting conditions. Category 2 or Category 3 Applications may be awarded with the imposition of one or more of the conditions listed in subsection (e) of this section.

(d) Possible Conditions.

(1) Applicant/Owner is required to ensure that each Person subject to previous participation review for the Combined Portfolio will correct all applicable issues of non-compliance identified by the previous participation review on or before a specified date and provide the Department with evidence of such correction within 30 calendar days of that date.

(2) Owner is required to have qualified personnel or a qualified third party perform a one-time review of an agreed upon percentage of files and complete the recommended actions of the reviewer on or before a specified deadline for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(3) The Applicant or the management company contracted by the Applicant is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department upon request or by a specified date.

(4) Owner agrees to hire a third party to perform reviews of an agreed upon percentage of their resident files on a quarterly basis, and complete the recommended actions of the reviewer for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(5) Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise Control.

(6) Owner agrees to replace the existing management company, consultant, or management personnel, with another of its choosing.

(7) Owner agrees to establish an email distribution group in CMTS (or other Department required system), to be kept in place until no later than a given date, and include agreed upon employee positions and/or designated Applicant members.

(8) Owner is required to revise or develop policies regarding the way that it will handle situations where persons under its control engage in falsification of documents. This policy must be submitted to TDHCA on or before a specified date and revised as required by the Department.

(9) Owner or Subrecipient is required to ensure that agreed upon persons attend and/or review the trainings listed in subparagraphs (A), (B), (C) and/or (D) of this paragraph (only for Applications made and reviewed under §1.301 of this subchapter (relating to Definitions and Previous Participation Reviews for Multifamily Awards and Ownership Transfers)) and/or (E) for applications made and reviewed under §1.302 of this subchapter (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter) and provide TDHCA with certification of attendance or completion no later than a given date.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association;

(B) Income Determination Training conducted by TDHCA staff;

(C) Review one or more of the TDHCA Compliance Training Presentation webinars:

(i) 2012 Income and Rent Limits Webinar Video;

(ii) 2023 Supportive Services Webinar Video;

(iii) Income Eligibility Presentation Video;

(iv) 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;

(v) Most current Tenant Selection Criteria Presentation;

(vi) Most current Affirmative Marketing Requirements Presentation;

(vii) Fair Housing Webinars (including but not limited to the 2017 FH webinars);

(viii) Multifamily Direct Loan Presentation Video;

(ix) 2022 Housing Tax Credit Monitoring after the Compliance Period Presentation Video;

(x) 2022 Section 811 Project Rental Assistance Presentation Video; and

(xi) 2023 Utility Allowance Training Presentation Video;

(D) Training for Certified Occupancy Specialist or Blended Occupancy Specialist; or

(E) Any other training deemed applicable and appropriate by the Department, which may include but is not limited to, weatherization related specific trainings such as OSHA, Lead Renovator, or Building Analyst training.

(10) Owner is required to submit the written policies and procedures for all Developments subject to a TDHCA LURA for review and will correct them as directed by the Department.

(11) Owner is required to have qualified personnel or a qualified third party perform NSPIRE inspections of 5% of their Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted to the Department upon request.

(12) Within 60 days of the condition issuance date the Owner will contract for a third party Property Needs Assessment and will submit to the Department a plan for addressing noted issues along with a budget and timeframe for completion.

(13) Owner agrees to have a third party accessibility review of the Development completed at a time to be determined by the Applicant, but no later than prior to requesting a TDHCA final construction inspection. Evidence of review must be submitted to the Department upon request.

(14) Applicant/Owner is required to provide all documentation relating to a Single Audit on or before a specified date.

(15) Any of the conditions identified in 2 CFR §200.207 which may include but are not limited to requiring additional, more detailed financial reports; requiring additional project monitoring; or establishing additional prior approvals. If such conditions are utilized, the Department will adhere to the notification requirements noted in 2 CFR §200.207(b).

(16) Applicant is required to have qualified personnel or a qualified third party perform an assessment of its operations and/or processes and complete the recommended actions of the reviewer on or before a specified deadline.

(17) Applicant is required to have qualified personnel or a qualified third party performs DOE required Quality Control Inspections of 5% of its Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted upon request.

(18) Applicant is required to provide evidence that reserves for physical repairs are fully funded as required by §10.404 of this title (relating to Replacement Reserves).

(19) In the case of a Development being funded with direct Grant funds (where an ongoing compliance agreement is a requirement) or Loan funds, Applicant is required to provide evidence of invoices and a lien waiver from the contractor, subcontractor, materials supplier, equipment lessor or other party to the construction project stating they have received payment and waive any future lien rights to the property for the amount paid at the time of every draw request submitted.

(e) Failure to meet conditions.

(1) The Executive Director may, for good cause and as limited by federal commitment, expenditure, or other deadlines, grant one extension to a deadline specified in a condition, with no fee required, for up to six months, if requested prior to the deadline. Any subsequent extension, or extensions requested after the deadline, must be approved by the Board.

(2) If any condition agreed upon by the Applicant and imposed by the Board is not met as determined by the evidence submitted (or lack thereof) when requested, the Applicant may be referred to the Enforcement Committee for debarment.

(f) Dispute of Recommendations or Compliance Recommendations for 4% Applications Eligible for Administrative Approval.

(1) The Appeal provisions in §1.7 of this title (relating to Appeals Process), relating to the appeals of a staff decision to the Executive Director, are not applicable.

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute that may be considered by Compliance, program area, or underwriting staff, (as applicable) or may be presented to the Board without further Department consideration consistent with paragraph (3) of this subsection.

(A) Their category as determined under §1.301(f) of this subchapter;

(B) Any conditions proposed by the program area, underwriting or Compliance; or

(C) A negative recommendation by the program area, underwriting or Compliance.

(3) Prior to the Board meeting at which the award recommendation is scheduled to be made, or within seven days of the notification of Compliance Conditions for 4% Application Eligible for Administrative Approval an Applicant or potential Subrecipient may submit to the Department (to the attention of Compliance staff), their Dispute detailing:

(A) The condition or determination with which the Applicant or potential Subrecipient disagrees;

(B) The reason(s) why the Applicant/potential Subrecipient disagrees with program, underwriting, or Compliance's recommendation or conditions;

(C) If the Dispute relates to conditions, any suggested alternate condition language;

(D) If the Dispute relates to a negative recommendation, any suggested conditions that the Applicant believes would allow a positive recommendation to be made; and

(E) Any supporting documentation not already submitted to the Department.

(4) An Applicant must file a written Dispute not later than the seventh calendar day after notice recommendation of denial or award with conditions has been provided. The Dispute must include any materials that the Applicant wishes Department staff and/or the Board to consider. An Applicant may request to meet with Department staff and staff is not obligated to meet with the Applicant.

(5) Department staff is not required to consider a Dispute prior to making its recommendation to the Board.

(6) If an Applicant proposes alternative conditions staff may provide the Board with a recommendation to accept, reject, or modify such proposed alternative conditions.

(7) A Dispute will be included on the Board agenda if received at least seven calendar days prior to the required posting date of that agenda. If the Applicant desires to submit additional materials for Board consideration, it may provide the Department with such materials, provided in pdf form, to be included in the presentation of the matter to the Board if those materials are provided not later than close

of business of the fifth calendar day before the date on which notice of the relevant Board meeting materials must be posted, allowing staff sufficient time to review the Applicant's materials and prepare a presentation to the Board reflecting staff's assessment and recommendation. The agenda item will include the materials provided by the Applicant and may include a staff response to the dispute and/or materials. It is within the Board chair's discretion whether or not to allow an applicant to supplement its response. An Applicant who wishes to provide supplemental materials at the time of the Board meeting must comply with the requirements of §1.10 of this chapter (relating to Public Comment Procedures). There is no assurance the Board chair will permit the submission, inclusion, or consideration of any such supplemental materials.

(8) The Board will make reasonable efforts to accommodate properly and timely filed Disputes under this subsection.

(g) Board Discretion. Subject to limitations in federal statute or regulation or in TxGMS, the Board has the discretion to accept, reject, or modify any recommendations in response to a recommendation for an award or in response to a Dispute. The Board may impose other conditions not noted or contemplated in this rule as recommended by the Department, or as requested by the Applicant; in such cases the conditions noted will have the force and effect of an order of the Board.

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 10, 2023.

TRD-202304182

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: November 30, 2023

Proposal publication date: September 22, 2023

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, without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5334), the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (the Bond Rules). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this adopted 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 nor authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

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

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the issuance of PAB. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment be-

tween September 22, 2023, and October 13, 2023, with no comments on the repeal itself received.

The Board adopted the final order adopting the repeal on November 9, 2023.

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 10, 2023.

TRD-202304186

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: November 30, 2023

Proposal publication date: September 22, 2023

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 new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). Sections 12.4 and 12.5 are adopted with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5335) and will be republished. Sections §§12.1 - 12.3 and 12.6 - 12.10 are adopted without changes and will not be republished. The purpose of the new sections is to provide compliance with Tex. Gov't Code §2306.359 and to update the rules 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 these rules 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 readoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").

2. The rule does not require a change in work that would require the creation of new employee positions, nor are the rule

changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

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

4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.

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

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

7. The rule does not increase 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 adopted 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 applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The 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 nec-

essary 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 nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the 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 22, 2023, and October 13, 2023. Comments from two commenters were received.

The Board adopted the final order adopting the new rule on November 9, 2023. The rule has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 22, 2023, and October 13, 2023, with comments received from: (1) Pedcor Investments, LLC, and (2) Lincoln Avenue Communities.

§12.4(c) - Pre-Application Process and Evaluation (1)

COMMENT SUMMARY:

Commenter (1) expressed concern relating to the Department's ranking and submission of applications with a Priority 3 Carryforward designation. The commenter states the ranking of pre-applications, as described under 10 TAC §12.4 of the Multifamily Housing Revenue Bond Rule, seems unclear with regard to those with a Priority 3 Carryforward classification and that the Department lacks transparency in how it handles such applications. The commenter states that the Department's practice of submitting a Priority 3 Carryforward application for a Certificate of Reservation (Reservation) from the Texas Bond Review Board (BRB) throughout the year decreases the chances of construction-ready projects with a Priority 5 or 6 Carryforward classification (i.e. local issuer applications) to receive a Reservation, due to the finite volume cap. Moreover, the commenter notes that developments with a Priority 5 or 6 designation have performed significant due diligence and expended in excess of 10% of total project costs. The commenter believes that in order for the development community to better assess the likelihood of receiving a Reservation from the BRB, the scoring and ranking of applications with a Priority 3 Carryforward designation should be applied in a more transparent manner and should only apply to those applications with exceptional scores or unique circumstances after considering the applications already submitted for Priority 5 or 6 designation.

STAFF RESPONSE:

In response to the commenter, there is nothing in Chapters 1372 or 2306 of the Tex. Gov't Code that requires the Department to consider applications proposed by local bond issuers. However, §1372.065 of the Tex. Gov't Code very clearly prioritizes applications filed by TDHCA (Priority 3), a state agency with a Governing Board that is appointed by the Governor and confirmed by the Texas Legislature, over any application filed by a local issuer (Priority 5 or 6). Further, the expenditures made for such applications noted by the commenter is a statutory requirement applicable only to Priority 5 applications; however, it is not difficult to imagine a Priority 3 application with similar expenditures given the timeline associated with when Traditional Carryforward becomes available. In addition, a developer with a Priority 3 application is continuing the same due diligence, with a greater risk, not only because there may not be volume cap, but because they have no assurance of whether the required signature under §1372.070 will be obtained.

§2306.351 authorizes the Department to issue bonds, which affords the Department the opportunity to assist local governments in providing housing for their residents and providing affordable housing options, thereby meeting its purposes under Chapter 2306. Moreover, the Multifamily Housing Revenue Bond rules govern and relate to bond issuances by the Department, not how the Department should evaluate applications it receives comparable to applications that may be affiliated with various local issuers to determine which are more unique, shovel-ready, etc., as suggested by the commenter. Commenter noted that if the Department submits projects for Traditional Carryforward then "*other shovel-ready affordable multifamily projects likely would not come to fruition.*" The Department received 2022 Traditional Carryforward for two projects that were shovel ready, and both projects (a total of 564 units) closed in 6 months.

Commenter claims that the Department does not pursue Traditional Carryforward in a transparent manner. An inducement resolution for a project is adopted by the Department's Governing Board in a public meeting, and the Board materials are published on the Department's website generally seven days and at least three days prior to the meeting. These materials have reflected whether it is the Department's intent to pursue Traditional Carryforward for the reservation, which was a change in Department practice based on previous comments received by this same commenter. Interested individuals are afforded an opportunity to address the Board regarding this action. The Department makes decisions regarding the best path to obtain bond volume cap, in light of a limited statutory set-aside, in order to provide affordable housing options to communities across the state.

§1372.070 requires the Department to obtain the Governor's signature on an application for Traditional Carryforward and the timing of when this signature is received is not within the Department's control. For the commenter to suggest that the Department refrain from exercising what it is clearly statutorily authorized to do as a statewide issuer would constrain not only the authority of the Department's Governor-appointed and Legislature-confirmed Board, but the Office of the Governor in addressing the need for affordable housing for low-income Texans.

Staff recommends no changes based on this comment.

§12.4(b) - Pre-Application Process and Evaluation (2)

COMMENT SUMMARY:

Commenter (2) commends the removal of language under §12.4(b) relating to the possible termination of an application

due to a neighborhood risk factor. The commenter believes that this results in more of a balance between community interests and development feasibility.

STAFF RESPONSE:

Staff appreciates the support.

Staff recommends no changes based on this comment.

§12.5(8) - Pre-Application Threshold Requirements - Re-notifications

To be consistent with a change made to the 2023 Qualified Allocation Plan, staff recommends removing the following language from the Rule relating to changes in density that would require a re-notification to local elected officials and neighborhood organizations:

"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."

§12.6(2) - Pre-Application Scoring Criteria - Cost of Development per Square Foot (2)

COMMENT SUMMARY:

Commenter (2) approves of the Department's increase in the threshold amount for the construction cost per square foot of Net Rentable Area (NRA), however, suggests that the threshold should be increased to approximately \$190 to \$200 per square foot of NRA in order to better align with current market conditions.

STAFF RESPONSE:

Staff proposed to increase the threshold from \$125 to \$150 per square foot of NRA based upon comments received relative to the Competitive Housing Tax Credit Program. Staff appreciates the challenges presented by rising construction costs and believes that costs will continue to vary across different Texas markets. There is difficulty in identifying an exact number until there is more normalcy in the market.

Staff recommends no change based on this comment.

§12.6(8) - Pre-Application Scoring Criteria- Underserved Area (2)

COMMENT SUMMARY:

Commenter (2) approves of the additional points for the Underserved Area scoring criteria and believes it will incentivize the development of housing in regions where it is most needed.

STAFF RESPONSE:

Staff appreciates the support.

Staff recommends no change based on this comment.

§12.6(10) Pre-Application Scoring Criteria- Preservation Initiative (2)

COMMENT SUMMARY:

Commenter (2) expressed concern regarding the reduction in the number of points for the Preservation Initiative scoring criteria. Commenter (2) notes that while there is a supply shortage of new units in many markets, preservation projects are essential in maintaining current housing stock and ensures longevity of existing communities. Moreover, commenter (2) notes that pre-

serving existing communities is more cost-effective as it is more expensive to build new affordable housing.

STAFF RESPONSE:

Staff appreciates the importance of the preservation of existing affordable housing and communities and strives to only adjust the scoring criteria in a manner that will achieve a balance in both new construction and preservation. Currently, acquisition and rehabilitation developments remain slightly favored based on the scoring criteria.

Staff recommends no change based on this comment.

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.

§12.4. 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)(D) 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.

(c) **Pre-Application Process.** An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this 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. 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:

(1) 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

(2) To the pre-application with the highest number of positive points achieved under §12.6(9) of this chapter (relating to Development Support/Opposition).

(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. 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 in a manner that results in the Development being within a new jurisdiction, Applicants are required to notify the new entity no later than the Full Application Delivery 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.

Filed with the Office of the Secretary of State on November 10, 2023.

TRD-202304187

Bobby Wilkinson

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Texas Department of Housing and Community Affairs

Effective date: November 30, 2023

Proposal publication date: September 22, 2023

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



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.1 - 3.3, 3.7

The Texas State Library and Archives Commission (commission) adopts amendments to §3.1, Definitions; §3.2, Standard Requirements for State Publications in All Formats; and §3.7, State Publications Contact Person; and new §3.3, Standard Deposit and Reporting Requirements for State Publications in All Formats. The amendments to §§3.1, 3.2 and 3.7 are adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4739). These rules will not be republished. Section 3.3 is adopted with nonsubstantive changes to the proposed rule and will be republished.

The commission recently concluded its quadrennial review of 13 TAC Chapter 3 as required by Government Code, §2001.039. During the review, staff identified the need for multiple amendments to update and improve the rules. The amendments and new section are necessary to streamline, simplify, update, and

clarify the commission's existing rules related to the State Publications Depository Program (program).

Amendments to §3.1 improve existing definitions, delete unnecessary definitions, make minor grammar and punctuation corrections, and renumber the definitions as appropriate.

Amendments to §3.2 clarify and improve the rule language and delete unnecessary language.

New §3.3 replaces the commission's previous rule regarding Standard Deposit and Reporting Requirements for State Publications in All Formats but does not make any major substantive changes. The new rule provides clearer guidance to state agencies regarding their duties under the program with respect to certain types of state publications. Subsection (a) establishes the general requirement for the number of copies of state publications that must be deposited, which is four copies for most state publications except for annual financial reports and annual operating budgets (three copies) and requests for legislative appropriations, quarterly and annual reports of measures, and state or strategic plans (two copies). These numbers are consistent with the previous requirement in rule with the exception of state or strategic plans. The new rule also requires two copies of state or strategic plans as opposed to three, in compliance with Government Code, §2056.002, which requires that two copies be provided to the commission.

New subsection (b) applies to state publications in electronic format, noting that the number and method of submission differs depending on whether the publication is available online. The subsection also notes that specific instructions may apply to the preparation and distribution of the publication. State agencies should comply with specific instructions in statute or administrative rule or as promulgated by other state agencies regarding state publications. However, in the absence of specific instructions, subsection (b) requires either online access to the publication or the submission of one copy on removable electronic media or other method approved by the Director and Librarian. The commission will maintain information about state publications that may have specific instructions regarding distribution on its website for state agencies to reference.

New subsection (c) establishes minimum requirements for electronic submissions, including file type, the requirement that state agencies include a publication reporting form, submission by the designated state agency publication liaison, and required descriptive information.

New subsection (d) clarifies that a publication reporting form must be included with each submission to the program, whether the submission is in print or electronic format.

New subsection (e) addresses the Texas Records and Information Locator (TRAIL), authorized by Government Code, §441.102, and notes that a state agency is not required to submit copies of its agency websites to the program. The subsection also establishes minimum technical requirements to which a state agency website should adhere to enable the commission to harvest information from the website through TRAIL.

Finally, amendments to §3.7 clarify the language, improve readability, and add one new requirement to the duties of state agency publications liaisons identifying and depositing historical publications that may be discovered that should have been provided to the program but were not.

SUMMARY OF COMMENTS. The commission did not receive any comments on the proposed amendments or new section.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.102, which requires the commission by rule to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications; Government Code, §441.103, which requires a state agency to furnish copies of its state publications that exist in a physical format to the Texas State Library in the number specified by commission rules; and Government Code, §441.104, which directs the commission to establish a program for the preservation and management of state publications.

§3.3. Standard Deposit and Reporting Requirements for State Publications in All Formats.

(a) State publications in physical format. State agencies must deposit four copies of state publications in physical format to the State Publications Depository Program except as follows:

(1) State agencies must deposit three copies of the following state publications:

- (A) Annual financial reports; and
- (B) Annual operating budgets.

(2) State agencies must deposit two copies of the following state publications:

- (A) Requests for legislative appropriations;
- (B) Quarterly and annual reports of measures; and
- (C) State or strategic plans (for agency services, programs within its jurisdiction).

(b) State publications in electronic format. The number and method of submission of state publications in electronic format differs depending on whether the electronic state publication is available online and specific instructions that may apply to the preparation and distribution of the publication. Unless specific instructions require otherwise:

(1) If a state publication is available online, a state agency shall provide the commission online access to the publication. The state agency is not required to submit an electronic copy of the state publication on removable electronic storage media. If also available in print, the URL for the online publication must be included on the cover or title page of the printed publication submitted in accordance with subsection (a) of this section;

(2) If a state publication is not available online, the state agency must submit one copy of each state publication on removable electronic storage media or other method approved by the Director and Librarian. Files must be formatted in a readily accessible format or other file type accessible via software provided to the commission or that is in the public domain. If the file is compressed, it must be compressed using lossless compression techniques.

(c) Minimum requirements for electronic submissions. All submissions of state publications in electronic format for the State Publications Depository Program must:

(1) Consist of an Adobe Portable Document File (PDF) or other secure file type accepted at the determination of the Director and Librarian;

(2) Include a publication reporting form;

(3) Be submitted by the designated state agency publications liaison(s); and

(4) Include the following descriptive information at a minimum:

(A) a title tag;

(B) an author meta tag that includes the name of the state agency responsible for creating the state publication;

(C) a description meta tag that includes a narrative description of the publication; and

(D) a keyword or subject meta tag that includes selected terms from within the publication.

(d) Publication reporting form. A state agency must include a completed publication reporting form with each submission of a publication in either print or electronic format. If a state publication is made available to the commission online in compliance with subsection (b)(1) of this section, the state agency must provide a completed publication reporting form to the commission when the agency notifies the commission that the publication is available.

(e) The Texas Records and Information Locator (TRAIL). TRAIL provides access to state publications that are made available to the public by state agencies online. A state agency is not required to submit copies of its state agency websites to the commission for the State Publications Depository Program. State agencies should ensure their websites adhere to the following minimum technical requirements to enable the commission to harvest the website through TRAIL:

(1) Guaranteed access, at no charge, to the state agency's online state publications. If a "robots.txt" file is used to prevent harvesting of a State Agency website, then that file must include an exception for TSLAC's designated harvesting system;

(2) State publications must be accessible:

(A) by anonymous File Transfer Protocol (FTP), Hyper Text Transfer Protocol (HTTP) or other electronic means as defined in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community; and

(B) by following a link or series of links from the Agency's primary URL. For publications accessible only by database searching or similar means, an alternative path such as a hidden link to a comprehensive site map must be provided except as exempted in §3.5 of this title (relating to Standard Exemptions for State Publications in All Formats); or

(C) on alternative electronic formats and interfaces consistent with requirements of the Americans with Disabilities Act of 1990 and as amended.

(3) Each original state publication and subsequent versions as described in §3.2(c) of this title (relating to Standard Requirements for State Publications in All Formats) must remain available on the agency website for a minimum of nine months to ensure that the publication has been collected by the commission and made available in TRAIL. Agencies may confirm that a version of an online publication has been added to the TRAIL archive by searching at www.tsl.texas.gov/trail/index.html.

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 9, 2023.

TRD-202304161

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Effective date: November 29, 2023

Proposal publication date: September 1, 2023

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



13 TAC §3.3

The Texas State Library and Archives Commission (commission) adopts the repeal of 13 Texas Administrative Code §3.3, Standard Deposit and Reporting Requirements for State Publications in All Formats. The repeal is adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4744) and will not be republished.

The commission repeals the existing §3.3 simultaneous with the adoption of new §3.3, also in this issue of the *Texas Register*. Due to the nature and number of necessary amendments to §3.3, the commission found it simpler to repeal existing §3.3 and propose new §3.3.

STATUTORY AUTHORITY. The repeal is adopted under Government Code, §441.102, which requires the commission by rule to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications; Government Code, §441.103, which requires a state agency to furnish copies of its state publications that exist in a physical format to the Texas State Library in the number specified by commission rules; and Government Code, §441.104, which directs the commission to establish a program for the preservation and management of state publications.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

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 9, 2023.

TRD-202304162

Sarah Swanson

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Texas State Library and Archives Commission

Effective date: November 29, 2023

Proposal publication date: September 1, 2023

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 157. HEARINGS AND APPEALS SUBCHAPTER CC. HEARINGS OF APPEALS ARISING UNDER FEDERAL LAW AND REGULATIONS

19 TAC §157.1082

The Texas Education Agency (TEA) adopts an amendment to §157.1082, concerning a grantee's or subgrantee's opportunity for a hearing in an enforcement arising under federal law and regulations. The amendment is adopted without changes to the proposed text as published in the September 8, 2023 issue of the *Texas Register* (48 TexReg 4979) and will not be republished. The adopted amendment updates the citation to the federal regulation applicable to the rule.

REASONED JUSTIFICATION: Section 157.1082 describes actions TEA may take if a grantee or subgrantee of a federal grant materially fails to comply with any term of an award. The adopted amendment to §157.1082 updates the federal citation that allows the actions specified in the rule. No substantive changes were made.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 8, 2023, and ended October 9, 2023. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under 2 Code of Federal Regulations, §200.339, which addresses federally required appeal processes associated with enforcement of federal grants.

CROSS REFERENCE TO STATUTE. The amendment implements 2 Code of Federal Regulations, §200.339.

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, 2023.

TRD-202304111

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: November 28, 2023

Proposal publication date: September 8, 2023

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



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.5, 153.6, 153.9, 153.15, 153.20, 153.21, 153.24, 153.28, 153.241

The Texas Appraiser Licensing and Certification Board (TALCB) adopts new and amendments to 22 TAC §153.1, Definitions; §153.5, Fees; §153.6, Military Service Member, Veteran, or Military Spouse Applications; §153.9, Applications; §153.15, Experience Required for Licensing; §153.20, Guidelines for Disciplinary Action, Denial of License; Probationary License; §153.21, Appraiser Trainees and Supervisory Appraisers;

§153.24, Complaint Processing; §153.28, Peer Investigative Committee Review; and §153.241, Sanctions Guidelines.

The amendments to §§153.1, 153.5, 153.9, 153.15, 153.20, 153.21, 153.24, 153.28 and 153.241 are adopted without changes to the proposed text as published in the September 1, 2023 issue of the *Texas Register* (48 TexReg 4753) and will not be republished. The amendments to §153.6 are adopted with nonsubstantive changes to the proposed text and will be republished.

The amendments to §§153.1, 153.5, 153.9, 153.24 and 153.28 implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective on January 1, 2024, and which changes the title of the TALCB "Commissioner" to "Executive Director."

New §153.6 and amendments to §153.9 implement statutory changes enacted by the 88th Legislature in SB 422 and become effective on September 1, 2023. SB 422 expands out-of-state occupational license recognition to include military service members, as long as certain criteria are met. SB 422 also modifies the time period within which verification of good standing occurs, as well as issuance of a license after certain conditions are satisfied, from "as soon as practicable" to no later than 30 days. The bill also addresses the term of the license in situations of divorce or other events impacting the military spouse's status. The amendments reflect these statutory changes. Specifically, new rule 153.6 is intended to replace and consolidated language struck from §153.9 related specifically to applicants who are military service members, veterans, and military spouses for greater clarity and organization, in unison with the reciprocity process in Occupations Code 1103, requirements established by the Appraisal Qualifications Board, and Appraisal Subcommittee. The amendments eliminate references to a residency requirement and references to alternative methods of demonstrating competency inapplicable to appraiser applicants. Finally, a statement of purpose is being added to the rule to make clear that this rule addresses the requirements provided under Chapter 55, Occupations Code, and is not intended to alter or modify licensure requirements governed by federal law.

The amendments to §§153.15, 153.20 and 153.21 implement statutory changes enacted by the 88th Legislature in SB 1222, which becomes effective on September 1, 2023, and which eliminates the requirement that experience required for licensing be submitted on an affidavit. As a result, references to this requirement are removed from TALCB rules and replaced by a certification. Additionally, the amendments to §153.15 remove a requirement that an applicant submit experience performed within five years of the date of application.

The amendments to §153.241 allow for greater flexibility in sanctions.

No comments were received regarding adoption of the amendments.

The amendments and new rule are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; §1103.154, which authorizes TALCB to adopt rules relating to professional conduct; and §1103.156 which authorizes TALCB to establish

reasonable fees to administer Chapter 1103, Texas Occupations Code.

§153.6. *Military Service Member, Veteran, or Military Spouse Applications.*

(a) Definitions.

(1) "Military service member" means a person who is on current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.

(b) The purpose of this section is to establish procedures authorized or required by Texas Occupations Code Chapter 55 and is not intended to modify or alter rights or legal requirements that may be provided under federal law, Chapter 1103 of the Occupations Code, or requirements established by the AQB.

(c) Expedited application.

(1) The Board will process an application for a military service member, veteran, or military spouse on an expedited basis.

(2) If an applicant under this section holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license or certification issued in this state, the Board will issue the license not later than the 30th day after receipt of the application.

(d) Waiver of fees.

(1) The Board will waive the license application fee and examination fees for an applicant who is:

(A) a military service member or veteran whose military service, training, or education substantially meets all of the requirements for a license; and

(B) a military service member, veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the same license in this state.

(2) The executive director or his or her designee may waive the application fee of a military service member, veteran, or military spouse who is not currently licensed, but within the five years preceding the application date held a license in this state and applies for reinstatement in accordance with subsection (f)(2) of this section.

(e) Credit for military experience.

(1) For an applicant who is a military service member or veteran, the Board shall credit any verifiable military service, training, or education toward the licensing requirements, other than an examination requirement.

(2) The Board shall award credit under this subsection consistent with the criteria adopted by the AQB and any exceptions to those criteria as authorized by the AQB.

(3) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(f) Reciprocity and reinstatement.

(1) For a military service member, veteran, or military spouse who holds a current license issued by another jurisdiction that

has licensing requirements that are substantially equivalent to the requirements for the license in this state may apply by submitting an application for license by reciprocity and any required supplemental documents for military service members, military veterans, or military spouses.

(2) For a military service member, veteran, or military spouse who is not currently licensed, but within the five years preceding the application date held a license in this state may submit an application for reinstatement and any required supplemental documents for military service members, military veterans, or military spouses.

(3) For a military service member and military spouse who wants to practice in Texas in accordance with 55.0041, Occupations Code:

(A) the Board will issue a license by reciprocity if:

(i) the applicant submits:

(I) notice to the Board of the applicant's intent to practice in Texas by submitting an application for reciprocity and any supplemental document for military service members or military spouses; and

(II) a copy of the member's military identification card; and

(ii) no later than 30 days upon receipt of the documents required under subparagraph (A) of this paragraph, the Board verifies that the member or spouse is currently licensed and in good standing with the other state or jurisdiction.

(B) a person authorized to practice in this state under this subsection must comply with all other laws and regulations applicable to the license.

(C) The event of a divorce or similar event that affects a person's status as a military spouse shall not affect the validity of a license issued under this subsection.

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 13, 2023.

TRD-202304209

Kathleen Santos

General Counsel

Texas Appraiser Licensing Certification Board

Effective date: December 3, 2023

Proposal publication date: September 1, 2023

For further information, please call: (512) 936-3652



CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.6

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.6, Request for Advisory Opinions.

The amendments are adopted without changes to the proposed text as published in the September 1, 2023 issue of the *Texas Register* (48 TexReg 4765) and will not be republished.

The amendments add language to the rule to reflect a process for Advisory Opinions issued by TALCB to be reviewed and determine whether to be withdrawn or superseded.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code 1103.151, Rules Relating to Certificates and Licenses and §1103.154, which authorizes TALCB to adopt rules related to professional conduct.

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 13, 2023.

TRD-202304202

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: December 3, 2023

Proposal publication date: September 1, 2023

For further information, please call: (512) 936-3652



SUBCHAPTER F. RULEMAKING

22 TAC §157.50

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.50, Negotiated Rulemaking.

The amendments are adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4765) and will not be republished.

The amendments implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective on January 1, 2024, and which changes the title of the TALCB "Commissioner" to "Executive Director."

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §1103.162, which required the Board to develop a policy to encourage the use of negotiated rulemaking.

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 13, 2023.

TRD-202304203

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: December 3, 2023

Proposal publication date: September 1, 2023

For further information, please call: (512) 936-3652



CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §§159.1, 159.52, 159.104, 159.105, 159.155, 159.201, 159.202, 159.204

The Texas Appraiser Licensing and Certification Board (TALCB) adopts new and amendments to 22 TAC §159.1, Definitions; §159.52, Fees; §159.104, Primary Contact; Appraiser Contact; Controlling Person; Contact Information; §159.105, Denial of Registration or Renewal of Registration; §159.155, Periodic Review of Appraisals; §159.201, Guidelines for Disciplinary Action; §159.202, AMC Investigative Committee; and §159.204, Complaint Processing.

The amendments are adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4766) and will not be republished.

The amendments to §§159.1, 159.52, 159.104, 159.105 and 159.204 implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective on January 1, 2024, and which changes the title of the TALCB "Commissioner" to "Executive Director."

The new rule §159.202, AMC Investigative Committee is proposed to implement statutory changes enacted by the 88th Legislature in SB 1222, which becomes effective on September 1, 2023, and which authorizes a process for a committee to review of complaints received under chapter 1104 of the Occupations Code, involving AMCs. The new rule identifies who may serve on the committee, delineates functions of the committee members and TALCB staff in the review process, and establishes process deadlines. The rule also specifies the types of complaints that are subject or not subject to the review of the AMC Investigative Committee, and the manner committee members and staff may communicate during the review process. The process outlined in the proposed rule is modeled after an existing process on governing the committee review of complaints under 1103 of the Occupations Code, involving appraisers.

The amendments to §159.155 remove a specified percentage requirement for the periodic review of appraisal that AMCs perform on appraisers performing appraisal services. The amendments require AMCs to have a written policy in place for conducting periodic reviews and make the policy and documentation demonstrating compliance with the policy available upon request by the Board.

The amendments to §159.201 and §159.204 clarify the applicability of USPAP as it relates to AMCs and the obligation to submit certain information to the ASC. The amendments to §159.204 also update language related to the statute of limitations to align with statute and allow greater flexibility in sanctions.

Two comments were received regarding adoption of the amendments. Both comments were in support of the changes to the chapter in general and in favor of the amendments to §159.155, Periodic Review of Appraisals, specifically.

The new and amendments are adopted under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 13, 2023.

TRD-202304204

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: December 3, 2023

Proposal publication date: September 1, 2023

For further information, please call: (512) 936-3652



PART 11. TEXAS BOARD OF NURSING

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.2 - 214.10, 214.12, 214.13

The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §§214.2 - 214.10, 214.12 and 214.13, without changes to the proposed text as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3481). The rules will not be republished.

Reasoned Justification. The amendments are adopted under the Board's authority to adopt and enforce rules necessary to regulate the practice of vocational nursing under Occupations Code §301.151(2), and in accordance with the Board's duty under Occupations Code §301.157(b)(3) to prescribe rules necessary for the conduct of approved schools of nursing and educational programs for vocational nurses. The adopted amendments are necessary to correct outdated references, provide clarifying and editorial changes, and simplify the existing numbering system for the Board's educational guidelines, contained in Chapter 214, Vocational Nursing Education.

Section 214.2 contains the definitions for the chapter. Adopted §214.2 clarifies existing definitions within the section and corrects outdated references. Additionally, adopted §214.2 adds a definition of *nursing clinical judgment* for use in the chapter: The term is nationally recognized and refers to the process by which nurses make decisions based on nursing knowledge. In 2012, the NCSBN National Council Licensing Examination (NCLEX) Committee (an advisory committee to monitor the exam reviewed findings from the practice analysis), examined nursing decision-making in the provision of ongoing nursing care to patients. The committee studied the decision making of nurses through the processes of critical thinking and making judgments about the patient's response to nursing care and patient needs for continuing or adjusting the nursing care. Over

the following decade, NCSBN studied the steps in the nursing process for making nursing assessments and planning care accordingly, and further researched the possibility of measuring nursing clinical judgment as a part of an updated version of the national licensure examinations for vocational and professional nursing. NCSBN provides the following definition of nursing clinical judgment: a nurse engages in an iterative multistep process that uses nursing knowledge to observe and assess presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions to deliver safe client care. On the national licensure examination, nursing clinical judgment content may be represented as a case study or as an individual stand-alone item.

The Board's definition provides clarity in discussing *nursing clinical judgment* as a key concept of vocational and professional nursing that is tested on the national licensure examination. In application the term is necessarily limited to nursing solutions for client care that fall within the scope of the nurse's practice and is not intended to include medical diagnoses or any final resolution of a patient's condition for care.

Section 214.3 contains the Board's requirements for nursing education program development, expansion, and closure. First, adopted §214.3 clarifies factors that will be considered by the Board when determining whether to approve a new nursing education program. Second, the adopted amendments to that section simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule. Third, the adopted amendments clarify factors that will be considered by the Board when determining whether a nursing education program is high-risk. Adopted §214.3 also specifies that the Board may require the appointment of a mentor to assist the director of a nursing education program who does not have prior experience in the director role in an effort to ensure the success of a high-risk program. Finally, the adopted section clarifies how NCLEX-PN® examination testing codes will be addressed in the event of program consolidation.

Section 214.4 addresses nursing education program approval status. Consistent with other changes made throughout the chapter, adopted §214.4 simplifies the existing numbering system for the Board's education guidelines that are currently referenced in the rule. The remaining changes made in adopted §214.4 are non-substantive in nature and clarify existing provisions within the section.

Adopted §214.5 updates an outdated reference.

Adopted §214.6 simplifies the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

Adopted §214.7 includes editorial changes made for better readability within the section.

Adopted §214.8 clarifies existing requirements related to increases in enrollment of 25% or more for accredited and non-accredited programs; simplifies the existing numbering system for the Board's education guidelines that are currently referenced in the rule; and includes editorial changes.

Adopted §214.9 updates an outdated reference, removes obsolete provisions from the section, and simplifies the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

Adopted §214.10 adds clarity to the section and removes obsolete provisions from the section.

Adopted §214.12 makes editorial changes.

Adopted §214.13 includes a reference to the Board's guidelines for additional clarity in the section.

Summary of Comments and Agency Response

Comment: A commenter representing the Texas Medical Association (TMA) states TMA has questions and concerns regarding the addition of the term "nursing clinical judgment" as a defined term in the Definitions sections of Chapter 214 and Chapter 215. The commenter states that the basis for the changes is not clear and that there is no legislative support for this terminology in that the term is not used in statute. TMA opposes the adoption of this amendment. Additionally, TMA has objections to the language contained within the definition indicating that there is a belief that the language of the definition could create scope of practice confusion. TMA objects specifically to the term "generate the best possible evidence-based solutions" as those solutions may require medical diagnosis and prescription of therapeutic or corrective measures. Further, TMA states that the term "solutions" implies a final resolution to the patient's concern or situation, which TMA states is inconsistent with a nurse's role as part of the continuum of care. TMA suggests that the term "nursing act" be used in place of the term "solutions."

TMA also raises concerns regarding the term "nursing diagnoses" in its comment regarding the simultaneously proposed amendments to both Chapters 214 and 215. That term is not used in Chapter 214 and the adopted amendments do not add the term. The comment applies only regarding Chapter 215, *Professional Nursing Education*.

Agency Response to Comments:

The Board declines to make the commenter's specific requested changes related to the Nursing Clinical Judgment definition. The Board does not agree that the language would reasonably generate any scope of practice confusion nor is the Board aware of any requirement that a term be used in statute to be adopted as a definition in a rule.

The commenter seeks additional background information for the addition of this definition. The National Council for State Boards of Nursing (NCSBN) provides the national licensing examination for pre-licensure nursing education programs in the United States, territories, and other countries. The examinations are designed at the vocational nursing (VN) level as well as at the professional nursing level for registered nurses (RN). In 2012, the NCSBN National Council Licensing Examination (NCLEX) Committee (an advisory committee to monitor the exam reviewed findings from the practice analysis), examined nursing decision making in the provision of ongoing nursing care to patients. The committee studied the decision making of nurses through the processes of critical thinking and making judgments about the patient's response to nursing care and patient needs for continuing or adjusting the nursing care. Over the following decade, NCSBN studied the steps in the nursing process for making nursing assessments and planning care accordingly, and further researched the possibility of measuring nursing clinical judgment as a part of an updated version of the national licensure examinations for vocational and professional nursing. NCSBN provides the following definition of nursing clinical judgment: a nurse engages in an iterative multistep process that uses nursing knowledge to observe and assess presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions to deliver safe client care. On the national licensure examination, nursing clinical judgment content may be

represented as a case study or as an individual stand-alone item. This nationally recognized definition informs the Board's proposed definition.

Beginning on April 1, 2023, both VN and RN candidates received a portion of Next Generation NCLEX (NGN) questions on their NCLEX examination. These new NGN items serve to measure the nursing clinical judgment of nursing applicants. Regulated schools of nursing must prepare their students for the NGN, which includes a nursing clinical judgment component.

The commenter's concern regarding the term "nursing diagnosis" does not apply to the amendments adopted to Chapter 214, *Vocational Nursing Education*. The term is contained only in Chapter 215, *Professional Nursing Education*.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code, §301.151 and §301.157(b)(3).

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 10, 2023.

TRD-202304190

James W. Johnston

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Texas Board of Nursing

Effective date: November 30, 2023

Proposal publication date: June 30, 2023

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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §§215.2 - 215.10, 215.12, 215.13

Introduction. The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §§215.2 - 215.10, 215.12 and 215.13, without changes to the adopted text as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3489). The rules will not be republished.

Reasoned Justification. The amendments are adopted under the Board's authority to adopt and enforce rules necessary to regulate the practice of professional nursing under Occupations Code §301.151(2), and in accordance with the Board's duty under Occupations Code §301.157(b)(3) to prescribe rules necessary for the conduct of approved schools of nursing and educational programs for professional nurses. The adopted amendments are necessary to correct outdated references; contain clarifying and editorial changes; and simplify the existing numbering system for the Board's educational guidelines, contained Professional Nursing Education.

Section 215.2 contains the definitions for the chapter. Adopted §215.2 clarifies existing definitions within the section and corrects outdated references. Additionally, adopted 215.2 adds the following new definition of nursing clinical judgment for use in the chapter. The term is nationally recognized and refers to the process by which nurses make decisions based on nursing knowledge. In 2012, the NCSBN National Council Licensing Examination (NCLEX) Committee (an advisory committee to monitor the exam reviewed findings from the practice analysis),

examined nursing decision-making in the provision of ongoing nursing care to patients. The committee studied the decision making of nurses through the processes of critical thinking and making judgments about the patient's response to nursing care and patient needs for continuing or adjusting the nursing care. Over the following decade, NCSBN studied the steps in the nursing process for making nursing assessments and planning care accordingly, and further researched the possibility of measuring nursing clinical judgment as a part of an updated version of the national licensure examinations for vocational and professional nursing. NCSBN provides the following definition of nursing clinical judgment: a nurse engages in an iterative multistep process that uses nursing knowledge to observe and assess presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions to deliver safe client care. On the national licensure examination, nursing clinical judgment content may be represented as a case study or as an individual stand-alone item.

The Board's definition provides clarity in discussing nursing clinical judgment as a key concept of vocational and professional nursing that is tested on the national licensure examination. In application the term is necessarily limited to nursing solutions for client care that fall within the scope of the nurse's practice and does not include medical diagnoses or imply a final resolution of a patient's condition and need for care.

The adopted amendments refer to nursing diagnoses. The term is commonly used in nursing practice and in professional nursing education in this state. A nursing diagnosis provides the basis for selection of nursing interventions to achieve outcomes for which the nurse is accountable. It is easily distinguishable from medical diagnosis and historically has not caused scope of practice confusion for doctors or nurses.

Section 215.3 contains the Board's requirements for nursing education program development, expansion, and closure. First, adopted §215.3 clarifies factors that will be considered by the Board when determining whether to approve a new nursing education program. Second, the adopted amendments to that section simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule. Third, the adopted amendments clarify factors that will be considered by the Board when determining whether a nursing education program is high-risk. Adopted §215.3 also specifies that the Board may require the appointment of a mentor to assist the director of a nursing education program who does not have prior experience in the director role in an effort to ensure the success of a high-risk program. Finally, the adopted amendments correct typographical errors in the section.

Section 215.4 addresses nursing education program approval status. Consistent with other changes made throughout the chapter, the adopted amendments simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule. The remaining changes are non-substantive in nature and clarify existing provisions within the section and make editorial edits.

Adopted §215.5 updates an outdated reference.

Adopted §215.6 simplifies the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

Adopted §215.7 makes editorial changes for better readability within the section.

Adopted §215.8 clarifies existing requirements related to increases in enrollment of 25% or more for accredited and non-accredited programs. The remaining proposed amendments also simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule and include editorial changes.

Adopted §215.9 updates an outdated reference and simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

Adopted §215.10 adds reference to an education guideline for additional guidance and clarity.

Adopted §215.12 makes editorial changes.

Adopted §215.13 includes a reference to the Board's guidelines for additional clarity in the section.

Summary of Comments and Agency Response

Comment: A commenter representing the Texas Medical Association (TMA) states TMA has questions and concerns regarding the addition of the term "nursing clinical judgment" as a defined term in the Definitions sections of Chapter 214 and Chapter 215. The commenter states that the basis for the changes is not clear and that there is no legislative support for this terminology in that the term is not used in statute. TMA opposes the adoption of this amendment. Additionally, TMA has objections to the language contained within the definition indicating that there is a belief that the language of the definition could create scope of practice confusion. TMA objects specifically to the term "generat[ing] the best possible evidence-based solutions" as those solutions may require medical diagnosis and prescription of therapeutic or corrective measures. Further, TMA states that the term "solutions" implies a final resolution to the patient's concern or situation, which TMA states is inconsistent with a nurse's role as part of the continuum of care. TMA suggests that the term "nursing act" be used in place of the term "solutions."

TMA also raises concerns regarding the term "nursing diagnoses." TMA raises concern that the term is not found in statute and has the potential to cause confusion with scope of practice limitations in the Nursing Practice Act. TMA suggests the term "nursing assessments" be used instead.

Agency Response to Comments:

The Board declines to make the commenter's specific requested changes related to the Nursing Clinical Judgment definition. The Board does not agree that the language would reasonably generate any scope of practice confusion nor is the Board aware of any requirement that a term be used in statute to be adopted as a definition in a rule.

The commenter seeks additional background information for the addition of this definition. The National Council for State Boards of Nursing (NCSBN) provides the national licensing examination for pre-licensure nursing education programs in the United States, territories, and other countries. The examinations are designed at the vocational nursing (VN) level as well as at the professional nursing level for registered nurses (RN). In 2012, the NCSBN National Council Licensing Examination (NCLEX) Committee (an advisory committee to monitor the exam reviewed findings from the practice analysis), examined nursing decision making in the provision of ongoing nursing care to patients. The committee studied the decision making of nurses through the processes of critical thinking and making judgments about the patient's response to nursing care and patient needs for contin-

uing or adjusting the nursing care. Over the following decade, NCSBN studied the steps in the nursing process for making nursing assessments and planning care accordingly, and further researched the possibility of measuring nursing clinical judgment as a part of an updated version of the national licensure examinations for vocational and professional nursing. NCSBN provides the following definition of nursing clinical judgment: a nurse engages in an iterative multistep process that uses nursing knowledge to observe and assess presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions to deliver safe client care. On the national licensure examination, nursing clinical judgment content may be represented as a case study or as an individual stand-alone item. This nationally recognized definition informs the Board's proposed definition.

Beginning on April 1, 2023, both VN and RN candidates received a portion of Next Generation NCLEX (NGN) questions on their NCLEX examination. These new NGN items serve to measure the nursing clinical judgment of nursing applicants. Regulated schools of nursing must prepare their students for the NGN, which includes a nursing clinical judgment component.

Nursing diagnoses provide the basis for selection of nursing interventions to achieve outcomes for which the nurse is accountable. The Board disagrees that the term would reasonably cause scope of practice confusion as the term includes the word "nursing," which serves to distinguish the term from "medical diagnosis," which appears to be the thrust of the commenter's concern. This rule, in no way, would expand or is intended to expand the scope of nursing practice. Further, the term "nursing diagnosis" has been used in nursing practice since the 1970's without generating scope of practice confusion.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.157(b).

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 10, 2023.

TRD-202304191

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Texas Board of Nursing

Effective date: November 30, 2023

Proposal publication date: June 30, 2023

For further information, please call: (512) 305-6879



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.57 concerning Qualified Accounting

Courses, with changes to the proposed text published in the July 28, 2023 issue of the *Texas Register* (48 TexReg 4060) and will be republished.

With the revision to the Public Accountancy Act (Act) permitting a candidate to sit for the exam at 120 semester hours, the number of upper level accounting courses is being reduced to 21 semester hours of course work. With the reduction of upper level accounting course work, the number of hours in the separate disciplines is correspondingly being reduced to implement the revisions to the Act.

Three comments were received regarding the adoption of the amendment.

The Board received comments from Melanie Thompson.

Ms. Thompson asked for clarification regarding the required ethics class. She understood that the ethics class would not be used for satisfying the 120 hours needed to sit for the exam. She posed the question as to whether the ethics class could be used toward the 24 hours of business classes needed for licensing.

Response: It was the committee's intent that the ethics class not be applied toward the number of hours needed for business classes. Ms. Thompson also recommended that the two-hour research class be a requirement of licensing and not for exam eligibility.

Response: The rule revision as proposed will be a requirement for licensing and not exam eligibility.

The Board also received comments from the TXCPA.

Proposed §511.57(e) requires a minimum of 12 hours of upper level accounting to take the UCPAE. The 12 upper level accounting hours includes intermediate accounting. Because most schools have two intermediate accounting courses this equates to six hours plus the additional upper level accounting classes. So instead of 21 hours of upper level accounting classes the result is a requirement of 24 hours of upper level accounting classes to take the exam.

Another comment concerned the requirement that a student must take two semester hours in research and analysis in order to be eligible to take the exam. This is in addition to the 21 hours of upper level accounting. The comment suggests that the requirement for research and analysis makes it more difficult for the student to be determined eligible to take the exam which was not the intent of SB 159.

The comment also suggests that requiring the research and analysis class earlier in their education causes problems in many university accounting programs and is not consistent with the current practice to take the class toward the end of their education program. It will therefore interfere with many students' ability to take advantage of the intent of SB 159.

An additional comment was included which expressed concern that the proposed rule does not permit internships in the educational program for students in the state's community colleges.

Response:

The proposed revision reflects the Board's agreement with the comments except that the issue regarding internships in community colleges will be examined at a later date.

The Board received comments from Trinity University

Commenter expressed the belief that the Accounting/Tax Research and Analysis be a requirement to become certified and not a requirement to sit for the exam.

Commenter also expressed the belief that internships should be counted toward the required upper level accounting hours or required upper division business courses.

Response: The Accounting/Tax Research and Analysis will not be a requirement to sit for the exam but will be a requirement to become licensed. Also internships from community colleges will be examined at a future date.

The amendment is adopted under the Act, Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§511.57. *Qualified Accounting Courses to take the UCPAE.*

(a) An applicant shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) and present official transcript(s) from board-recognized institution(s) that show degree credit for no fewer than 21 semester credit hours of upper division accounting courses as defined in subsections (e), (f) and (g) of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter, and after obtaining the degree, complete the requisite 21 semester credit hours of upper division accounting courses, as defined in subsections (e), (f) and (g) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by §511.52 or §511.54 of this chapter (relating to Recognized Texas Community Colleges).

(b) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester credit hour for each hour of credit received under the quarter system.

(c) The board will accept no fewer than 21 semester credit hours of accounting courses from the courses listed in subsections (e), (f) and (g) of this section. The hours from a course that has been repeated will be counted only once toward the required 21 semester hours. The courses must meet the board's standards by containing sufficient accounting knowledge and application to be useful to candidates taking the UCPAE. A board-recognized institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate or higher degree or its equivalent, and they must be shown on an official transcript.

(d) Upper level accounting coursework recognized by the board and in effect prior to January 1, 2024, may be found in §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE).

(e) Effective January 1, 2024, the subject-matter content should be derived from the UCPAE Blueprint. A minimum of 12 semester hours with at least three semester hours in each of the following accounting course content areas is required:

(1) financial accounting and reporting for business organizations or intermediate accounting;

(2) financial statement auditing;

(3) taxation; and

(4) accounting information systems or accounting data analytics.

(f) Effective January 1, 2024, a minimum of 9 hours in any of the following accounting course content areas is required:

(1) up to 6 semester credit hours of additional financial accounting and reporting for business organizations or intermediate accounting;

(2) advanced accounting;

(3) accounting theory;

(4) managerial or cost accounting (excluding introductory level courses);

(5) auditing and attestation services;

(6) internal accounting control and risk assessment;

(7) financial statement analysis;

(8) accounting research and analysis;

(9) up to 9 semester credit hours of taxation (including tax research and analysis);

(10) financial accounting and reporting for governmental and/or other nonprofit entities;

(11) up to 9 semester credit hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(12) up to 9 semester credit hours of accounting data analytics, provided the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting; business data analytics may be considered provided the courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting; (while data analytics tools may be taught in the courses, application of the tools should be the primary objective of the courses);

(13) fraud examination;

(14) international accounting and financial reporting;

(15) mergers and acquisitions;

(16) financial planning;

(17) at its discretion, the board may accept up to three semester hours of credit of accounting course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (16) of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's merit and content; and

(18) at its discretion, the board may accept up to three semester credit hours of independent study in accounting selected or designed by the student under faculty supervision. The curriculum for the course shall not repeat the curriculum of another accounting course that the student has completed.

(g) The following types of introductory courses do not meet the accounting course definition in subsections (e) and (f) of this section:

- (1) elementary accounting;
- (2) principles of accounting;
- (3) financial and managerial accounting;
- (4) introductory accounting courses; and
- (5) accounting software courses.

(h) Any CPA review course offered by an institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(i) CPE courses shall not be used to meet the accounting course definition.

(j) An ethics course required in §511.58(d) of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE) shall not be used to meet the accounting course definition in subsections (e) and (f) of this section.

(k) Accounting courses completed through an extension school of a board recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(l) The board may review the content of accounting courses and determine if they meet the requirements of this section.

(m) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

- (1) American College Education (ACE);
- (2) Prior Learning Assessment (PLA);
- (3) Defense Activity for Non-Traditional Education Support (DANTES);
- (4) Defense Subject Standardized Test (DSST); and
- (5) Straighterline.

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 9, 2023.

TRD-202304143

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Effective date: November 29, 2023

Proposal publication date: July 28, 2023

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CHAPTER 527. PEER REVIEW

22 TAC §527.5

The Texas State Board of Public Accountancy (Board) adopts an amendment to §527.5 concerning Deficient Reviews, without changes to the proposed text as published in the September 29,

2023, issue of the *Texas Register* (48 TexReg 5616) and will not be republished.

Upon a finding of deficient peer reviews, current Board rules provide for a three-year suspension of attest work by a licensee. Upon the expiration of the three years, the suspension is automatically lifted without any demonstration by the licensee they are now competent to perform attest services. The rule revision will eliminate the three-year suspension but require a licensee to have a third-party CPA review the licensee's work prior to being authorized to independently offer attest services to the public. Only upon a recommendation to the Board by the CPA performing the third-party review will the Board consider reinstating their ability to offer attest services to the public.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304144

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Effective date: November 29, 2023

Proposal publication date: September 29, 2023

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §531.18

The Texas Real Estate Commission (TREC) proposes adopts to 22 TAC §531.18, Consumer Information, in Chapter 531, Canons of Professional Ethics and Conduct, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4593) and will not be republished.

The amendments to 22 TAC §531.18 reflect statutory changes enacted by the 88th Legislature in HB 1363, which eliminated the real estate inspection recovery fund. As a result, references to that fund are removed from the Consumer Protection Notice form adopted by reference and the version number in the rule is updated.

No comments were received on the proposed amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151 and §1101.202. Section 1101.151 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. Section 1101.202 requires the Commission to prescribe a notice containing the name, mailing address, and telephone number of the Commission for the purpose of directing a complaint to the commission; and establish methods by which consumers and service recipients are provided the notice by a person regulated under Chapter 1101 or 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.

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304130

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Texas Real Estate Commission

Effective date: November 29, 2023

Proposal publication date: August 25, 2023

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CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.4, §535.5

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.4, License Required, and §535.5, License Not Required, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4594) and will not be republished.

The amendments implement statutory changes enacted by the 88th Legislature in SB 1577, which become effective January 1, 2024. Currently, Chapter 1101, Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. SB 1577 allows certain entities-limited liability companies and s-corporations (as that term is defined by federal law)-to register with the Commission in lieu of obtaining a license. In order to be eligible for registration, these exempted entities must: (i) perform no acts of a broker, other than receiving said compensation on behalf of a license holder; and (ii) be at least 51 percent owned by the license holder on whose behalf the business entity receives compensation. The rule changes reflect this statutory change.

No comments were received for §535.5 as published. Six comments were received for §535.4. Five comments were in support of the change. One commenter expressed concern that the amendment was simultaneously not necessary and was also concerned that by not requiring a license, unlicensed individuals would reduce the integrity of the industry. TREC general counsel reviewed this comment and noted the proposed changes are in line with statute and do not authorize unlicensed brokerage activity. Because the change in this rule is required to reflect the statutory changes made by the legislature, the Commission declines to make changes to the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 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. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

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 9, 2023.

TRD-202304131

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Effective date: January 1, 2024

Proposal publication date: August 25, 2023

For further information, please call: (512) 936-3284



22 TAC §535.6

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.6, Equitable Interests in Real Property, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4596) and will not be republished.

Currently, a person may engage in "wholesaling"--that is, the practice of acquiring an option or entering into a contract to purchase real property and then selling or assigning the interest in the contract to another--without a real estate license, as long as certain disclosures are made to the buyer of the interest. The amendments implement statutory changes enacted by the 88th Legislature in SB 1577, which requires first, that disclosure also be made to the original seller, and second, that the disclosures be in writing. Subsection (c) is being removed to more closely align with the statutory language. Finally, a non-substantive change is made for consistency throughout the chapter.

No comments were received on the proposed amendments as published.

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. The amendments are also adopted under §1101.0045, Texas Occupations Code, which establishes the statutory basis for the rule.

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 9, 2023.

TRD-202304134

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Effective date: January 1, 2024
Proposal publication date: August 25, 2023
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SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

22 TAC §535.35

The Texas Real Estate Commission (TREC) adopts new 22 TAC §535.35, Registration of Certain Business Entities, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4597), and will not be republished.

New §535.35 implements statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective January 1, 2024. Currently, §1101.355(c), Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. Licensure requires certain conditions be satisfied, including, for instance, that the entity have a designated broker and payment of an initial license application fee of \$150 and a subsequent \$72 application fee to renew. SB 1577 amends §1101.355 by allowing certain entities--limited liability companies and s-corporations (as that term is defined by federal law)--to register with the Commission in lieu of obtaining a license and requires the Commission to adopt rules providing for this registration. The new rule outlines the requirements these exempt business entities must follow to register the business entity with the Commission. The changes also provide a term for the registration once issued, as well as an obligation to certify continuing compliance. Additionally, SB 1577 also amends §1101.152, Occupations Code, which specifically directs the Commission to adopt a rule to charge and collect fees in amounts reasonable and necessary to cover the costs of registering a business entity. Therefore, the changes set forth the fee obligations for such registration and certification of continued compliance. Finally, under the proposal, a license holder must also notify the Commission in writing not later than the 10th day after the date the business entity no longer qualifies for the exemption.

No comments were received on the proposed new rule as published.

The new rule is adopted under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 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. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

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 9, 2023.

TRD-202304132
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General Counsel
Texas Real Estate Commission
Effective date: January 1, 2024
Proposal publication date: August 25, 2023
For further information, please call: (512) 936-3284



SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.58

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.58, License for Military Service Members, Veterans, or Military Spouses, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4598) and will not be republished.

The amendments, in part, implement statutory changes enacted by the 88th Legislature in SB 422, which first, expands out-of-state occupational license recognition to include military service members, as long as certain criteria are met. SB 422 also modifies the time period within which verification of good standing occurs, as well as issuance of a license after certain conditions are satisfied, from "as soon as practicable" to no later than 30 days. The bill also addresses the term of the license in situations of divorce or other events impacting the military spouse's status. The rule amendments reflect these statutory changes.

In addition, as a result of education requirements being added for easement and right-of-way agents (ERWs) during the 87th Legislative Session, language is added making clear that ERW applicants must otherwise comply with the requirements in 22 TAC §535.400, unless excepted by §535.58. Additionally, language is being struck from the rule to better reflect the statutory framework under Chapter 55, Occupations Code. Finally, a statement of purpose is being added to the rule to make clear that this rule addresses the requirements provided under Chapter 55, Occupations Code, and not federal law.

No comments were received on the proposed amendments as published.

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. The amendments are also adopted under §55.0041, as amended by SB 422, which requires agencies to adopt rules for the recognition of out-of-state licenses for military service members and military spouses, and §55.005, which requires expedited licenses for military service members, military veterans, and military spouse.

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 9, 2023.

TRD-202304135

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Effective date: November 29, 2023

Proposal publication date: August 25, 2023

For further information, please call: (512) 936-3284

SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.147

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.147, Splitting Fee with Unlicensed Person, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4600), and will not be republished.

The amendments implement statutory changes enacted by the 88th Legislature in SB 1577, which become effective January 1, 2024. Currently, Chapter 1101, Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. SB 1577 allows certain entities—limited liability companies and s-corporations (as that term is defined by federal law)—to register with the Commission in lieu of obtaining a license. In order to be eligible for registration, these exempted entities must: (i) perform no acts of a broker, other than receiving said compensation on behalf of a license holder; and (ii) be at least 51 percent owned by the license holder on whose behalf the business entity receives compensation. The rule changes reflect this statutory change.

No comments were received on the proposed amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 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. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

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 9, 2023.

TRD-202304133

Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

Effective date: January 1, 2024

Proposal publication date: August 25, 2023

For further information, please call: (512) 936-3284

SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4601), and will not be republished.

The amendments address a violation of 22 TAC §535.157 (relating to Obligation to Respond Timely), which was recently adopted by the Commission. Current rule 535.157 obligates a broker and sales agent to respond to his or her principal, a broker or sales agent representing another party to a real estate transaction, or an unrepresented party of a real estate transaction within two calendar days. Under the changes to 535.191, a violation of §535.157 could result in an administrative penalty of \$100 - \$1,500 per violation per day.

This change is recommended by the Commission's Enforcement Committee.

No comments were received on the proposed amendments as published.

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. The amendments are also adopted under Texas Occupations Code, §1101.702, which requires the Commission adopt by rule a schedule of administrative penalties.

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 9, 2023.

TRD-202304136

Vanessa E. Burgess

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Texas Real Estate Commission

Effective date: November 29, 2023

Proposal publication date: August 25, 2023

For further information, please call: (512) 936-3284

SUBCHAPTER R. REAL ESTATE INSPECTIONS

22 TAC §535.210, §535.219

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.210, Fees and §535.219, Schedule of Administrative Penalties, in Chapter 535, General Provisions, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4603), and will not be republished.

The amendments reflect statutory changes enacted by the 88th Legislature in HB 1363, which eliminated the real estate inspection recovery fund. The changes to 535.210 reflect the fact that for applications submitted as of September 1, 2023, the \$10 fee will no longer be required. The changes to §535.219 replace a repealed statutory section with a related rule 22 TAC §535.220(g) (although related, this rule is authorized by another statutory provision).

No comments were received on the proposed amendments as published.

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. The amendments are also adopted under Texas Occupations Code, §1102.403, which allows the Commission to impose an administrative penalty as provided by Subchapter O, Chapter 1101 pursuant to 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.

Filed with the Office of the Secretary of State on November 9, 2023.

TRD-202304137

Vanessa E. Burgess

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Texas Real Estate Commission

Effective date: November 29, 2023

Proposal publication date: August 25, 2023

For further information, please call: (512) 936-3284



CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.62

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §537.62, Standard Contract Form TREC No. OP-H, Seller's Disclosure Notice; in Chapter 537, Professional Agreements and Standard Contracts, without changes, as published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4605) and will not be republished.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property, although some forms--like the Seller's Disclosure Notice--are adopted by the Commission for voluntary use by license holders. Contract 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 to Chapter 537 to comply with statutory changes enacted by the 88th Legislature in HB 697.

The Seller's Disclosure Notice is updated to comply with the requirements of HB 697, which add a disclosure related to fuel gas piping to the statutorily-required notice.

One comment was received. The commenter requested that an 'unknown' checkbox be added to the fuel gas piping section of the form, believing sellers will not understand what fuel gas piping is. TREC general counsel reviewed this comment and noted that the notice already allows a seller to mark "unknown." Additionally, the Commission's Seller's Disclosure Notice mirrors Section 5.008, Texas Property Code, and it is the policy of the Commission's Broker-Lawyer Committee (the committee charged with drafting and updating contract forms) to not deviate from the statute. As a result, the Commission declined to make changes as a result of this comment.

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. The amendments are also adopted under Texas Occupations Code §1101.155, which allows the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Broker-Lawyer Committee and adopted by the Commission.

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 9, 2023.

TRD-202304138

Vanessa E. Burgess

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Texas Real Estate Commission

Effective date: November 29, 2023

Proposal publication date: August 25, 2023

For further information, please call: (512) 936-3284



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts an amendment to §1.81, concerning Recognition of Out-of-State License of a Military Service Member and Military Spouse; and new §1.91, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

The amendment to §1.81 and new §1.91 are adopted with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5617). The rules will be republished.

BACKGROUND AND JUSTIFICATION

The amendment and new rule are adopted to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023, which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. S.B. 422 allows military service members, military spouses, and military veterans who are currently licensed by another jurisdiction to engage in a business or occupation in Texas and grants the person a verification letter or alternative license after meeting certain conditions to operate for three years. This adoption establishes requirements and procedures authorized by Texas Occupations Code Chapter 55 and does not modify or alter rights that may be provided under federal law.

COMMENTS

The 21-day comment period ended Friday October 20, 2023. During this period, DSHS did not receive any comments regarding the proposed rules.

DSHS updates §1.81(d)(2) and (e) to clarify the requirements of receiving a verification letter.

DSHS corrects punctuation errors in §1.81 and §1.91.

SUBCHAPTER F. LICENSURE EXEMPTIONS

25 TAC §1.81

STATUTORY AUTHORITY

The amendment is adopted under the Texas Occupations Code §§55.004, 55.005, and 55.0041; and Texas Government Code §531.0055(j) and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§1.81. Recognition of Out-of-State License of a Military Service Member and Military Spouse.

(a) For the purposes of this section, the definitions in Texas Occupations Code Chapter 55 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code Chapter 55, and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses and verifications issued by the Department of State Health Services (department) under authority granted by the Texas Health and Safety Code or Texas Occupations Code.

(c) Notwithstanding any other rule, a military service member or military spouse may engage in a business or occupation as if licensed in the State of Texas without obtaining the applicable license in Texas, if the military service member or military spouse:

(1) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state;

(2) notifies the department, in writing, of the military service member's or military spouse's intent to practice in this state;

(3) submits proof of the military service member's or military spouse's residency in this state and a copy of the military service member or military spouse's military identification card; and

(4) receives from the department a verification letter that:

(A) the department has verified the military service member's or military spouse's license in another jurisdiction; and

(B) the military service member or military spouse is authorized to engage in the business or occupation in accordance with the Texas statutes and rules for that business or occupation.

(d) To receive a verification letter, the military service member or military spouse, must submit:

(1) a request to the department for recognition of the military service member's or military spouse's license issued by the other jurisdiction, on a form prescribed by the department;

(2) proof of residency in this state, which may include a copy of the permanent change-of-station order for the military service member;

(3) a copy of the military service member's or military spouse's military identification card; and

(4) proof the military service member is stationed at a military installation in Texas.

(e) The department has 30 days from the date a military service member or military spouse submits a request complying with subsection (d) of this section to verify that the military service member or military spouse is licensed in good standing in a jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license under the statutes and regulations of this state. Upon verification, the department shall issue a verification letter recognizing the licensure as the equivalent license in this state.

(f) The verification letter will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The verification letter may not be renewed.

(g) In the event of a divorce or similar event that affects a person's status as a military spouse, the former military spouse that received a verification under subsection (d) of this section, may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the verification letter described by subsection (e) of this section.

(h) The military service member or military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code, Texas Occupations Code, and all relevant Texas Administrative Code provisions.

(i) The department may revoke the verification letter at its discretion. Grounds for revocation include:

(1) the military service member or military spouse fails to comply with subsection (h) of this section; or

(2) the military service member's or military spouse's license required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

(j) The department will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state.

(1) Whether the other jurisdiction requires an applicant to pass an examination that demonstrates competence in the field.

(2) Whether the other jurisdiction requires an applicant to meet any experience qualifications.

(3) Whether the other jurisdiction requires an applicant to meet any education qualifications.

(4) The other jurisdiction's license requirements, including the scope of work authorized by the license.

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 9, 2023.

TRD-202304126

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: December 1, 2023

Proposal publication date: September 29, 2023

For further information, please call: (512) 484-5470



SUBCHAPTER G. ALTERNATIVE LICENSING FOR MILITARY

25 TAC §1.91

STATUTORY AUTHORITY

The new rule is adopted under the Texas Occupations Code §§55.004, 55.005, and 55.0041; and Texas Government Code §531.0055(j) and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§1.91. Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

(a) For the purposes of this section, the definitions in Texas Occupations Code Chapter 55 are hereby adopted by reference. This section establishes requirements and procedures authorized or required by Texas Occupations Code Chapter 55 and does not modify or alter rights that may be provided under federal law.

(b) This section applies to all licenses issued by the Department of State Health Services (department) under authority granted by the Texas Health and Safety Code or Texas Occupations Code.

(c) Notwithstanding any other rule, a military service member, military spouse, or military veteran may apply for an occupational license offered by the department if the military service member, military spouse, or military veteran:

(1) is currently licensed by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state, and the license is in good standing; or

(2) held the same license in Texas within the preceding five years.

(d) A military service member or military spouse must provide proof of residency in this state. This requirement is satisfied by providing a copy of the permanent change-of-station order assigning the military service member to a military installation in Texas.

(e) An applicant requesting a license under this section must meet all requirements for obtaining the license, including receiving appropriate credit for training, education, and professional experience.

(f) The department will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another

jurisdiction's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state.

(1) Whether the other jurisdiction requires an applicant to pass an examination that demonstrates competence in the field.

(2) Whether the other jurisdiction requires an applicant to meet any experience qualifications.

(3) Whether the other jurisdiction requires an applicant to meet any education qualifications.

(4) The other jurisdiction's license requirements, including the scope of work authorized under the license.

(g) The department will not charge a fee for the issuance of the license. The applicant will be responsible for fees associated with a required background check.

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 9, 2023.

TRD-202304127

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: December 1, 2023

Proposal publication date: September 29, 2023

For further information, please call: (512) 484-5470



CHAPTER 228. RETAIL FOOD ESTABLISHMENTS

SUBCHAPTER B. MANAGEMENT AND PERSONNEL

25 TAC §228.33

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §228.33, concerning Food Allergen Awareness Poster Required.

New §228.33 is adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4986). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted new section is necessary to comply with Senate Bill (S.B.) 812, 88th Legislature, Regular Session, 2023. S.B. 812 amends the Texas Health and Safety Code to add §437.027, which requires retail food establishments display a poster relating to food allergen awareness in an area of the establishment regularly accessible to the establishment's food service employees. S.B. 812 prescribes the content of the poster at Texas Health and Safety Code §437.027(b).

COMMENTS

The 31-day comment period ended October 9, 2023.

During this period, DSHS received comments regarding the proposed rule from three commenters, including Food Allergy Re-

search & Education (FARE), San Antonio Wing-Stop, and The Kroger Company. A summary of comments relating to the rule and DSHS responses follows.

Comment: A commenter from FARE made general remarks about the importance of food allergy awareness among food establishment employees and made several suggestions regarding the content of the poster itself.

Response: DSHS will take FARE's suggestions into consideration in the development of the required sample Food Allergen Awareness poster.

Comment: Two industry commenters asked questions about implementation of the poster itself but did not comment on the proposed rule.

Response: DSHS responded directly to the individual commenters with answers to their specific questions. DSHS informed the commenters regarding when and how the allergen awareness poster will be available for self-printing from the DSHS Retail Food Safety website. DSHS also informed the commenters that an establishment can use a poster other than the DSHS sample poster if it meets the requirements of the statute. DSHS also informed the commenters the enforcement of the poster requirement cannot begin until September 1, 2024.

STATUTORY AUTHORITY

The adopted new rule is authorized by Texas Health and Safety Code §437.027(c), which directs the Executive Commissioner of HHSC to adopt rules to implement legislation; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS, and for the administration of Texas Health and Safety Code Chapter 1001.

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 7, 2023.

TRD-202304101

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: December 1, 2023

Proposal publication date: September 8, 2023

For further information, please call: (512) 800-5343



CHAPTER 229. FOOD AND DRUG SUBCHAPTER K. TEXAS FOOD ESTABLISHMENTS

25 TAC §§229.172, 229.176 - 229.178

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §229.172, concerning Accreditation of Certified Food Management Programs; §229.176, concerning Certification of Food Managers; §229.177, Certification of Food Managers in Areas

Under the Department of State Health Services Permitting Jurisdiction; and §229.178, concerning Accreditation of Food Handler Education or Training Programs.

The amendment to §229.177 is adopted with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5455). This rule will be republished. The amendments to §§229.172, 229.176, and 229.178 are adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5455). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendments are necessary to comply with Senate Bill (S.B.) 812, 88th Legislature, Regular Session, 2023, which amends Texas Health and Safety Code §438.043 and §438.0431. S.B. 812 requires allergen training be included in DSHS-accredited Certified Food Manager (CFM) and Food Handler (FH) training. S.B. 812 also amends Texas Health and Safety Code §438.103 and requires state-approved CFM examinations to include questions testing food allergen awareness. The adopted amendments reflect the required addition of food allergen awareness to DSHS-accredited CFM and FH training programs and CFM examinations.

COMMENTS

The 21-day comment period ended October 13, 2023.

During this period, DSHS did not receive any comments regarding the proposed rules.

DSHS corrects a punctuation error in §229.177(c)(2).

STATUTORY AUTHORITY

The adopted amendments are authorized by Texas Health and Safety Code §438.0431(b), which directs the Executive Commissioner of HHSC to adopt rules to implement legislation; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§229.177. Certification of Food Managers in Areas Under the Department of State Health Services Permitting Jurisdiction.

(a) Purpose. The purpose of this section is to implement a food manager certification requirement as authorized in the Texas Health and Safety Code, Chapter 437, §437.0076(b). Certification of food managers after testing on food safety principles reduces the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

(b) Food manager certification required. One certified food manager must be employed by each food establishment permitted under Texas Health and Safety Code, §437.0055. Certification must be obtained by passing a department approved examination at an approved examination site and meeting all requirements in Texas Health and Safety Code, Chapter 438, Subchapter G, and §229.176 of this title (relating to Certification of Food Managers).

(c) Food manager certification exemptions. The following food establishments are exempt from the requirements in subsection (b) of this section:

(1) establishments that handle only prepackaged food and do not package food as exempted in Texas Health and Safety Code, §437.0076(c);

(2) child care facilities as exempted by Texas Health and Safety Code, §437.0076(f);

(3) establishments that do not prepare or handle exposed Time/Temperature Control for Safety (TCS) food--(formerly Potentially Hazardous Food (PHF)), as defined in 2017 FDA Food Code 1-201.10; or

(4) nonprofit organizations as defined in §229.371(9) of this title (relating to Permitting Retail Food Establishments).

(d) Responsibilities of a certified food manager. Responsibilities of a certified food manager include:

(1) identifying hazards in the day-to-day operation of a food establishment that provide food for human consumption;

(2) developing or implementing specific policies, procedures or standards to prevent foodborne illness;

(3) supervising or directing food preparation activities and ensuring appropriate corrective actions are taken as needed to protect the health of the consumer;

(4) training the food establishment employees on the principles of food safety; and

(5) performing in-house self-inspections of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(e) Certificate reciprocity. A certificate issued to an individual who successfully completes a department approved examination shall be accepted as meeting the training and testing requirements under Texas Health and Safety Code, §438.046(b).

(f) Certificate posting. The original food manager certificate shall be posted in a location in the food establishment that is conspicuous to consumers.

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 7, 2023.

TRD-202304102

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: December 1, 2023

Proposal publication date: September 22, 2023

For further information, please call: (512) 800-5343



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code §358.6 to provide technical assistance in water loss control for qualifying retail public utilities that submit water loss audits and related data to the TWDB. The proposal is adopted without changes as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5635) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

This rulemaking is to implement Senate Bill 28 (SB 28), Section 8, passed by the 88th Texas Legislature, effective September 1, 2023. SB 28 directs the TWDB to establish a program providing technical assistance to retail public utilities conducting water loss audits required by Chapter 16 of the Texas Water Code. The TWDB is required to prioritize technical assistance to retail public utilities required to submit water loss audits to the TWDB based on submitted water loss audits, the population served by the utility, and the integrity of the utility's system. SB 28 also requires the TWDB to publish certain water loss data submitted to the TWDB on its official website in addition to information related to entities receiving technical assistance established by these proposed rules.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

In 31 TAC §358.6, new §358.6(g) is adopted to provide technical assistance in water loss control and outlining the circumstances of the technical assistance offered by the TWDB.

In 31 TAC §358.6, new §358.6(h) is adopted to describe how the agency will prioritize the technical assistance offered by the TWDB to retail public utilities based on water loss audits submitted, the population served by the retail public utility, and the system integrity of the retail public utility.

In 31 TAC §358.6, new §358.6(i) is adopted to establish how the TWDB will publish on its official website certain information related to the retail public utilities receiving technical assistance in addition to other information and data related to water loss audits that the TWDB currently collects.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to establish a program to provide technical assistance to retail public water utilities in conducting required water loss audits and in applying for financial assistance from the TWDB to mitigate the utility system's water loss.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state

law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency.

This rule is adopted under the authority of Texas Water Code §16.0121, as amended by SB 28, 88th Texas Legislative Session. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to establish a program to provide technical assistance to retail public water utilities in conducting required water loss audits and in applying for financial assistance from the board to mitigate the utility system's water loss as well as to prioritize the technical assistance based on three factors. The rule also directs the TWDB to publish certain information related to its collection of water loss data and the use of this program on its official website. The rule would substantially advance this stated purpose by codifying and expanding TWDB's water loss program to better assist retail public utilities in mitigating their water loss.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that requires retail public utilities to conduct and submit water loss audits.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory, nor a constitutional, taking of private real property. Specifically, the subject regulation does not affect a landowner's rights in private real

property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, the specific purpose of this rule is to implement portions of SB 28 and expand the TWDB's water loss program to better assist retail public utilities in mitigating their water loss. The creation of this program as proposed and collection of better water loss data by the TWDB is not a statutory or constitutional taking of private real property. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The comment period ended October 30, 2023. No public comments were received; therefore, no revisions to the rule as proposed will be made and the rule as published in (48 TexReg 5635), will not be republished.

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and under the authority of Texas Water Code Section 16.0121(k) and Section 16.0121(l), as enacted by SB 28, passed during the 88th Texas Legislative Session, effective September 1, 2023. This rulemaking affects Water Code, Chapter 16, Subchapter B. §358.6 Water Loss Audits.

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 10, 2023.

TRD-202304175

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: November 30, 2023

Proposal publication date: September 29, 2023

For further information, please call: (512) 463-7686

