

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8085, concerning Reimbursement Methodology for Physicians and Other Practitioners; and §355.8441, concerning Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to clarify the current structure of reimbursement methodologies for certain services and programs administered by HHSC. The amendments add details to describe the methodology HHSC uses to determine reimbursement amounts to Licensed Behavior Analysts (LBAs) and Licensed Assistant Behavior Analysts (LaBAs) for Applied Behavior Analysis (ABA) professional services. The amendment also adds wage statistic data as an element to be considered for reimbursement methodology for Physicians and Other Practitioners.

In addition, following a Centers for Medicare & Medicaid Services (CMS) revision of their reimbursement methodologies, references to the Medicare reimbursement methodology are being updated to be in line with the CMS changes. The intent is to remove outdated reimbursement percentages and references to the Medicare average sales price and replace them with simpler references to the Medicare fee schedules where applicable. Where §355.8085 currently specifies its applicability to the Texas Medicaid program, the language has been revised to include "and other programs administered by Texas HHSC" in order to add clarity that the rule can apply to other programs in addition to Medicaid. This update provides clarification regarding the scope of the reimbursement methods.

SECTION-BY-SECTION SUMMARY

Edits were made throughout §355.8085 and §355.8441 to correct punctuation, grammar, and references, and to clarify phrases.

Proposed amendment to §355.8085(a) adds an analysis of wage statistics data as one of the elements HHSC considers when reviewing fees for individual services at least every two years.

Proposed amendment to §355.8085(b) adds LBAs and LaBAs to the list of eligible providers.

Proposed amendment to §355.8085(e)(5) removes any references to a percentage of Medicare average sales price and replaces previous references with a reference to the Medicare rate.

Proposed amendment §355.8085(g)(6) adds a reference to §355.8441 as the location in which reimbursement methodology for LaBAs is defined.

Proposed amendment §355.8441(a)(13) defines reimbursement methodologies for LBAs and LaBAs.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rules do not impose any additional costs or requirements on small businesses, micro-businesses, or rural communities that are required to comply with the rules. The proposed rules clarify reimbursement methodologies for services that are already covered.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public will benefit from added transparency regarding reimbursement for these services.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there is no cost associated with this rule update.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held via webinar. The meeting date and time will be posted on the HHSC Communications and Events Website at <https://hhs.texas.gov/about-hhs/communications-events> and the HHSC Provider Finance communications website at <https://pfd.hhs.texas.gov/provider-finance-communications>.

Persons requiring further information, special assistance, or accommodations should email the Provider Finance Acute Care's section at PFDAcuteCare@hhs.texas.gov, if you have questions.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Provider Finance Department (Acute Care), 4601 W. Guadalupe St, Austin, Texas 78751; Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; or by email to PFDAcuteCare@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R091" in the subject line.

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8085

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance

(Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.8085. *Reimbursement Methodology for Physicians and Other Practitioners.*

(a) Introduction. This section describes the [Texas Medicaid] reimbursement methodology that the Texas Health and Human Services Commission (HHSC) uses to calculate payment for covered services provided by physicians and other practitioners within Texas Medicaid and other programs administered by HHSC.

(1) There is no geographical or specialty reimbursement differential for individual services.

(2) HHSC reviews the fees for individual services at least every two years based upon:

(A) analysis of Medicare fees for the same or similar item or service;

(B) analysis of Medicaid fees for the same or similar item or service in other states; [ø]

(C) analysis of commercial fees for the same or similar item or service; or[.];

(D) an analysis of wage statistics data.

(3) HHSC may use data sources or methodologies other than those listed in paragraph (2) of this subsection to establish reimbursement [Medicaid] fees for physicians and other practitioners when HHSC determines that those methodologies are unreasonable or insufficient.

(4) Fees for these services are adjusted within available funding as described in §355.201 of this chapter [title] (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid [by the Health and Human Services Commission].)

(b) Eligible Providers. Eligible providers include the following.[.];

- (1) Providers of Laboratory and X-ray Services;
- (2) Providers of Radiation Therapy;
- (3) Physical, Occupational, and Speech Therapists;
- (4) Physical, Occupational, and Speech Therapy Assistants;
- (5) Physicians;
- (6) Podiatrists;
- (7) Chiropractors;
- (8) Optometrists;
- (9) Dentists;
- (10) Psychologists;
- (11) Licensed Psychological Associates;
- (12) Provisionally Licensed Psychologists;
- (13) Licensed Psychological Interns and Fellows;
- (14) Maternity clinics;

- (15) State Supported Living Centers;
- (16) Tuberculosis clinics; ~~and~~
- (17) Peer Specialists;~~[-]~~
- (18) Licensed Behavior Analysts (LBAs); and
- (19) Licensed Assistant Behavior Analysts (LaBAs).

(c) Definitions. When used in this section, these words and terms have the following meanings unless the context clearly indicates otherwise. ~~[The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.]~~

(1) Access-based fees (ABF)--Fees for individual services, where HHSC deems necessary, to account for deficiencies relating to the adequacy of access to health care services.

(2) Biological--A substance that is made from a living organism or its products and is used in the prevention, diagnosis, or treatment of cancer and other diseases.

(3) Conversion factor--The dollar amount by which the sum of the three cost component relative value units (RVUs) is multiplied to obtain a reimbursement fee for each individual service.

(4) Drug--Any substance that is used to prevent, diagnose, treat or relieve symptoms of a disease or abnormal condition.

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

(6) Relative value units (RVUs)--The relative value assigned to each of the three individual components that comprise the cost of providing individual ~~[Medicaid]~~ services for Medicaid and other programs administered by HHSC. The three cost components of each reimbursement fee are intended to reflect the work, overhead, and professional liability expense required to provide each individual service.

(7) Resource-based fees (RBF)--Fees for individual services based upon HHSC's determination of the resources that an economically efficient provider requires to provide individual services.

(8) Vaccine--An immunogen, the administration of which is intended to stimulate the immune system to result in the prevention, amelioration or therapy of any disease or infection.

(d) Calculating the payment amounts. Subject to qualifications, limitations, and exclusions as provided in this chapter, payment to eligible providers must not exceed the lesser of the provider's billed amount or the amount derived from the methodology described in this section. The fee schedule that results from the reimbursement methodology may be composed of both ABFs ~~[access-based fees (ABFs)]~~ and (RBFs) ~~[resource-based fees (RBFs)]~~.

(1) ABF methodology allows the state to:

(A) reimburse for procedure codes not covered by Medicare;

(B) account for inadequate reimbursement rates for particularly difficult procedures;

(C) encourage participation in the HHSC administered ~~programs [Medicaid program]~~ by physicians and other practitioners; and

(D) set reimbursement to allow the eligible HHSC administered program's ~~[Medicaid]~~ population to receive adequate health care services in an appropriate setting.

(2) An RBF is calculated using the following formula: $RBF = (total\ RVU * CF)$, where RBF = Resource-Based Fee, total RVU = the sum of the three Relative Value Units that comprise the cost of providing individual ~~[Medicaid]~~ services, and CF = Conversion Factor.

(A) Except when ~~[as otherwise]~~ specified otherwise, HHSC bases the RVUs that are employed in the HHSC ~~[Texas Medicaid]~~ reimbursement methodologies on ~~[methodology upon]~~ the RVUs of the individual services as specified in the Medicare Fee Schedule. HHSC reviews any changes to, or revisions of, the various Medicare RVUs and, if applicable, adopts the changes as part of the reimbursement methodology within available funding.

(B) HHSC may develop and apply multiple conversion factors for various classes of service, such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(c) Reimbursement for physician-administered drugs, vaccines, and biologicals. In determining the reimbursement methodology for physician-administered drugs, vaccines, and biologicals, HHSC may consider information such as costs, utilization, data sufficiency, and public input. Reimbursement for physician-administered drugs, vaccines, and biologicals is ~~[are]~~ based on the lesser of the billed amount, a percentage of the Medicare rate, or one of the following methodologies:

(1) If the drug or biological is considered a new drug or biological (that is, approved for marketing by the Food and Drug Administration within 12 months of implementation as a benefit of HHSC-administered programs ~~[Texas Medicaid]~~), it may be reimbursed at an amount equal to 89.5 percent of the average wholesale price (AWP).

(2) If the drug or biological does not meet the definition of a new drug or biological, it may be reimbursed at an amount equal to 85 percent of AWP.

(3) Vaccines may be reimbursed at an amount equal to 89.5 percent of AWP.

(4) Infusion drugs furnished through an item of implanted Durable Medical Equipment may be reimbursed at an amount equal to 89.5 percent of AWP.

(5) Drugs, other than vaccines and infusion drugs, may be reimbursed at a percentage of the Medicare rate ~~[an amount equal to 106 percent of the average sales price (ASP)]~~.

(6) HHSC may use other data sources or methodologies to establish its ~~[Medicaid]~~ fees for physician-administered drugs, vaccines, and biologicals when HHSC determines that the above methodologies are unreasonable or insufficient.

(f) Reimbursement for services provided under the supervision of a licensed psychologist. Services ~~[Reimbursement for services]~~ provided under the supervision of a licensed psychologist by a licensed psychological associate (LPA) or a provisionally licensed psychologist (PLP) ~~are [is]~~ reimbursed to the licensed psychologist at 70 percent of the fee paid to the licensed psychologist for the same service. Services ~~[Reimbursement for services]~~ provided under the supervision of a licensed psychologist by a licensed psychology intern or fellow ~~are [is]~~ reimbursed at 50 percent of the fee paid to a licensed psychologist for the same service.

(g) Reimbursement for certain other providers. The descriptions for reimbursement of certain other providers are described in sections of this chapter.

(1) Reimbursement for physician assistants is described in §355.8093 of this chapter [title] (relating to Reimbursement Methodology for Physician Assistants).

(2) Reimbursement for nurse practitioners and clinical nurse specialists is described in §355.8281 of this chapter [title] (relating to Reimbursement Methodology for Nurse Practitioners and Clinical Nurse Specialists).

(3) Reimbursement for services provided under Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) is described in §355.8441 of this chapter [title] (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services).

(4) Reimbursement for Licensed Professional Counselors, Licensed Clinical Social Workers, and Licensed Marriage and Family Therapists is described in §355.8091 of this chapter [title] (relating to Reimbursement to Licensed Professional Counselors, Licensed Clinical Social Workers, and Licensed Marriage and Family Therapists).

(5) Reimbursement for Physical, Occupational, and Speech Therapy Services is described in §355.8097 of this chapter [title] (relating to Reimbursement Methodology for Physical, Occupational, and Speech Therapy Services).

(6) Reimbursement methodology for LaBAs is described in §355.8441 of this subchapter (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services).

(h) Fees for services provided by physicians or other practitioners are adjusted within available funding as described in §355.201 of this chapter [title] (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid [by the Health and Human Services Commission]).

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

Filed with the Office of the Secretary of State on January 16, 2025.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 217-1686



DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

1 TAC §355.8441

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and

Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32.

§355.8441. Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services.

(a) The following are reimbursement methodologies for services provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, delivered to Medicaid clients under age 21, also known as Texas Health Steps (THSteps) and the THSteps Comprehensive Care Program (CCP). Reimbursement methodologies for services provided to all Medicaid clients, including clients under age 21, are located elsewhere in this chapter.

(1) Counseling and psychotherapy services are reimbursed to freestanding psychiatric facilities in accordance with §355.8060 of this subchapter (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities).

(2) Durable Medical Equipment (DME)[medical equipment], prosthetics, orthotics and supplies (DMEPOS) are reimbursed in accordance with §355.8023 of this subchapter (relating to Reimbursement Methodology for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)).

(3) Nursing services, including, but not limited to, private duty nursing, registered nurse (RN) services, licensed vocational nurse/licensed practical nurse (LVN/LPN) services, skilled nursing services delegated to qualified aides by RNs in accordance with the licensure standards promulgated by the Texas Board of Nursing, and nursing assessment services, are reimbursed the lesser of the provider's billed charges or fees established by the Texas Health and Human Services Commission (HHSC) for each of the applicable provider types as follows.[-]

(A) Independently enrolled RNs and LVNs/LPNs, under §355.8085 of this subchapter (relating to Reimbursement Methodology for Physicians and Other Practitioners);

(B) Home health agencies (HHAs), under §355.8021 of this subchapter (relating to Reimbursement Methodology for Home Health Services); and

(C) Advanced Practice Registered Nurses (APRNs), under §355.8281(a) of this subchapter (relating to Reimbursement Methodology for Nurse Practitioners and Clinical Nurse Specialists).

(4) Physician Assistants (PA), under §355.8093 of this subchapter (relating to Reimbursement Methodology for Physician Assistants).

(5) Physical therapy services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8097 of this subchapter (relating to Reimbursement Methodology for Physical, Occupational, and Speech Therapy Services);

(B) HHAs, under §355.8097 of this subchapter;

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and

outpatient rehabilitation facilities (ORFs), under §355.8097 of this subchapter;

(D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and

(E) outpatient hospitals, under §355.8061 of this subchapter (relating to Outpatient Hospital Reimbursement).

(6) Occupational therapy services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8097 of this subchapter;

(B) HHAs, under §355.8097 of this subchapter;

(C) CORFs and ORFs, under §355.8097 of this subchapter;

(D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and

(E) outpatient hospitals, under §355.8061 of this subchapter.

(7) Speech-language pathology services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8097 of this subchapter;

(B) HHAs, under §355.8097 of this subchapter;

(C) CORFs and ORFs, under §355.8097 of this subchapter;

(D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and

(E) outpatient hospitals, under §355.8061 of this subchapter.

(8) Nutritional services provided by licensed dietitians are reimbursed the lesser of the provider's billed charges or fees determined by HHSC in accordance with §355.8085 of this subchapter.

(9) Providers are reimbursed for the administration of immunizations the lesser of the provider's billed charges or fees determined by HHSC in accordance with §355.8085 of this subchapter.

(10) Vaccines are reimbursed the lesser of the provider's billed charges or the fees determined by HHSC in accordance with §355.8085 of this subchapter.

(11) Dental services are reimbursed in accordance with the following Medicaid reimbursement methodologies.[:]

(A) Dental services provided by enrolled dental providers are reimbursed in accordance with §355.8085 of this subchapter.

(B) Dental services provided by Federally Qualified Health Centers [federally qualified health centers] (FQHCs) are reimbursed in accordance with §355.8261 of this subchapter (relating to Federally Qualified Health Center Services Reimbursement).

(C) For services provided through September 30, 2019, publicly owned dental providers may be eligible to receive Uncompensated Care (UC) payments for dental services under the Texas Healthcare Transformation and Quality Improvement 1115 Waiver, as described in this section. For services provided beginning October 1,

2019, eligibility for publicly owned dental providers to receive waiver payments, and the methodology for calculating payment amounts, is described in §355.8208 [section 355.8208] of this subchapter (relating to Waiver Payments to Publicly-Owned Dental Providers for Uncompensated Charity Care) [title]. For purposes of this section, Uncompensated Care payments are payments intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act. HHSC will calculate UC payments using the following methodology.[:]

(i) Eligible dental providers must submit an annual cost report based on the federal fiscal year. HHSC will provide the cost report form with detailed instructions to enrolled dental providers. Cost reports are due to HHSC 180 days after the close of the applicable reporting period. Providers must certify that expenditures submitted on the cost report have not been claimed on any other cost report.

(ii) Payments to eligible providers will be based on cost and payment data reported on the cost report along with supporting documentation. As defined in the cost report and detailed instructions, a cost-to-billed-charges ratio will be used to calculate the total allowable cost. The total allowable cost minus any payments will be the UC payment due to the provider. The UC payment is calculated yearly and is contingent on receipt of funds as specified in clause (iii) of this subparagraph.

(iii) The funding for the state share of UC payments is limited to [:] and obtained through, intergovernmental transfers of funds from the governmental entity that owns and operates the dental provider. An intergovernmental transfer that is not received in the manner and by the date specified by HHSC may not be accepted.

(iv) UC payments are limited by the publicly owned dental provider pool aggregate limit as determined by §355.8201 of this subchapter (relating to Waiver Payments to Hospitals for Uncompensated Care).

(v) If actual UC costs for all eligible publicly owned dental providers are [is] greater than the publicly owned dental provider pool aggregate limit as described in clause (iv) of this subparagraph, then HHSC will reduce the UC payments for all eligible publicly owned dental providers proportionately.

(vi) If a UC payment results in an overpayment or if the federal government disallows federal financial participation related to the receipt or use of supplemental payments under this section, HHSC may recoup an amount equal to the federal share of supplemental payments overpaid or disallowed. To satisfy the amount owed, HHSC may recoup from any current or future Medicaid payments.

(12) Personal care services (PCS) are reimbursed in accordance with the following Medicaid reimbursement methodologies for the applicable provider type.[:]

(A) School districts delivering PCS under School Health and Related Services (SHARS) are reimbursed in accordance with §355.8443 of this division (relating to Reimbursement Methodology for School Health and Related Services (SHARS)).[: and]

(B) Providers other than school districts delivering PCS are reimbursed as follows:

(i) PCS and PCS delivered in conjunction with delegated nursing services are reimbursed fees determined by HHSC. HHSC reviews the fees for individual services at least every two years based upon:

(I) analysis of Medicare fees for the same or similar item or service;

(II) analysis of Medicaid fees for the same or similar item or service in other states; or

(III) analysis of commercial fees for the same or similar item or service.

(ii) HHSC may use data sources or methodologies other than those listed in clause (i) of this subparagraph to establish Medicaid fees for physicians and other practitioners when HHSC determines that those methodologies are unreasonable or insufficient.

(iii) PCS delivered through the Consumer Directed Services payment option are reimbursed in accordance with §355.114 of this chapter (relating to Consumer Directed Services Payment Option).

(13) Licensed Behavior Analysts (LBAs) are reimbursed in accordance with §355.8085 of this subchapter and Licensed Assistant Behavior Analysts (LaBAs) are reimbursed at a percentage of LBAs' reimbursement rate.

(b) Fees for EPSDT services are adjusted within available funding as described in §355.201 of this chapter [title] (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid [by the Health and Human Services Commission]).

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500121

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 217-1686



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.15

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, §1.15, Integrated Housing Rule. The purpose of the proposed repeal is to include updates to references and make minor technical corrections.

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

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

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

Mr. Bobby Wilkinson 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 an existing activity: requirements relating to integrated housing for recipients of Department funds.

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 section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 31, 2025 through March 4, 2025, to

receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 4, 2025.

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.

§1.15. Integrated Housing Rule.

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500144
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 2, 2025
For further information, please call: (512) 475-3959



10 TAC §1.15

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, §1.15, Integrated Housing Rule. The purpose of the proposed new rule is to include updates to references and make minor technical corrections.

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 section would be in effect:

1. The new section does not create or eliminate a government program but relates to changes to an existing activity: requirements relating to integrated housing for recipients of Department funds.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section 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 section is not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

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

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

8. The new section 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 section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section 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 new section as to its possible effects on local economies and has determined that for the first five years the new section 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 section is in effect, the public benefit anticipated as a result of the new section would be a more current and germane rule. There will not be economic costs to individuals required to comply with the new 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 new section is in effect, enforcing or administering the section does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 31, 2025 through March 4, 2025, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 4, 2025.

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

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

§1.15. Integrated Housing Rule.

(a) Purpose. It is the purpose of this section to provide a standard by which Developments funded by the Department offer an integrated housing opportunity for Households with Disabilities. This rule is authorized by Tex. Gov't Code, §2306.111(g) that promotes projects that provide integrated affordable housing.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the funded or awarded Development, or assigned by federal or state law.

(2) Households with Disabilities--A Household composed of one or more persons, at least one of whom is an individual who is determined to have a physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act or disability as defined by other applicable federal or state law.

(3) Integrated Housing--Living arrangements typical of the general population. Integration is achieved when Households with Disabilities have the option to choose housing units that are located among units that are not reserved or set aside for Households with Disabilities. Integrated Housing is distinctly different from assisted living facilities/arrangements.

(4) Unit--Has the meaning in §11.1(d) of this title, or of Single Family Housing Unit in §20.3 of this title, or Dwelling Unit in §7.2 of this title, or as determined by the applicable funding source or funding announcement.

(c) Applicability. This rule applies to:

(1) All Multifamily Developments subject to Chapter 11 of this title, Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 of this title (relating to Multifamily Direct Loan Rule), with the exclusion of Transitional Housing Developments;

(2) Single Family Developments subject to Chapter 23, Subchapter F, Single Family Development Program, of this title (relating to Single Family HOME Program), §7.3 of this title, or done with Neighborhood Stabilization Program funds, with the exclusion of Shelters, Transitional Housing, and Scattered-site developments, meaning one to four family dwellings located on sites that are on non-adjacent lots, with no more than four units on any one site; and

(3) Only the restrictions or set asides placed on Units through a Contract, LURA, or financing source that limits occupancy to Persons with Disabilities. This rule does not prohibit a Development from having a higher percentage of actual occupants who are Persons with Disabilities.

(4) Previously awarded Multifamily Developments that would no longer be compliant with this rule are not considered to be in violation of the percentages described in subsection (d)(2) or (3) of this section if the award is made prior to September 1, 2018, and the restrictions or set asides were already on the Development or adopted in the Application for the Development.

(d) Integrated Housing Standard. Units exclusively set aside or containing a preference for Households with Disabilities must be dispersed throughout a Development.

(1) A Development may not market or restrict occupancy solely to Households with Disabilities unless required by a federal funding source.

(2) Developments with 50 or more Units shall not exclusively set aside more than 25% of the total Units in the Development for Households with Disabilities.

(3) Developments with fewer than 50 Units shall not exclusively set aside more than 36% of the Units in the Development for Households with Disabilities.

(e) Board Waiver. The Board may waive the requirements of this rule if the Board can affirm that the waiver of the rule is necessary to serve a population or subpopulation that would not be adequately served without the waiver, and that the Development, even with the waiver, does not substantially deviate from the principle of Integrated Housing.

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

Filed with the Office of the Secretary of State on January 16, 2025.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 2, 2025

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



SUBCHAPTER D. UNIFORM GUIDANCE FOR RECIPIENTS OF FEDERAL AND STATE FUNDS

10 TAC §§1.401, 1.403, 1.404, 1.407

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401, Effective Date and Definitions, §1.403, Single Audit Requirements, §1.404, Purchase and Procurement Standards, and §1.407, Inventory Report. The purpose of the amendments is to bring the rule into conformance with the Texas Grant Management Standards Version 2.0 published by the Texas Comptroller of Public Accounts in October 2024.

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 amendments would be in effect:

1. The amendments do not create or eliminate a government program but relate to changes to an existing activity: how state and federal requirements are applied to recipients of Department funds.

2. The amendments 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 amendments do not require additional future legislative appropriations.

4. The amendments will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The amendments are not creating a new regulation.
6. The amendments will amend an existing regulation.
7. The amendments will not increase or decrease the number of individuals subject to the rule's applicability.
8. The amendments 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 amendments and determined that the amendments 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 amendments 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 amendments as to their possible effects on local economies and has determined that for the first five years the amendments 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 amendments are in effect, the public benefit anticipated as a result of the changed sections would be an updated and compliant rule. There will not be economic costs to individuals required to comply with the amended 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 amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT. The public comment period will be held from December 27, 2024 through January 28, 2025, to receive input on the proposed action.

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

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

§1.401. Effective Date and Definition.

(a) Revisions to this Subchapter reflect updates to 2 CFR Part 180 and 2 CFR Part 200, which [and] are generally effective for Contracts executed on or after October 1, 2024. This rule also reflects conformance with the Texas Grant Management Standards Version 2.0 (TxGMS) published by the Texas Comptroller of Public Accounts, which are effective for Contracts executed on or after September 1, 2025. TxGMS 2.0 may also be incorporated into Contracts executed

on or after October 1, 2024, and will be incorporated into Contracts where funds are added on or after September 1, 2025. Previous versions of these rules as memorialized in Contracts will continue to be effective unless the Contract is amended to reflect TxGMS 2.0, unless the Contract is amended to add additional funds on or after October 1, 2024, and that amendment specifically incorporates some or all of the provisions in the rule, to the extent federally allowed.]

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used 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 law.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this part.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Equipment--tangible personal property having a useful life of more than one year or a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$10,000 [(except in the ease of Contracts subject to TXGMS or UGMS, in which case \$5,000)].

(4) Professional services--for a unit of government is as defined by state law. For Private Nonprofit Organizations it means services:

(A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) landscape architecture;
- (iv) land surveying;
- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising;
- (ix) professional nursing; or
- (x) legal services; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;
- (vii) a professional engineer;
- (viii) a state certified or state licensed real estate appraiser;
- (ix) attorney; or
- (x) a registered nurse.

(5) Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, chapter 783, Uniform Grant and Contract Management, as reflected in an audit report.

(6) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds expended by the Subrecipient during their fiscal year along with the outstanding balance of any loans made with federal or state funds if there are continuing compliance requirements other than repayment of the loan.

(7) Subrecipient--Includes an entity receiving or applying for federal or state funds from the Department under Chapters 6, 7, 20, 23, 24, 25, or 26 as identified by Contract or in this subchapter. Except as otherwise noted in this subchapter or by Contract, the definition does not include Applicants/Owners who have applied for and/or received funds under a program administered by the Multifamily Finance Division, except for CHDO Operating funds, a grant made to a unit of government or nonprofit organization, or Affiliate, or TCAP-RF grants or loans when made to a unit of government or nonprofit organization or Affiliate. Except as otherwise noted in this subchapter or by Contract, this definition does not include vendors having been procured by the Department for goods or services. A Subrecipient may also be referred to as Administrator.

(8) Supplies--means tangible personal property other than "Equipment" in this section.

(9) Texas Grant Management Standards (TxGMS)--The standardized set of financial management procedures and definitions established by Tex. Gov't Code, chapter 783 regarding Uniform Grant and Contract Management to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. This includes TxGMS Version 2.0 published by the Texas Comptroller of Public Accounts in October 2024. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations including public housing and housing finance agencies. In addition, Tex. Gov't Code Chapter 2105, regarding Administration of Block Grants, subjects subrecipients of federal block grants (as defined therein) to TxGMS.

(10) Uniform Grant Management Standards (UGMS)--the standardized set of financial management procedures used by the Department in Contracts that began before January 1, 2022.

§1.403. Single Audit Requirements.

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have applied for or received Direct Loan Funds, grants or 811 PRA funds from the Department who are or have an Affiliate that is required to submit a Single Audit, i.e. units of government, nonprofit organizations.

(b) Procurement of a Single Auditor. A Subrecipient or Affiliate must procure their single auditor in the following manner unless subject to a different requirement in the Local Government Code:

(1) Competitive Proposal procedures whereby competitors' qualifications are evaluated and a contract awarded to the most qualified competitor. Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources. Procurements must be conducted in a manner that prohibits the use of in-state or local geographical preferences in the evaluation of bids or proposals;

(2) A Subrecipient may not use the sealed bid method for procurement of the Single Auditor. There is no requirement that the

selected audit firm be geographically located near the Subrecipient. If a Subrecipient does not receive proposals from firms with appropriate experience or responses with a price that is not reasonable compared to the cost price analysis, the submissions must be rejected and procurement must be re-performed.

(c) A Subrecipient or Affiliate must confirm that it is contracting with an audit firm that is properly licensed to perform the Single Audit and is not on a limited scope status or under any other sanction, reprimand or violation with the Texas State Board of Public Accountability. The Subrecipient must ensure that the Single Audit is performed in accordance with the limitations on the auditor's license.

(d) A Subrecipient is required to submit a Single Audit Certification form within two (2) months after the end of its fiscal year indicating the amount they expended in Federal and State funds during the fiscal year and the outstanding balance of any loans made with federal funds if there are continuing compliance requirements other than repayment of the loan.

(e) Subrecipients that expend \$1,000,000 or more in an entity's fiscal year that starts on or after October 1, 2024 (or in the case of an entity's fiscal years starting before October 1, 2024, \$750,000 or more) in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of \$1,000,000 or \$750,000 (as applicable for the fiscal year) with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted. [~~Subrecipients that expend \$1,000,000 or more (or in the case of entities subject to TXGMS or UGMS of \$750,000 or more) in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of \$1,000,000 or more (or in the case of entities subject to TXMGS or UGMS of \$750,000 or more) with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted.~~] If the Subrecipient's Single Audit is required by 2 CFR 200, subpart F, the report must be submitted to the Federal Audit Clearinghouse the earlier of 30 calendar days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal year. If a Single Audit is required but not under 2 CFR Part 200, subpart F, the report must be submitted to the Department the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of its respective fiscal year. If the deadline is on a Saturday, Sunday, federal holiday (for a Single Audit required to be submitted to the Federal Audit Clearinghouse), or a state holiday (for a Single Audit required to be submitted to the Department), the deadline is the next business day.

(f) Subrecipients are required to submit a notification to the Department within five business days of submission to the Federal Audit Clearinghouse. Along with the notice, the Subrecipient must indicate if the auditor issued a management letter. If a management letter was issued by the auditor, a copy must be sent to the Department.

(g) The Department will review the Single Audit and issue a management decision letter for audit findings pertaining to the Federal award provided to the Subrecipient from the Department. If the Single Audit results in disallowed costs, those amounts must be repaid or an acceptable repayment plan must be entered into with the Department in accordance with 10 TAC §1.21, Action by Department if Outstanding Balances Exist.

(h) In evaluating a Single Audit, the Department will consider both audit findings and management responses in its review. The Department will notify Subrecipients and Affiliates (if applicable) of any Deficiencies or Findings from within the Single Audit for which the Department requires additional information or clarification and will provide a deadline by which that resolution must occur.

(i) All findings identified in the most recent Single Audit will be reported to the Executive Director during the Previous Participation review process described in Subchapter C of this Chapter. The Subrecipient may submit written comments for consideration within five business days of the Department's management decision letter.

(j) If the Subrecipient disagrees with the auditors finding(s), and the issue is related to administration of one of the Department's programs, an appeal process is available to provide an opportunity for the auditee to explain its disagreement to the Department. This is not an appeal of audit findings themselves. The Subrecipient may submit a letter of appeal and documentation to support the appeal. The Department will take the documentation and written appeal into consideration prior to issuing a management decision letter. If the Subrecipient does not disagree with the auditor's finding, no appeal to the Department is available.

(k) In accordance with 2 CFR Part 200 and the State of Texas Single Audit Circular §225, with the exception of nondiscretionary CSBG funds except as otherwise required by federal laws or regulations, the Department may suspend and cease payments under all active Contracts, or refrain from executing a new Contract for any Board awarded contracts, until the Single Audit is received. In addition, the Department may elect not to renew an entity in accordance with §1.411 of this Chapter (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code), or not amend or enter into a new Contract with a Subrecipient until receipt of the required Single Audit Certification form or the submission requirements detailed in subsection (e) of this section.

(l) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Subrecipient applies for funding or an award from the Department, findings noted in the Single Audit and the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to the Executive Director.

§1.404. Purchase and Procurement Standards.

(a) The procurement of all goods and services shall be conducted, to the maximum extent practical, in a manner providing full and open competition consistent with the standards of 2 CFR Part 200, UGMS, and TxGMS, as applicable.

(b) Subrecipients shall establish, and require its subrecipients/Subcontractors (as applicable by program regulations) to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts. Procedures must:

(1) include a cost or price analysis that provides for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Where appropriate, analyzing lease versus purchase alternatives, performing the proposed service in-house, and performing any other appropriate analysis to determine the most economical approach.

(2) require that solicitations for goods and services provide for a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition, but must contain requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. The specific features of "brand name or equal value" that bidders are required to meet must be listed in the solicitation.

(3) include a method for conducting technical evaluations of the proposals received and for selecting awardees.

(c) Documentation of procurement processes, to include but not be limited to the items in paragraphs (1) to (9) of this subsection, must be maintained by the Subrecipient in accordance with the record retention requirements of the applicable program:

- (1) rationale for the type of procurement,
- (2) cost or price analysis,
- (3) procurement package,
- (4) advertising,
- (5) responses,
- (6) selection process,
- (7) contractor selection or rejection,
- (8) certification of conflict of interest requirements being satisfied, and
- (9) evidence that the awardee is not an excluded entity in the System for Award Management (SAM).

(d) In accordance with 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter D, Division 1, each Subrecipient shall make a good faith effort to utilize the state's Historically Underutilized Business Program in contracts for construction, services (including consulting and Professional Services) and commodities purchases.

(e) The State of Texas conducts procurement for many materials, goods, and appliances. Use of the State of Texas Co-Op Purchasing Program does not satisfy the requirements of 2 CFR Part 200. For more detail about how to purchase from the state contract, please contact: State of Texas Co-Op Purchasing Program, Texas Comptroller of Public Accounts. If Subrecipients choose to use the Cooperative Purchasing Program, documentation of annual fee payment is required.

(f) All vehicles considered for purchase with state or federal funds must be pre-approved by the Department. Subrecipient must present written justification for the needed vehicle. If approved such approval will be provided via written correspondence from the Department. Procurement procedures must include provisions for full and open competition and a comparison of the costs associated with leasing versus buying a vehicle. Any vehicle purchased without approval may result in disallowed costs.

(g) For procurement transactions not subject to UGMS or TxGMS, the Department has adopted a \$10,000 micropurchase and \$250,000 simplified acquisition threshold. If the federal simplified acquisition threshold changes, as a result of 2 CFR §200.88, or if it is temporarily raised because of a federal disaster declaration, the Department will publish the new amount on its website. For procurement transactions subject to TxGMS 2.0, but not 2 CFR Part 200 [UGMS or TxGMS] Subrecipient must follow a \$10,000 [~~\$3,000~~] micropurchase threshold and a \$500,000 [~~\$250,000~~] Texas Acquisition Threshold [(which is currently tied to the federal simplified acquisition threshold)]. For procurement transactions subject to UGMS or TXGMS prior to version 2.0, Subrecipient must follow a \$3,000 micropurchase threshold and a \$250,000 Texas Acquisition Threshold. Certain political subdivisions (such as cities and counties) are required under state law to follow a \$50,000 sealed bid threshold. [If the federal simplified acquisition threshold changes, as a result of 2 CFR §200.88, or if it is temporarily raised because of a federal disaster declaration, the Department will publish the new amount on its website.]

§1.407. Inventory Report.

(a) The Department requires the submission of an inventory report for all Contracts to be submitted to the Department, no later than 45 calendar days after the end of the Contract Term, or a more frequent period as reflected in the Contract. Real Property and Equipment must be inventoried and reported on the Department's required form. The form and instructions are found on the Department's website.

(b) Real property and Equipment purchased with funds under a Contract with the Department must be inventoried and reported to the Department during the Contract Term.

(c) Aggregate Supplies of over \$10,000 [(except in the case of Contracts subject to TXGMS or UGMS, in which case this limit is \$5,000)], must be reported to the Department at the end of the Contract Term using federal form SF-428, which is a standard form to collect information related to tangible personal property or other form required by the federal fund source.

(d) For certain public facility activities funded by the Community Development Block Grant, inventory requirements will be those required by HUD for real property, as further identified in the Contract.

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

Filed with the Office of the Secretary of State on January 16, 2025.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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



CHAPTER 2. ENFORCEMENT

SUBCHAPTER B. ENFORCEMENT FOR NONCOMPLIANCE WITH PROGRAM REQUIREMENTS OF CHAPTERS 6 AND 7

10 TAC §2.201, §2.202

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 2, Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7, §2.201, Cost Reimbursement, and §2.202 Sanctions and Contract Closeout. The purpose of the proposed repeal is to make changes to bring this rule into consistency with other more recent revisions to Department rules and processes and to improve clarity.

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

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

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

Mr. Bobby Wilkinson 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 an existing activity: how to handle certain facets of enforcement actions relating to the Community Affairs and Homelessness Programs.

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. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 31, 2025 through March 4, 2025, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us.

ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 4, 2025.

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.

§2.201. *Cost Reimbursement.*

§2.202. *Sanctions and Contract Closeout.*

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

Filed with the Office of the Secretary of State on January 16, 2025.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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



10 TAC §2.201, §2.202

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 2, Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7, §2.201, Cost Reimbursement, and §2.202 Sanctions and Contract Closeout. The purpose of the proposed repeal is to make changes to bring this rule into consistency with other more recent revisions to Department rules and processes and to improve clarity.

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 relates to changes to an existing activity: how to handle certain facets of enforcement actions relating to the Community Affairs and Homelessness Programs.
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 they 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 a more current and germane rule. 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 sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 31, 2025 through March 4, 2025, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 4, 2025.

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 affects no other code, article, or statute.

§2.201. *Cost Reimbursement.*

(a) The Department may place on Cost Reimbursement any Contract, other than non-Discretionary CSBG. Cost Reimbursement requires Subrecipients to submit supporting documentation and back up for Expenditures or Obligations prior to the Department releasing

funds. The Department staff will indicate for each entity placed on Cost Reimbursement status whether all expenses will be reviewed or a sample, and the nature of any additional documentation that the Department will require from the Subrecipient in connection therewith. The decision by the Department to release funds in a cost review situation does not constitute final approval of the expenditure. Funds so advanced remain subject to future reviews, monitoring, and audits and in no way does the decision to release funds constrain or limit those staff performing further reviews, monitoring, or audits.

(b) In addition to the reporting requirements outlined in §6.7 of this title (relating to Subrecipient Reporting Requirements) an entity on Cost Reimbursement must submit, at a minimum, their expanded general ledger, chart of accounts, cost allocation plan, and bank reconciliations for the previous three months. Upon review of those items the Department will request submission of back up for some or all of the reported Expenditures.

(c) To the extent that the Contract has budget caps, the budget caps for each budget category will be enforced each month for which the entity is on Cost Reimbursement.

(d) An entity will be removed from Cost Reimbursement when the Department determines that identified risks or concerns have been sufficiently mitigated.

(e) An entity on Cost Reimbursement remains subject to further reviews, monitoring, and audits.

(f) The Department reserves the right to outsource some or all of its work associated with the Cost Reimbursement process to a third party.

§2.202. Sanctions and Contract Closeout.

(a) A Subrecipient that enters into a Contract with the Department to administer programs are required to follow all Legal Requirements governing these programs.

(b) If a Subrecipient fails to comply with program and Contract requirements, rules, or regulations and in the event monitoring or other reliable sources reveal material Deficiencies or Findings in performance, or if the Subrecipient fails to correct any Deficiency or Finding within the time allowed by federal or state law, the Department, in order to protect state or federal funds, may take reasonable and appropriate actions, including, but not limited to, one or more of the items described in paragraphs (1) - (6) of this subsection. In so doing, the Department will not take any action that exceeds what it is permitted to do under applicable state and federal law. The Department, as appropriate, may provide written notice of its actions and the rights of a Subrecipient to appeal.

(1) Place the Subrecipient on Cost Reimbursement as further described in §2.201 of this subchapter;

(2) With the exception of non-Discretionary CSBG, withhold all payments from the Subrecipient (both reimbursements and advances) until acceptable confirmation of compliance with the rules and regulations are received by the Department;

(3) Reduce the allocation of funds to Subrecipients as described in §2.203 of this subchapter (relating to Termination and Reduction of Funding for CSBG Eligible Entities) and as limited for LI-HEAP funds as outlined in Tex. Gov't Code, Chapter 2105;

(4) With the exception of non-Discretionary CSBG, suspend performance of the Contract or reduce funds until proof of compliance with the rules and regulations are received by the Department or a decision is made by the Department to initiate proceedings for Contract termination;

(5) If permitted by applicable state and federal statute and regulations, elect not to provide future grant funds to the Subrecipient, either prospectively in general or until appropriate actions are taken to ensure compliance; and/or

(6) Terminate the Contract. Adhering to the requirements governing each specific program administered by the Department, as needed, the Department may determine to proceed with the termination of a Contract, in whole or in part, at any time the Department establishes there is good cause for termination. Such cause may include, but is not limited to: fraud; waste; abuse; fiscal mismanagement; not providing services to clients, or failing to expend Contract funds to serve clients, as contemplated under the Contract; or other serious Findings in the Subrecipient's performance. For CSBG contract termination procedures, refer to §2.203 of this subchapter.

(c) Contract Closeout. When a Contract is terminated, or voluntarily relinquished, the procedures described in paragraphs (1) - (12) of this subsection will be implemented. The terminology of a "terminated" Subrecipient below is intended to include a Subrecipient that is voluntarily terminating the Contract.

(1) The Department will issue a termination letter to the Subrecipient no less than 30 days prior to terminating the Contract; in the case of a Subrecipient that has notified the Department in writing of voluntarily relinquishment, the Department will acknowledge that termination in writing. If the entity is an Eligible Entity the Department, following the CSBG Act, will simultaneously initiate proceedings to terminate the Eligible Entity status and the effectiveness of the contractual termination will be stayed automatically pending the outcome of those proceedings. The Department may determine to take one or more of the following actions:

(A) suspend funds immediately;

(B) allow the Subrecipient to pursue a temporary transfer to another Department-approved provider;

(C) require Cost Reimbursement for closeout proceedings; and/or

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

(2) If the Department determines that Cost Reimbursement is appropriate to accomplish closeout, the provisions in §2.201 of this subchapter will be utilized.

(3) No later than 30 calendar days after the Contract is terminated, the Subrecipient will perform a physical inventory of client files, including case management files.

(4) The terminated Subrecipient will have 30 calendar days from the date of the physical inventory to make available to the Department all current client files, which must be boxed by the county in which a household received assistance. Current and active case management files also must be inventoried, and boxed by county.

(5) Within 60 calendar days following the Subrecipient due date for preparing and boxing client files, Department staff will retrieve the client files.

(6) The terminated Subrecipient will prepare and submit no later than 30 calendar days from the date the Department retrieves

the client files, a final report containing a full accounting of all funds expended under the Contract.

(7) A final monthly expenditure report and a final monthly performance report for all remaining expenditures incurred during the Contract period must be received by the Department no later than 45 calendar days from the date the Department determines that the closeout of the program and the period of transition are complete.

(8) The Subrecipient will submit to the Department no later than 45 calendar days after the termination of the Contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the Contract as further described in §1.407 of this title.

(9) The Department may require transfer of title to Equipment to the Department or may direct that a Subrecipient transfer such title to Equipment to another entity receiving funds from the Department. The Department will make arrangements to remove Equipment covered by this paragraph within 90 calendar days following termination of the Contract.

(10) Upon selection of a new service provider, the Department will transfer to the new provider client files and, as appropriate, Equipment.

(11) A current year Single Audit must be performed for all entities that have exceeded the federal expenditure threshold under 2 CFR Part 200, Subpart F or the State expenditure threshold under Texas Grant Management Standards, as applicable. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the Contract. The terminated Subrecipient must have a binding contract with a Certified Public Accounting firm on or before the termination date of the Contract. The actual costs of the Single Audit and accrued audit costs including support documentation must be submitted to the Department no later than 45 calendar days from the date the Department determines the closeout is complete.

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

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500141

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 2, 2025

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



CHAPTER 5. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801, §5.802

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program. The purpose of the repeal is to eliminate an outdated rule, while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Department's Section 8 Housing Choice Voucher Program.

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Section 8 Housing Choice Voucher Program.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 24, 2025, to February 24, 2025, to receive input on the proposed repealed chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email abigail.versyp@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central Time, February 24, 2025.

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

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§5.801. *Project Access Initiative.*

§5.802. *Waiting List.*

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500142

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 2, 2025

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



10 TAC §5.801, §5.802

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program. The purpose of the proposed new sections is to comply with federal requirements and update its procedures to include additional special purpose vouchers.

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

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

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Section 8 Housing Choice Voucher Programs.

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

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

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

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

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

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed new 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 §2306.111.

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

2. The Department has determined that because the proposed new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the proposed new 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 proposed new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule outlines administration of an existing depart-

ment program and is purely administrative, there are no "probable" effects of the proposed new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to federal and state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 24, 2025, to February 24, 2025, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email to abigail.versyp@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central Time, February 24, 2025.

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

Except as described herein the proposed new rule affects no other code, article, or statute.

§5.801. Project Access Initiative.

(a) Purpose. The Project Access Program (PA Program) is a program that utilizes federal Section 8 Housing Choice Vouchers, Non-Elderly Disabled Vouchers, and Mainstream Vouchers administered by the Texas Department of Housing and Community Affairs (the Department) to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing. This rule provides the parameters and eligibility standards for this program.

(b) Definitions.

(1) At-Risk Applicant--A household that has applied to the Department's Section 8 Project Access program, and exited an Institution prior to issuance of a Department Section 8 Housing Choice Voucher using an alternate short term rental assistance solution and is at risk of that short term rental assistance ending.

(2) HHSC--Texas Health and Human Services Commission.

(3) HUD--The U.S. Department of Housing and Urban Development.

(4) Institution--Congregate settings populated exclusively or primarily with individuals with disabilities; congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or settings that provide for daytime activities primarily with other individuals with disabilities. This definition includes but is

not limited to a nursing facility, state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD. The definition for Institution is further limited for vouchers funded with NED as further provided for in subsection (e)(2)(C) of this section. This definition does not include a prison, jail, halfway house, or other setting that persons reside in as part of a criminal proceeding.

(5) Mainstream Vouchers (MVP)--HUD's Mainstream Voucher Program.

(6) Non-Elderly Disabled (NED)--HUD's Non-Elderly Disabled Program.

(7) Section 8--HUD's Section 8 Housing Choice Voucher Program administered by the Department.

(c) Regulations Governing Program. All Section 8 Program rules and regulations, including but not limited to, criterion at 24 CFR Part 982 apply to the program.

(d) Project Access in the Department's PHA Plan. Project Access households have a preference in the Department's Section 8 Program, as designated in the Department's Annual PHA Plan. The total number of Project Access Vouchers will be determined each year in the Department's PHA Plan.

(e) Eligibility for the Project Access Program.

(1) A household that participates in the Project Access Program must meet all Section 8 eligibility criteria, and one member of the household must meet the eligibility criteria in subparagraphs (A) and (B) of this paragraph:

(A) Must have a disability as defined in 24 CFR §5.403; and

(B) Must meet one of the criteria in clauses (i) or (ii) of this subparagraph:

(i) be a resident of an Institution at the time of voucher issuance; or

(ii) be an At-Risk Applicant that meets one of the criteria of subclauses (I) through (IV) of this clause:

(I) A current recipient of Tenant-Based Rental Assistance (TBRA) from a HOME Investment Partnership Program, whose assistance from that HOME source is within six months of expiration and is not eligible for extension or renewal, and was a previous resident of an Institution prior to receiving the TBRA assistance;

(II) A household with a household member who meets the criteria of an At-Risk Applicant and has lost their TBRA from a HOME Investment Partnership Program due to lack of available funding;

(III) A household that is a current recipient of rental assistance funded by HHSC, whose assistance from HHSC is within six months of expiration and is not eligible for extension or renewal, and was a previous resident of an Institution immediately prior to receiving the assistance; or

(IV) A household that is a current recipient of HHSC funded group home housing that was a previous resident of a state hospital immediately prior to receiving the group home assistance.

(2) NED and Mainstream Vouchers have additional eligibility criteria which are:

(A) The household member with the disability as defined in 24 CFR §5.403, must be 18 but under 62 years of age at the time of voucher issuance;

(B) For NED only, the head of household, spouse, co-head, or sole member, must be a person with a disability; and

(C) For NED only, the qualifying household member must not be an At-Risk Applicant as described in this subsection, must be residing in a nursing facility, Texas state psychiatric hospital, or intermediate care facility immediately prior to voucher issuance, and must also be referred by the applicable HHSC funded agency.

(f) Waiting List and Allocation of Vouchers.

(1) Unless no longer authorized as a set-aside by HUD, no more than 10 percent of the vouchers used in the Project Access Program will be reserved for households with a household member eligible for a pilot program in partnership with the HHSC for Texas state psychiatric hospitals who otherwise meets the criteria of the Project Access Program at the time of voucher issuance.

(2) The Department will accept an application for the PA Program at any time. An applicant for the PA Program is placed on a Waiting List until a voucher becomes available. An applicant who qualifies for the Project Access HHSC Pilot Program in subsection (f)(1) of this section is placed on a Waiting List for Project Access HHSC Pilot Program, and also for the general PA Program Waiting List.

(3) The Department will select applicants off the Waiting List for the Project Access HHSC Pilot Program, and for the general PA Program waitlist. Households will first be assessed for eligibility for NED and Mainstream Vouchers. Households eligible for PA that are not eligible for NED or Mainstream may be issued a regular Section 8 Voucher.

(4) Maintaining Status on the Project Access Waiting List. A household on the Project Access waiting list may maintain their order and eligibility for a Project Access voucher if the household:

(A) Applied for the PA Program and was placed on the waiting list prior to transition out of an Institution; and

(B) Received continuous rental assistance from one of the eligible sources identified under subsection (e)(1)(B)(ii) of this section or other Department funding for rental assistance from the time of exit from an Institution until the issuance of the Project Access voucher.

§5.802. Waiting List.

(a) Purpose. The U.S. Department of Housing and Urban Development (HUD) requires that the Texas Department of Housing and Community Affairs (the Department), in its role as a public housing authority (PHA) administering a Housing Choice Voucher (HCV) program, adopt a clear approach to accepting applications, placing households on the waiting list, and selecting households from the waiting list. This rule provides the Department's policies for taking applications, managing the waiting list and selecting households for HCV assistance specifically for its 34-county jurisdictional area.

(b) Applicability.

(1) This rule is applicable only to the specific geographically limited jurisdiction of the Department. This jurisdictional area is comprised of discrete areas within counties (currently 34), but may be expanded or reduced upon action of the Board. The jurisdictional area reflected on the Department's website will serve as the jurisdictional area for the purpose of this rule.

(2) This rule does not apply to the waiting list for statewide Project Access vouchers which is addressed in §5.801 of this chapter (relating to Project Access Initiative). The rule does not address the specific waiting list process for project-based vouchers administered by the Department or for HUD Veterans Affairs Supportive Housing

(VASH) vouchers administered by the Department. Should any special purpose vouchers be received by the Department that serve specific populations or geographic areas other than the geographically limited jurisdiction of the Department referenced in paragraph (1) of this subsection, these waiting lists policies are not required to be utilized. Additionally, certain households might be accepted into the HCV program if required by 24 CFR §982.203, or at the direction of HUD, as directed by a court of law, or as part of a TDHCA conciliation agreement.

(c) Definitions and HUD Regulations.

(1) While the HUD regulations in 24 CFR Parts 5, §§903 and 982 use the word "family," in order to be consistent with other rules in this Part, this rule will use the word "household." Both words are intended to have the same meaning.

(2) Nothing in this rule is intended to conflict with federal statutes or regulations that govern the HCV assistance. If HUD mandates a process or procedure to be used for application or waiting list management that is not identified in this rule, the Department will follow HUD's direction and will amend this rule as soon as practicable.

(d) Outreach and Affirmative Marketing.

(1) HUD regulations require that all households have an equal opportunity to apply for and receive housing assistance, and that the PHA affirmatively further fair housing goals in the administration of the program (24 CFR §982.53).

(2) The Department will conduct sufficient outreach to ensure that a sufficient number of applications will be received. HUD requires that at least 75% of the households served by the Department are extremely low-income households, and therefore the Department may need to conduct special outreach to ensure that an adequate number of extremely low-income households apply for assistance. All outreach will specify the number of households that will be accepted onto the waiting list.

(3) All outreach efforts relating to the opening of the waiting list will take place at least 7 calendar days prior to the first day of the application acceptance period, but no longer than 45 calendar days prior to the first day of the application acceptance period.

(4) Prior to performing outreach efforts for the opening of the waiting list, the Department will analyze the characteristics of the population being served by the program and the characteristics of the population as a whole in the PHA's jurisdiction to identify underserved populations. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are underrepresented in the program. Outreach materials will be provided in English, Spanish, and any other language as determined by a 4-factor analysis within each county service area.

(5) Outreach efforts will include:

(A) marketing through press releases to local newspapers, including minority newspapers;

(B) communicating with councils of governments, regional planning councils, and community action agencies, whose jurisdictions include any one of the counties in the jurisdiction of the Department, to:

(i) request that they distribute informational materials and flyers to their clients;

(ii) offer training so that they can assist households with submitting an online application; and

(iii) request that they make available a computer or web interface for clients to apply;

(C) developing partnerships with other organizations that serve the low-income population and agencies that provide services to elderly persons, people with disabilities, and people with Limited English proficiency (LEP); and

(D) clear guidance on how a person with a disability can request a reasonable accommodation for the application process.

(6) The Department will maintain a designated telephone number where interested persons can receive specific directions on how and when to apply.

(e) Application.

(1) The Department will utilize an electronic application process available in multiple languages.

(2) Any household that wishes to receive HCV assistance must apply for admission to the program.

(3) All applications must be received through the Department's online application tool. Applications received in the mail or by hand delivery will not be considered.

(4) To be placed on the waiting list only an initial pre-application is required to be submitted. However, the Department may elect to skip the pre-application and use only the full application. Only when an applicant is being pulled from the waiting list to be offered a voucher will a full application submission be required. Form HUD-92006, Supplement to Application for Federally Assisted Housing, must be submitted as an attachment to the Department's full application. A household must submit the completed pre-application or application to ensure that the Department receives the information needed to determine the household's eligibility.

(5) Application Acceptance Period. Applications will be accepted for a 14-calendar day period.

(6) Individuals who have a disability which would prevent them from making an application online may call the Department to make special arrangements so that Department staff can complete their application in time to be included in the lottery process. A Telecommunications Device for the Deaf (TDD) is available for the deaf.

(f) Placement on Waiting List.

(1) No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list (24 CFR §982.202(c)).

(2) Placement on the waiting list does not indicate that the household is, in fact, eligible for assistance. A final determination of eligibility will be made when the household is selected from the waiting list.

(3) Creation of Waiting List. The Department will establish a single waiting list for its jurisdictional area. The Department will announce in its outreach documents the total number of households it will place on its waiting list. Except for households on a project-based waiting list, all households that are on a special purpose waiting list at the beginning of the application acceptance period and that wish to live in the Department's jurisdictional area will be placed first on the jurisdictional waiting list based on the time they have been on the special purpose waiting list (i.e. oldest time on any special purpose waiting list gets assigned the first number). All other applications received during the application acceptance period will be assigned a number using a random number generator, called a lottery process. These applications will then be placed in numerical order according to that assigned number. The Department will then place applicants on the waiting list up to the number of households the Department announced it would accept on its waiting list in rising numerical order (inclusive of the

households automatically placed on the jurisdictional waiting list because they were on a special purpose waiting list at the beginning of the application acceptance period). All other applications not within the number being accepted on the wait list will not be placed on the waiting list. All applications submitted will be notified in writing of having been added to the waiting list and their number ranking, or that they were not placed on the waiting list.

(4) Ineligible for Placement on the Waiting List. If the Department can determine from the information provided that a household is ineligible, the household will not be placed on the waiting list or be able to participate in the lottery process described in this section for placement on the waiting list. Where a household is determined to be ineligible, the Department will send written notification of the ineligibility determination within 14 calendar days of receiving the complete application from the Department at the Department headquarters (24 CFR §982.201(f)). The notice will specify the reasons for ineligibility, and will inform the household of its right to request an informal review and explain the process for doing so.

(5) Applicants with Special Purpose Characteristics. The application for the jurisdictional waiting list will ask if the household qualifies for any of the open special purpose waiting lists, including Project Access, that the Department maintains, except for a project-based waiting list or a waiting list in which a household may not directly apply. The applicant household, if qualified, may be added to one or more special purpose waiting lists at the end of the application acceptance period, but this will not impact their lottery number for the jurisdictional waiting list.

(6) If the Department permanently absorbs vouchers from another housing authority and is reassigned the contract by HUD, the waiting list from the other housing authority will be maintained, in its existing order, but will not be further expanded. That waiting list will be treated as separate from the rest of the Department's waiting list until it has been depleted. If after absorption of that area, the Department opens its jurisdictional waiting list, applicants located in the absorbed area will be eligible to also apply to this waiting list.

(g) Selection of Households from the Waiting List.

(1) The actual order in which households are selected from the waiting list can be affected if a household has certain characteristics designated by HUD or the Department to receive preferential treatment, such as being impacted by a particular declared disaster. Funding earmarked exclusively for households with particular characteristics, such as eligibility for Project Access or FYI, may also alter the order in which households are served. HUD requires that extremely low-income (ELI) households make up at least 75% of the households admitted to the HCV program during the Department's fiscal year. ELI households are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, the Department may skip non-ELI household on the waiting list in order to select an ELI household. (24 CFR §982.201(b)(2)). The skipped non-ELI household will retain its position on the waiting list. Low-income households admitted to the program that are "continuously assisted" under the 1937 Housing Act (24 CFR 982.4(b)), as well as low-income or moderate-income households admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes (24 CFR §982.201(b)(2)(v)).

(2) When a voucher becomes available, the Department will select the household at the top of the waiting list. The order of admission from the waiting list IS NOT based on household size, or on the household unit size for which the household qualifies under the occupancy guidelines. If the Department does not have sufficient funds to

subsidize the household unit size of the household at the top of the waiting list, the Department WILL NOT skip the top household to admit an applicant with a smaller household unit size. Instead, the household at the top of the waiting list will be admitted when sufficient funds are available. (24 CFR §982.204(d) and(e)).

(3) When a household comes to the top of the waiting list and the Department is ready to issue a voucher, the household will be notified and required to complete the full application. The household will also be required to complete a Personal Declaration Form. A household that does not respond to the request for full application more than three times will be sent a notice consistent with program policies removing them from the waiting list.

(4) A household's decision to apply for, receive, or refuse non-PHA federal, state, or local housing assistance will not affect the household's placement on the jurisdictional waiting list, or any preferences for which the household may qualify, except as specified in §5.801 of this chapter.

(h) Reporting Changes in Household Circumstances While On the Waiting List. While a household is on the waiting list, the household must immediately inform the Department of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing. Failure to provide this information may prevent the Department from being able to reach a household if a voucher becomes available and may result in removal from the waiting list.

(i) Updating of the Waiting List and Removal from the Waiting List.

(1) To ensure that the Department's waiting list reflects the most current applicant information, the waiting list may be updated no less than every twelve months.

(2) Process.

(A) To update the waiting list, the Department will send an update request to each household on the waiting list to determine whether the household continues to be interested in, and qualifies for, the program. This update request will be sent to the last address on record for the household and to any email address provided by the household.

(B) The update request will provide a deadline by which the household must respond, which will be approximately 10 days from the date the letter is sent and will state that failure to respond will result in the applicant's name being removed from the waiting list.

(C) The household's response to the Department must be in writing and may be delivered, by mail, or by email. Responses should be postmarked or received by the Department no later than the deadline specified in the Department's letter.

(D) If the household fails to respond by the specified deadline, the household will be removed from the waiting list without further notice. If the notice is returned to the Department by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice. If the notice is returned to the Department by the post office with a forwarding address, the notice will be re-sent to the address indicated. The household will have a new deadline specified by which to respond.

(3) Removal from the Waiting List.

(A) If a household is removed from the waiting list for failure to respond, the Department may reinstate the household to their former position on the waiting list if it determines that the lack of response was due to Department error, or to circumstances beyond the

household's control. Greater flexibility in this criterion may be provided as a reasonable accommodation.

(B) If a household is removed from the waiting list because they have failed to respond to the Department's request for more information/updates or the Department has determined that they are no longer eligible for assistance, a notice will be sent to the household's address of record as well as to any alternate address or email address provided on the initial application. The notice will state the reasons the household was removed from the waiting list and will inform the household that they have 10 calendar days from the date of the written correspondence to request an informal review of the Department's decision (24 CFR §982.201(f)).

(C) If a household accepts a tenant-based public housing voucher from the Department, the household will be removed from all tenant-based public housing Department waiting lists.

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500143

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 2, 2025

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



TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER A. OFFICIALS

DIVISION 3. DUTIES OF OTHER OFFICIALS

16 TAC §313.61

The Texas Racing Commission (TXRC) proposes rule amendments in Texas Administrative Code, Title 16, Part 8, Chapter 313, §313.61. Horsemen's Bookkeeper. The purpose of this rule amendment is to strengthen the ability of the Commission to track and audit funds that are managed by the Horsemen's Bookkeeper.

A. ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL ECONOMY

There are no anticipated economic costs to persons required to comply with the proposed rule amendments. There is no effect on local economy for the first five years that the proposed rule amendments will be in effect; therefore, no local employment impact statement is required under Texas Government Code §§2001.022 and 2001.024(a)(6).

B. FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Amy F. Cook, Executive Director, has determined that the proposed rule amendment will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code § 2006.002, is not required.

C. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.0221.

Pursuant to Texas Government Code §2001.0221, Texas Racing Commission provides the following government growth impact statement for the proposed rule amendments. For each year of the first five years that the proposed rule amendments will be in effect, the Texas Racing Commission has determined the following:

The proposed rule amendments will not create or eliminate a government program;

Implementation of the proposed rule amendments will not require the creation of new employee positions or the elimination of existing employee positions;

implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency;

the proposed rule amendments will not require an increase or decrease in fees paid to the agency;

the proposed rule amendments are new rules and therefore create new regulations;

the proposed rule amendments will not expand, limit, or repeal an existing regulation;

the proposed rule amendments will not increase or decrease the number of individuals subject to the rules' applicability; and

the proposed rule amendments will not positively or adversely affect the state's economy.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to improve the positive economic impact, health, and safety of licensed horse racing in Texas by reducing the impact of unlicensed racing.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule amendment.

H. LEGAL REVIEW REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(3).

Amy F. Cook, Executive Director certifies that a legal review has been completed and the proposal is within agency's legal authority to adopt under §2026.001 of the Texas Occupations Code.

REQUESTS FOR PUBLIC COMMENTS

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed under Texas Occupations Code §2021.

CROSS REFERENCE TO STATUTE. Texas Occupations Code §2021.

§313.61. *Horsemen's Bookkeeper.*

(a) Designation of horsemen's bookkeeper.

(1) An association shall ensure a horsemen's bookkeeper is available to maintain the horsemen's account.

(2) The executive secretary may designate an entity unrelated to the association to serve as the horsemen's bookkeeper. To be designated as the horsemen's bookkeeper, an entity must annually submit a plan of operation acceptable to the executive secretary that demonstrates the entity's ability to perform the duties of the horsemen's bookkeeper.

(3) A designation as horsemen's bookkeeper does not constitute a license, but the executive secretary may require any individual involved with a designated entity to receive a license.

(4) If the executive secretary approves an association's request to designate an entity as horsemen's bookkeeper, the association is relieved of responsibility for providing a horsemen's bookkeeper and shall cooperate fully with the horsemen's bookkeeper designated by the executive secretary.

(b) Revocation of designation.

(1) A designation as the horsemen's bookkeeper continues in effect until revoked by the executive secretary.

(2) The executive secretary may revoke a designation as the horsemen's bookkeeper if the executive secretary determines the designated entity has:

(A) failed to comply with the Act, or the plan of operation, in a manner that indicates malfeasance as opposed to mere mistake;

(B) failed to maintain accurate and reliable records;

(C) misappropriated or mishandled funds in its possession or control;

(D) failed to correct within a reasonable time any deficiency in operations identified by the executive secretary in writing; or

(E) had its authority to act as a horsemen's bookkeeper revoked in another jurisdiction.

(3) Before revoking a designation as horsemen's bookkeeper, the executive secretary must issue a notice of proposed revocation which specifically describes the grounds for revocation. No later than 30 days after receiving a notice of proposed revocation, the entity may file a written response to the allegations with the executive secretary.

(4) The executive secretary may not revoke a designation without making adequate provision for a successor horsemen's bookkeeper.

(c) Operations of horsemen's bookkeeper.

(1) Each owner engaged in racing must open and maintain an account with the horsemen's bookkeeper. The horsemen's bookkeeper may permit other individuals to open and maintain an account with the horsemen's bookkeeper, subject to the approval of the executive secretary. The aggregate of all such accounts is the horsemen's account.

(2) The horsemen's bookkeeper shall keep accurate records of the horsemen's account and the constituent accounts. The horsemen's bookkeeper shall:

(A) promptly credit each account with all earnings, awards, and deposits;

(B) deduct or disburse all payments as directed by the owner or authorized agent;

(C) render periodic statements of each constituent account; and

(D) perform all other duties and functions as may be required by the Act or the Rules.

(d) Audit. The executive secretary may at any time inspect, review or audit the records and performance of the horsemen's bookkeeper. Not later than June 15 of each year beginning in 2026, the horsemen's bookkeeper shall submit to the Commission audited financial statements. The funds received and/or expended by the horsemen's bookkeeper from the horse industry escrow account must be included in the audit. An auditor's statement must be included as part of the annual audit attesting to the proper use of the funds received from the horse industry escrow account by the horsemen's bookkeeper.

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

Filed with the Office of the Secretary of State on January 15, 2025.

TRD-202500118

Amy F. Cook
Executive Director

Texas Racing Commission

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 833-6699



CHAPTER 319. VETERINARY PRACTICES
AND DRUG TESTING
SUBCHAPTER B. TREATMENT OF HORSES
16 TAC §319.110

The Texas Racing Commission (TXRC) proposes amendments to Texas Administrative Code, Title 16, Part 8, Chapter 319, §319.110 Requirements to Enter Association Grounds. The purpose of this rule amendment is to require a negative Equine Infectious Anemia (EIA) test within 180 days prior to entry into the stable gate of an association. The rule change also authorizes the Executive Director to require other tests as need arises.

A. ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL ECONOMY

There are no anticipated economic costs to persons required to comply with the proposed rule amendments. There is no effect on local economy for the first five years that the proposed rule amendments will be in effect; therefore, no local employment impact statement is required under Texas Government Code §§2001.022 and 2001.024(a)(6).

B. FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Amy F. Cook, Executive Director, has determined that the proposed rule amendment will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code § 2006.002, is not required.

C. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.0221.

Pursuant to Texas Government Code §2001.0221, Texas Racing Commission provides the following government growth impact statement for the proposed rule amendments. For each year of the first five years that the proposed rule amendments will be in effect, the Texas Racing Commission has determined the following:

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

(2) Implementation of the proposed rule amendments will not require the creation of new employee positions or the elimination of existing employee positions;

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

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

(5) the proposed rule amendments are new rules and therefore create new regulations;

(6) the proposed rule amendments will not expand, limit, or repeal an existing regulation;

(7) the proposed rule amendments will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the proposed rule amendments will not positively or adversely affect the state's economy.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of gov-

ernment action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to improve the positive economic impact, health, and safety of licensed horse racing in Texas by reducing the impact of unlicensed racing.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule amendment.

H. LEGAL REVIEW REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(3).

Amy F. Cook, Executive Director certifies that a legal review has been completed and the proposal is within agency's legal authority to adopt under §2026.001 of the Texas Occupations Code.

REQUESTS FOR PUBLIC COMMENTS

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed under Texas Occupations Code §2026.001.

CROSS REFERENCE TO STATUTE. Texas Occupations Code §2026.001.

§319.110. Requirements to Enter Association Grounds.

To be admitted on to an association's grounds, a horse must be accompanied by paperwork showing ownership, a current certificate of veterinary inspection, including a negative Equine Infectious Anemia (EIA) test within the 180 days prior to entrance to an association grounds, and meet any other health inspection requirements established by federal or state authorities. The Executive Director of the Commission may require a certificate of veterinary inspection or a negative EIA test within a shorter amount of time and may require test results for other diseases based on operational requirements. A copy of the above documents must be kept with the horse identifier through the duration of time the horse is on association property. [the Texas Animal Health Commission.]

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

Filed with the Office of the Secretary of State on January 15, 2025.

TRD-202500119

Amy F. Cook

Executive Director

Texas Racing Commission

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.52 concerning Definitions.

Background, Justification and Summary

The amendment deletes the reference to a section of the Board's rules that no longer exists. A reference is not needed.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will eliminate confusion for those seeking to locate the referenced rule.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase

or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.52. Definitions.

The following words and terms, when used in title 22, part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) "Act" means the Public Accountancy Act, Chapter 901, Occupations Code;

(2) "Advertisement" means a message which is transmitted to persons by, or at the direction of, a person and which has reference to the availability of the person to perform Professional Accounting Services;

(3) "Affiliated entity" means an entity controlling or being controlled by or under common control with another entity, directly or indirectly, through one or more intermediaries;

(4) "Attest Service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by

the AICPA, PCAOB, or another national or international accountancy organization recognized by the board;

(B) a review or compilation required by the board to be performed in accordance with standards for accounting and review services adopted by the AICPA or another national or international accountancy organization recognized by the board;

(C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the AICPA or another national or international accountancy organization recognized by the board;

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the AICPA or another national or international accountancy organization recognized by the board;

(5) "Board" means the Texas State Board of Public Accountancy;

(6) "Charitable Organization" means an organization which has been granted tax-exempt status under the Internal Revenue Code of 1986, §501(c), as amended;

(7) "Client" means a party who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service or professional accounting work;

(8) "Client Practice of Public Accountancy" is the offer to perform or the performance by a person for a client or a potential client of professional accounting services or professional accounting work, and also includes:

(A) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and

(B) the performance of litigation support services;

(9) "Commission" means compensation for recommending or referring any product or service to be supplied by another party;

(10) "Contingent fee" means a fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a person's non-Contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority;

(11) "Financial Statements" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles or other comprehensive basis of accounting. Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements on Standards for Attestation Engagements and tax returns and supporting schedules do not constitute financial statements for the purposes of this definition;

(12) "Firm" means a sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other

legally recognized business entity engaged in the practice of public accountancy;

(13) "Good standing" means compliance by a licensee with the board's licensing rules, including the mandatory continuing education requirements, Peer Review, and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the person must be in compliance with all the provisions of the board order to be considered in good standing;

(14) "Licensee" means the holder of a license issued by the board to a person pursuant to the Act, or pursuant to provisions of a prior Act;

(15) "Out of state practitioner and out of state firm" means a person licensed in another jurisdiction practicing in Texas pursuant to a practice privilege as provided for in §901.461 and §901.462 of the Act (relating to Practice by Certain Out-of-State Firms and Practice by Out-of-State Practitioner with Substantially Equivalent Qualifications);

(16) "Peer Review," "Quality Review" or "Compliance Assurance" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm;

(17) "Person" means an individual, sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity that provides or offers to provide professional accounting services or professional accounting work as defined in paragraph (22) of this section;

(18) "Principal office" means the location specified by the client as the address to which a client practice of public accounting service [described in §517.1(a)(2) of this title (relating to Practice by Certain Out of State Firms)] is directed and is synonymous with Home Office where it appears in the Act;

(19) "Practice unit" means an office of a firm required to be licensed with the board for the purpose of the client practice of public accountancy;

(20) "Practice privilege" means the privilege for an out-of-state person to provide certain Professional Accounting Services or Professional Accounting Work in Texas to the extent permitted under Chapter 517 of this title (relating to Practice by Certain Out of State Firms and Individuals);

(21) "Preparation engagement" means the preparation of financial statements that do not include an audit, review or a compilation report on those financial statements in accordance with Standards for Accounting and Review Services adopted by the AICPA;

(22) "Professional Accounting Services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including but not limited to:

- (A) issuing reports on financial statement(s);
- (B) preparation engagements pursuant to SSARS;
- (C) providing management or financial advisory or consulting services;
- (D) preparing tax returns;
- (E) providing advice in tax matters;
- (F) providing forensic accounting services;
- (G) providing internal auditing services;

(H) accounting, auditing and other assurance services;

(I) providing litigation support services; and

(J) recommending the sale of a product if the recommendation requires or implies accounting or auditing skills.

(23) "Report" means an opinion, report, or other document, prepared in connection with an attest service that states or implies assurance as to the reliability of financial statement(s); and includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing. A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication. A statement or implication of special knowledge or competence in accounting or auditing may arise from the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an accountant or auditor; or the language of the opinion, report, or other document itself.

(24) Interpretive Comment: The practice of public accountancy is defined in §901.003 of the Act (relating to the Practice of Public Accountancy).

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842



22 TAC §501.53

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.53 concerning Applicability of Rules of Professional Conduct.

Background, Justification and Summary

Licensees practicing through a practice privilege in this state must comply with all of the Board's rules of professional conduct. In addition, non-attest financials are not issued in accordance with accounting principles as they do not express an opinion and licensees not in the client practice of public accounting may issue non-attest transmittals without a firm license.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will: 1) make it clear that licensees practicing through a practice privilege in this

state must comply with all of the Board's Rules of Professional Conduct; 2) eliminate the requirement that non-attest financial statements must comply with accounting principles; and 3) make it clear that licensees not in the client practice of public accounting may issue non-attest transmittals without a firm license.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state

will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.53. *Applicability of Rules of Professional Conduct.*

(a) All of the rules of professional conduct shall apply to and must be observed by a certificate or registration holder and any individual who holds a certificate of license as a CPA in another state and whose principal place of business is not in this state but offers or renders professional accounting services in this state pursuant to §901.462 of the Act (relating to Practice by Out-Of-State Practitioner with Substantially Equivalent Qualifications) engaged in the client practice of public accountancy.

~~[(b) No certificate or registration holder shall issue, or otherwise be associated with, financial statements that do not conform to the accounting principles described in §501.61 of this chapter (relating to Accounting Principles).]~~

~~[(b) [(e)] Notwithstanding subsection (a) of this section, the [The] following rules of professional conduct shall be required of all licensees, including licensees practicing pursuant to §901.462 of the Act and certificate or registration holders [apply to and be required to be observed by certificate or registration holders when] not employed in the client practice of public accountancy:~~

~~(1) §501.63(b) of this chapter (relating to Reporting Standards);~~

~~(2) [(4)] §501.73 of this chapter (relating to Integrity and Objectivity) when in an employer/employee relationship;~~

~~(3) [(2)] §501.74 of this chapter (relating to Competence);~~

~~(4) [(3)] §501.77 of this chapter (relating to Acting through Others);~~

~~(5) [(4)] §501.78 of this chapter (relating to Withdrawal or Resignation);~~

~~(6) [(5)] §501.90 of this chapter (relating to Discreditable Acts);~~

~~(7) [(6)] §501.91 of this chapter (relating to Reportable Events);~~

~~(8) [(7)] §501.92 of this chapter (relating to Frivolous Complaints);~~

~~(9) [(8)] §501.93 of this chapter (relating to Responses); and~~

~~(10) [(9)] §501.94 of this chapter (relating to Mandatory Continuing Professional Education).~~

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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22 TAC §501.55

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.55 concerning Definition of Acronyms.

Background, Justification and Summary

Government Auditing Standards is more accurately referred to as Generally Accepted Government Auditing Standards and that is added to the current acronym and TSBPA is added to the acronym in our rules.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will clarify that the correct reference to Government Auditing Standards is more properly referenced as Generally Accepted, and so that the public will understand that TSBPA represents in the Board rules the name of this agency which is Texas State Board of Public Accountancy.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.55. Definition of Acronyms.

The following acronyms, when used in Title 22, Part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings:

- (1) "AICPA" means the American Institute of Certified Public Accountants;
- (2) "CPA" means Certified Public Accountant;
- (3) "CPE" means continuing professional education;
- (4) "FASB" means the Financial Accounting Standards Board;
- (5) "GAAP" means Generally Accepted Accounting Principles;
- (6) "GAAS" means Generally Accepted Auditing Standards;
- (7) "GAGAS" means Generally Accepted Government Auditing Standards;
- (8) "GASB" means the Governmental Accounting Standards Board;
- (9) "IASB" means the International Accounting Standards Board;

- Board;
- (10) "IESB" means the International Ethics Standards Board;
- (11) "IFRB" means International Financial Reporting Bulletins;
- (12) "IFRS" means International Financial Reporting Standards;
- (13) "IRS" means the Internal Revenue Service;
- (14) "NASBA" means the National Association of State Boards of Accountancy;
- (15) "NPRC" means the National Peer Review Committee;
- (16) "PCAOB" means the Public Company Accounting Oversight Board;
- (17) "SAS" means Statements on Auditing Standards;
- (18) "SEC" means the United States Securities and Exchange Commission;
- (19) "SOAH" means the State Office of Administrative Hearings;
- (20) "SSAE" means Statements on Standards for Attestation Engagements;
- (21) "SSARS" means Statements on Standards for Accounting and Review Services;
- (22) "SSCS" means Statements on Standards for Consulting Services;
- (23) "SSTS" means Statements on Standards for Tax Services;
- (24) "TSBPA" means Texas State Board of Public Accountancy;
- (25) [(24)] "TXCPA" means the Texas Society of Certified Public Accountants;
- (26) [(25)] "UAA" means the Uniform Accountancy Act;
- (27) [(26)] "UCPAE" means the Uniform Certified Public Accountant Examination;
- (28) [(27)] "U.S. GAO" means the United States Government Accountability Office; and
- (29) [(28)] "U.S. IQAB" means the United States International Qualifications Appraisal Board.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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SUBCHAPTER B. PROFESSIONAL STANDARDS

22 TAC §501.60

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.60 concerning Auditing Standards.

Background, Justification and Summary

Auditing standards of the Public Company Accounting Oversight Board (PCAOB) also includes PCAOB rules.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will make it clear that this agency expects licensees to comply with PCAOB rules or be subject to disciplinary action.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his

attention at (512) 305-7854, no later than noon on March 3, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.60. Auditing Standards.

A person shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an auditor with respect to such financial statements, unless he has complied with GAAS. Each of the following are considered to be sources of GAAS:

- (1) SAS issued by the AICPA;
- (2) auditing standards included in Standards for Audit of Government Organizations, Programs, Activities and Functions issued by the U.S. GAO;
- (3) auditing and related professional practice standards and rules to be used by registered public accounting firms issued by the PCAOB; as well as,
- (4) other pronouncements having similar generally recognized authority.

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

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J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §501.63

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.63 concerning Reporting Standards.

Background, Justification and Summary

Peer review does not apply to preparation engagements even though it is a very limited attest service.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will make it clear that preparation engagements are not subject to peer review.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small busi-

nesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.63. Reporting Standards.

(a) A licensee in the client practice of public accountancy must comply with SSARS or another similar standard of a national or international accountancy organization recognized by the board when transmitting a client's financial statements to the client or a third party.

(b) A licensee not employed in the client practice of public accountancy may prepare his employer's financial statements and may issue non-attest transmittals or information regarding non-attest transmittals without a firm license, provided those transmittals do not purport to be in compliance with SSARS or any other similar standard of a national or international accountancy organization recognized by the board.

(c) A licensee performing a preparation engagement is not required to enroll in peer review.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.79

The Texas State Board of Public Accountancy (Board) proposes new rule §501.79 concerning Transfer or Return of Files Resulting from the Sale, Transfer, Discontinuation or Acquisition of Practice.

Background, Justification and Summary

A licensee that sells its' client's files must notify the client of the change in firms when the licensee continues to practice with the new firm. A licensee who sell his firm's client files must obtain

permission of the client prior to the transfer of the client files when the licensee does not work with the new firm as an employee or owner. A licensee that discontinues his practice must maintain the confidentiality of the client files and arrange for the return of the client files to the client when requested.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule will help the public understand that the licensee is responsible for communicating the closing of the firm and the protection of the confidentiality of the firm's files, obtaining the client's permission prior to the transfer of the firm's files to a new firm when the licensee transfers the firm's files to the licensee's new firm.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the new rule and a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the new rule does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the new rule is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed new rule.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his

attention at (512) 305-7854, no later than noon on March 3, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§501.79. Transfer or Return of Files Resulting from the Sale, Transfer, Discontinuation or Acquisition of Practice.

(a) A licensee or licensee's firm that sells or transfers all or part of the licensee's practice to another person, firm, or entity, and is employed by the firm or retains ownership in the firm, is required to notify the clients of the change in ownership within 30 days of the sale or transfer.

(b) A licensee or licensee's firm that sells or transfers all or part of the licensee's practice to another person, firm, or entity and will no longer be employed by or retain any ownership in the practice is required to:

(1) submit a written request to each client subject to the sale or transfer, requesting the client's consent to transfer its files to the successor firm. The licensee should not transfer any client files to the successor firm until the client's consent is obtained. The licensee is required to retain evidence of consent for at least five years from the date of sale or transfer of the firm;

(2) arrange to return any client records, not transferred to the new firm, unless the licensee and client agree to some other arrangement; and

(3) retain in a confidential manner, client files where the licensee is unable to contact the client, for at least five years from the sale or transfer. When practicing before the IRS or other taxing authorities or regulatory bodies, licensees should ensure compliance with the most restrictive retention requirements.

(c) A licensee who discontinues his or her practice but does not sell or transfer the practice to a successor firm, is required within 30 days of the discontinuation of the practice to:

(1) Notify each client in writing of the discontinuation of the practice. The licensee must retain evidence of notification made to clients for at least five years. The licensee is not required to provide notification to former clients of the firm.

(2) Return any client records that the licensee is required to provide to the client, unless the licensee and client agree to some other arrangement.

(3) Retain in a confidential manner, client files where the licensee is unable to contact the client, for at least five years from the discontinuation of the practice. When practicing before the IRS or other taxing authorities or regulatory bodies, licensees should ensure compliance with any retention requirements that are more restrictive.

(d) A licensee who acquires all or part of a practice from another person, firm, or entity (predecessor firm) should be satisfied that all clients of the predecessor firm subject to the acquisition have consented to the licensee's continuation of professional services and retention of any client files or records the successor firm retains.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.81

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.81 concerning Firm Licensing.

Background, Justification and Summary

A licensee may provide non-attest accounting services through a non-licensed firm and use the CPA credential in association with the firm but must include the notice that the firm is not a CPA firm and the firm is not regulated by Board each time the licensee uses the CPA credential.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will make clear of the licensee's responsibility to disclose to the public when they are providing non-attest accounting services through a non-CPA firm not regulated by the Board.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.81. Firm Licensing.

(a) A firm, may not provide or offer to provide attest services or use the title "CPA," "CPAs," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or any variation of those titles unless the firm holds a firm license issued by

the board or qualifies under a practice privilege. A firm license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued. A firm license does not expire when the application for license renewal is received by the board prior to its expiration date. An expiration date for a firm license may be extended by the board, in its sole discretion, upon a demonstration of extenuating circumstances that prevented the firm from timely applying for or renewing a firm license.

(b) A firm is required to hold a license issued by the board if the firm establishes or maintains an office in this state.

(c) Each advertisement or written promotional statement that refers to a CPA's designation and his or her association with an unlicensed entity in the client practice of public accountancy must include the disclaimer: "This firm is not a CPA firm and these services are not regulated by the Texas State Board of Public Accountancy." The disclaimer must be included in conspicuous proximity to the name of the unlicensed entity and be printed in a size at least equal to, and a type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio format only, the disclaimer shall be clearly declared at the conclusion of each such presentation.

(d) The requirements of subsection (c) of this section do not apply with regard to a person performing services:

(1) as a licensed attorney at law of this state while in the practice of law or as an employee of a licensed attorney when acting within the scope of the attorney's practice of law;

(2) as an employee, officer, or director of a federally-insured depository institution, when lawfully acting within the scope of the legally permitted activities of the institution's trust department; or

(3) pursuant to a practice privilege.

(e) On the determination by the board that a person has practiced without a license or through an unlicensed firm in violation of subsection (c) of this section, the person's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

(f) Interpretive Comment: A person who is employed by an unlicensed firm that offers services that fall within the definitions of the client practice of public accountancy as defined in §501.52(8) and (22) of this chapter (relating to Definitions) and §901.003 of the Act (relating to Practice of Public Accountancy) must comply with the disclaimer requirement found in subsection (c) of this section.

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

Filed with the Office of the Secretary of State on January 16, 2025.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842



SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.90 concerning Discreditable Acts.

Background, Justification and Summary

The current rules identify acts that the Board may consider discreditable and subject to disciplinary action. The rule also states that there could be additional acts that the Board may find discreditable. The rule is being revised to only include acts that it has identified. The practice has been to hold licensees accountable for only those acts identified. The licensee should have the right to know what behavior the Board believes is unacceptable and thus sanctionable.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will be greater clarity for licensees to know what may be considered a discreditable act.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Ac-

countancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.90. *Discreditable Acts.*

A discreditable act evidences a lack of integrity and reflects adversely on that person's fitness to engage in the practice of public accountancy. [A person shall not commit any act that reflects adversely on that person's fitness to engage in the practice of public accountancy.] The [A discreditable act includes but is not limited to and the] board may discipline a person for the following discreditable acts:

- (1) fraud or deceit in obtaining a certificate as a CPA or in obtaining registration under the Act or in obtaining a license to practice public accounting;
- (2) dishonesty, fraud or gross negligence in the practice of public accountancy;
- (3) violation of any of the provisions of Subchapter J or §901.458 of the Act (relating to Loss of Independence) applicable to a person certified or registered by the board;
- (4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States;
- (5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm;
- (6) a revocation, cancellation, placement on probation, limitation on the scope of practice, or suspension by another state, or a refusal of renewal by another state, of the authority issued by that state to the person, or to the person's partner, member, or shareholder,

to engage in the practice of public accountancy for a reason other than the failure to pay the appropriate authorization fee;

(7) suspension or revocation of or any consent decree concerning the right to practice before any state or federal regulatory or licensing body for a cause which in the opinion of the board warrants its action;

(8) a final finding of conduct by state or federal courts of competent jurisdiction, agencies, boards, local governments or commissions for violations of state or federal laws or rules or findings of unethical conduct by licensees that engage in activities regulated by entities including but not limited to: the Public Company Accounting Oversight Board, Internal Revenue Service, U.S. Securities and Exchange Commission, U.S. Department of Labor, U.S. General Accounting Office, U.S. Housing and Urban Development, Texas State Auditor, Texas Comptroller of Public Accounts, Texas Securities Board, Texas Department of Insurance, and the Texas Secretary of State;

(9) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(10) fiscal dishonesty or breach of fiduciary responsibility of any type;

(11) failure to comply with a final order of any state or federal court;

(12) repeated failure to respond to a client's inquiry within a reasonable time without good cause;

(13) intentionally misrepresenting facts or making a misleading or deceitful statement to a client, the board, board staff or any person acting on behalf of the board;

(14) giving intentional false sworn testimony or perjury in court or in connection with discovery in a court proceeding or in any communication to the board or any other federal or state regulatory or licensing body;

(15) threats of bodily harm or retribution to a client;

(16) public allegations of a lack of mental capacity of a client which cannot be supported in fact;

(17) voluntarily disclosing information communicated to the person by an employer, past or present, or through the person's employment in connection with accounting services rendered to the employer, except:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");

(C) pursuant to:

(i) a court order signed by a judge;

(ii) a summons under the provisions of:

(I) the Internal Revenue Code of 1986 and its subsequent amendments;

(II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments; or

(III) the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) and its subsequent amendments;

(iii) a congressional or grand jury subpoena; or

(iv) applicable federal laws, federal government regulations, including requirements of the PCAOB;

(D) in an investigation or proceeding by the board;

(E) in an ethical investigation conducted by a professional organization of CPAs;

(F) in the course of a peer review under §901.159 of the Act (relating to Peer Review); or

(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.

(18) breaching the terms of an agreed consent order entered by the board or violating any Board Order.

(19) Interpretive Comment: The board has found in §519.7 of this title (relating to Criminal Offenses that May Subject a Licensee or Certificate Holder to Discipline or Disqualify a Person from Receiving a License) and §525.1 of this title (relating to Applications for the UCPAE, Issuance of the CPA Certificate, or Initial License) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

(20) Interpretive comment: A conviction or final finding of unethical conduct by a competent authority, for the purpose of paragraph (8) of this subsection, includes any right to practice before the authority or findings that limit the scope of the permit or license conveyed by the authority. Conviction relates to the finding in a criminal proceeding and final finding relates to a determination in a non-criminal proceeding. Unethical conduct or activities are determined by the governmental entity making the determination of a conviction or final finding.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 305-7842



22 TAC §501.93

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.93 concerning Responses.

Background, Justification and Summary

The rule is being updated to recognize email communications with the Board in addition to postal service mail.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will recognize the acceptance and wide-spread use of email communications with this agency.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.93. Responses.

(a) A person shall substantively respond in writing, within 30 days or less as specified by the board, to any communication from the board requesting a response. It is not a substantive response for a person to simply reply that they do not intend to respond or provide the records or documents requested. The time to respond shall commence on the date that the earliest communication was mailed or emailed to the last known mailing or email address of the person, according to the board's records [address furnished to the board by the person].

(b) When requested, and at no expense to the board, the written response shall include:

(1) copies of the person's documentation, reports and/or work papers related to issues in a complaint investigation; and

(2) copies of documents and reports or access to documents and reports related to the issues in a complaint investigation of the person's professional accounting work or ethical issues conducted by state and federal regulatory bodies and professional organizations, that the board may determine is related to the board's investigation.

(c) Failure to timely respond substantively to written communications, or failure to furnish requested documentation and/or work papers, constitutes conduct indicating lack of fitness to serve the public as a professional accountant.

(d) Each applicant and each person required to be registered with the board under the Act shall notify the board, either in writing or through the board's website, of any and all changes in [either] such person's mailing address, email address, or telephone number and the effective date thereof within 30 days before or after such effective date.

(e) Interpretive Comment. This section should be read in conjunction with §519.6 of this title (relating to Subpoenas).

(f) Interpretive Comment. In this section, the term board includes board staff.

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

Filed with the Office of the Secretary of State on January 16, 2025.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 305-7842



CHAPTER 507. EMPLOYEES OF THE BOARD

22 TAC §507.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.4 concerning Confidentiality.

Background, Justification and Summary

Section 901.160 of the Public Accountancy Act states that information regarding a disciplinary action is confidential prior to the information going to public hearing. The proposed rule revision makes it clear that a complaint investigation that does not result in disciplinary action is also not public information. The purpose of the provision in the Public Accountancy Act is to protect unproven allegations from becoming public information.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will clarify that all complaint investigations are confidential prior to going to public hearing.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505

E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 3, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§507.4. Confidentiality.

(a) Members of the board, advisory committee members, the executive director, members of board staff, independent contractors and consultants retained by the board shall not disclose any confidential information which comes to their attention, except as may be required by law.

(b) Regardless of whether the board takes disciplinary action or not, all complaint investigations, including [All complaints,] investigation files, investigation reports, and other investigative information in the possession of, received or gathered by the board is confidential, prior to public hearing or board action, and any employee, agent, or member of the board may not disclose the information contained in these files except to another governmental, regulatory or law enforcement agency engaged in an enforcement action and as provided for in §901.160 of the Act (relating to Availability and Confidentiality of Certain Board Files) or upon receiving written authorization from the license applicant or current or former license holder who is the subject of the investigation.

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500131

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 305-7842



TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 67. HEARINGS ON DISPUTED CLAIMS

34 TAC §67.201

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 67, concerning Hearings on Disputed Claims, by amending §67.201 (Procedures Governing Bid Protests).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administrative Code, §§61.1 *et seq.*

Amendments are proposed for §67.201 in order to clarify the rule and its interaction with other rules and statutes, to remove the requirement that copies of bid protests be sent to interested parties, and to enhance public understanding of the rule.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rules will be in effect:

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

Gabrielle Schreiber, Director of Procurement and Contract Oversight, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments to the rules reflect clarifications of the intent of the rules and their interaction with other rules and statutes. The proposed amendments do not constitute a taking. Ms. Schreiber has also determined that, to her knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and the proposed amendments do not impose a cost on regulated persons.

Ms. Schreiber also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a

result of adopting and complying with the rules would be to clarify public understanding of the agency's administration of the rules.

Comments on the proposed amendments may be submitted to Cynthia C. Hamilton, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at *General.Counsel@ers.texas.gov*. The deadline for receiving comments is March 3, 2025, at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendments.

§67.201. *Procedures Governing Bid Protests.*

(a) A vendor who is aggrieved by the solicitation, evaluation, or award of a contract [by ERS, hereinafter referred to as the Protesting Party,] may file a formal written protest with the Director of Procurement and Contract Oversight. [~~of ERS. Such protests must be in writing and received in the Office of Procurement and Contract Oversight within the time stated in subsection (d) of this section.~~] Formal protests must conform to the requirements of this subsection, subsections [subsection] (c) and [; subsection] (d), and, when applicable, subsection (e) of this section, and shall be resolved in accordance with [the procedure set forth in] subsections (f) - (h) [(m)] of this section. [~~Copies of the protest must be mailed or delivered by the Protesting Party to ERS and other Interested Parties. For the purposes of this section, "Interested Parties" means all vendors who have submitted bids or proposals for the applicable contract.~~] A [The] protest must be emailed or mailed as specified on the ERS website or hand delivered to ERS during regular business hours. [~~Interested Parties contemporaneously with filing the protest with the Director of Procurement and Contract Oversight of ERS.~~]

(b) If the Executive Director determines that the award of a contract without delay is necessary to protect the best interests of ERS, the agency may proceed with the award despite a timely protest.

[(b) In the event of a timely protest or appeal under this section, ERS shall not proceed further with the solicitation or with the award of the contract unless the Executive Director of ERS makes a determination that the award of the contract or implementation of the contract without delay are necessary to protect the best interests of ERS.]

(c) A formal protest must be sworn and [; under the penalties of perjury,] contain:

(1) a list [specific identification] of every [the] statutory and [or] regulatory provision [provision(s)] that [the action complained of] is alleged to have been violated;

(2) a specific description of every [each] act that is alleged to have violated the listed statutory and [or] regulatory provisions [provision(s) identified in paragraph (1) of this subsection];

(3) a precise statement of [the] relevant facts;

(4) a precise statement [an identification] of every [the] issue of law and fact that the protesting party contends must [or issues to] be resolved; and

(5) argument and authorities in support of the protest.

(d) To be considered timely, the protest must be received [filed]:

(1) by the last day [end] of the posted solicitation period, if the protest concerns the solicitation [documents or actions associated with the publication of solicitation documents]; [or]

(2) by the day of the contract award, if the protest concerns the evaluation; or

(3) [(2)] no later than 10 business [alendar] days after the date that ERS issued notice of award, if the protest concerns the award.

(e) If a protest is not resolved by mutual agreement, the Director of Procurement and Contract Oversight shall issue a written determination.

[(e) If ERS determines that it may need to utilize the services of an actuary, consultant, or another professional (Professional Services) in its efforts to resolve the protest, the Protesting Party shall be required to post a bond in an amount no less than the estimated cost to ERS for such Professional Services. The amount of the bond shall be determined in the sole discretion of ERS. The Protesting Party shall post the bond within five calendar days of notice from ERS that such bond is required or shall be deemed to have waived the right to protest.]

[(1) If such Professional Services are utilized by ERS and the bid protest is not finally resolved in favor of the Protesting Party, the Protesting Party shall be required to forfeit its bond.]

[(2) If such Professional Services are not utilized by ERS and/or the bid protest is finally resolved in favor of the Protesting Party, the Protesting Party's bond shall be returned to the Protesting Party after final resolution of the bid protest.]

(f) A protesting party may submit a written appeal of a protest determination to the Deputy Executive Director. An appeal must be emailed or mailed as specified on the ERS website or hand delivered to ERS during regular business hours and must be received by ERS no later than 10 business days after the date that ERS issued notice of the determination. Any appeal shall be limited to the matters timely raised in writing in the formal protest.

[(f) The Director of Procurement and Contract Oversight of ERS may accept written responses to the protest from Interested Parties and ERS staff.]

[(g) The Director of Procurement and Contract Oversight of ERS may confer with the General Counsel of ERS in his/her review of the protest.]

[(h) The Director of Procurement and Contract Oversight of ERS shall have the authority to settle and resolve the protest.]

[(i) If the protest is not resolved by mutual agreement, the Director of Procurement and Contract Oversight of ERS will issue a written determination on the protest.]

[(1) If the Director of Procurement and Contract Oversight of ERS determines that no violation of rules or statutes has occurred, he/she shall so inform the Protesting Party and Interested Parties by letter that sets forth the reasons for the determination.]

[(2) If the Director of Procurement and Contract Oversight of ERS determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he/she shall so inform the Protesting Party and Interested Parties by letter which sets forth the reasons for the determination and the appropriate remedial action.]

[(j) The determination of a protest by the Director of Procurement and Contract Oversight may be appealed by the Protesting Party to the Deputy Executive Director of ERS. An appeal of the determination by the Director of Procurement and Contract Oversight of ERS must be in writing and must be received in the office of the Deputy Ex-

ecutive Director of ERS no later than 10 calendar days after the date of the determination by the Director of Procurement and Contract Oversight. The appeal shall be limited to the review of the determination by the Director of Procurement and Contract Oversight. Copies of the appeal must be mailed or delivered by the Protesting Party to ERS and Interested Parties contemporaneously with filing the appeal to the Deputy Executive Director of ERS. The appeal must contain a certified statement that such copies have been served on all parties as required by this subsection.]

[(k) The Deputy Executive Director of ERS may confer with the General Counsel of ERS in his/her review of the matter appealed.]

(g) [(b)] An untimely appeal [that is not filed timely] shall not be considered unless the appealing party demonstrates good cause for the untimeliness. [delay is shown. The Deputy Executive Director shall determine if good cause exists.] "Good Cause" [Good Cause] means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause.

(h) A protesting party may appeal a protest determination only to the Deputy Executive Director, and the determination of the Deputy Executive Director shall not be subject to further appeal or judicial review.

[(m) A decision issued in writing by the Deputy Executive Director of ERS shall be the final administrative action of ERS, and no further appeal shall be permitted.]

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

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CHAPTER 73. BENEFITS

34 TAC §73.21, §73.22

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 73, concerning Benefits, by amending §73.21 (Reduction Factor for Age and Retirement Option) and adding new §73.22 (Increasing Annuity Option).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administrative Code, §§61.1 *et seq.*

Amendments are proposed for §73.21 in order to clarify that the tables described in the rule continue to govern benefits payable after August 31, 2022. New §73.22 is proposed to clarify how ERS will administer the new increasing annuity option described in Tex. Gov't Code §814.110 for ERS retirees and their designated beneficiaries.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended and new rules will be in effect:

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

Robin Hardaway, Director of Customer Benefits, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments and new rules reflect clarification of the intent of the rules and their interaction with other rules and statutes. They also provide for the implementation of the new increasing annuity option described in Tex. Gov't Code §814.110. The proposed amendments and new rule do not constitute a taking. Ms. Hardaway has also determined that, to her knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and the proposed amendments and new rule do not impose a cost on regulated persons.

Ms. Hardaway also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules would be to enhance public understanding of the agency's administration of the rules and related statutory provisions.

Comments regarding the proposed amendments and new rule may be submitted to Cynthia Canfield Hamilton, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at General.Counsel@ers.texas.gov. The deadline for receiving comments is March 3, 2025, at 10:00 a.m.

The amendments and new rule are proposed under Tex. Gov't Code §814.110, which authorizes the ERS Board of Trustees to adopt rules for the implementation of the new increasing annuity option; 815.105, which requires the Board to adopt mortality, service, and other tables based on actuarial reports; and Tex. Gov't Code §815.102, which authorizes the Board to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendments.

§73.21. *Reduction Factor for Age and Retirement Option.*

(a) Actuarial assumptions, mortality tables, and reduction factors used for calculation of benefits first payable on or after September 1, 2018, [~~but prior to September 1, 2022;~~] are those adopted by the board, as adjusted from time to time as required by Tex. Gov't Code §815.105, and apply to forms and effective dates of annuities specified by the board.

(b) The 1999 reduction factors for optional forms of retirement annuities apply to retirements effective on or after September 30, 1999, but prior to September 30, 2009, and are those factors adopted by the board on December 8, 1999, based on assumptions adopted by the board on December 9, 1998. The 1999 reduction factors apply to annuities first payable between January 1, 2000, and August 31, 2009. The 2009 reduction factors for optional forms of retirement annuities apply to retirements effective on or after September 30, 2009, but prior to September 1, 2014, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2014 reduction factors for optional forms of retirement annuities apply to retirements effective on or after September 1, 2014, but prior to September 1, 2018, and are those factors adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and further based on legislative changes to the retirement plan effective September 1, 2013.

(c) The actuaries have developed reduction factors for early retirement or death in accordance with the mortality tables adopted by the board. The 2009 reduction factors for early retirement or death apply to retirements effective on or after September 30, 2009, but prior to September 1, 2010, and apply to deaths first reported to ERS on or after September 1, 2009, but prior to September 1, 2010, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 reduction factors for early retirement or death apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2 of this chapter. The 2010 reduction factors apply to retirements effective on or after September 30, 2010, but prior to September 1, 2014, and apply to deaths first reported to ERS on or after September 1, 2010, but prior to September 1, 2014, and are those factors adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 reduction factors for early retirement or death apply to retirements effective on or after September 1, 2014, but prior to September 1, 2018, and deaths first reported to ERS on or after September 1, 2014, but prior to September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013.

(d) The 2000 reduction factors for the partial lump sum option apply to retirements effective on or after January 1, 2000, but prior to September 1, 2009, and are those factors adopted by the board on December 8, 1999, based on assumptions adopted by the board on December 9, 1998. The 2009 reduction factors for the partial lump sum option apply to retirements effective on or after September 30, 2009, but prior to September 1, 2014, and deaths first reported to ERS on or after September 1, 2009, but prior to September 1, 2014, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2014 reduction factors for the partial lump sum option apply to retirements effective on or after September 1, 2014, but prior to September 1, 2018, and are those factors adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013.

(e) The 2005 reduction factors for standard nonoccupational disability retirements apply to disability retirement applications received by the system on or after September 1, 2005, for retirements effective prior to September 30, 2009, and are those factors adopted by the board on August 24, 2005, based on assumptions adopted by the board on December 10, 2003. The 2009 reduction factors for standard nonoccupational disability retirements apply to retirements effective on or after September 30, 2009, but prior to September 30, 2010, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 reduction factors for standard nonoccupational disability retirements apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2 of this chapter. The 2010 reduction factors for standard nonoccupational disability retirements apply to retirements effective on or after September 30, 2010, but prior to September 1, 2014, and are those factors adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 reduction factors for standard nonoccupational disability retirements apply to retirements effective on or after September 1, 2014, but prior to September 1, 2018, and are those factors adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013.

§73.22. Increasing Annuity Option.

(a) This section governs the increasing annuity option described in Tex. Gov't Code § 814.110, which is also known as the "self-funded increase option."

(b) If a retiree selected an increasing annuity under Tex. Gov't Code § 814.110 prior to retirement, annuity payments shall increase by two percent (2%) each year, calculated annually on the anniversary of the retiree's original retirement.

(c) If a retiree selected an increasing annuity together with an optional service retirement annuity described by Tex. Gov't Code § 814.108, the retiree shall receive the annual increase for the retiree's lifetime, and upon the retiree's death, the retiree's designated beneficiary shall continue to receive the annual increase during the beneficiary's lifetime.

(d) If a retiree selected an increasing annuity together with an optional service retirement annuity described by Tex. Gov't Code § 814.108 and the retiree's designated beneficiary predeceases the retiree, the system shall recalculate the annuity. The annuity first shall be recalculated in accordance with Tex. Gov't Code § 814.108(d) and then shall be adjusted to account for the annual increase. The recalculated annuity shall be actuarially equivalent to the increasing annuity that the retiree would have received if the retiree had selected only an increasing annuity without the optional service retirement annuity. After the annuity is recalculated, the retiree shall continue to receive an annual increase based on the recalculated amount, in accordance with Tex. Gov't Code § 814.110 and this section, throughout the retiree's lifetime.

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

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CHAPTER 76. CASH BALANCE BENEFIT

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 76, concerning Cash Balance Benefit, by amending §76.1 (Definitions), §76.3 (Proportionate Service Purchases), §76.4 (Optional Retirement Program), §76.5 (Factor Tables), §76.9 (Annual Interest Rate), §76.10 (Gain Sharing Interest Rate), §76.11 (Return of Excess Contributions), and §76.12 (Uniformed Services Employment and Reemployment Rights Act). Additionally, ERS proposes to repeal the following rules in TAC Chapter 76: §76.6 (Optional Cash Balance Retirement Benefits), §76.7 (Change in Annuity Selection), and §76.8 (Partial Lump-Sum Option).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administrative Code, §§61.1 *et seq.*

Sections 76.1, 76.3, 76.4, 76.5, 76.9, 76.10, 76.11, and 76.12 are being amended in order to incorporate changes resulting from the enactment of Tex. Gov't Code Chapter 840A and in order to clarify the intent of the rules and their interaction with other rules and statutes, thus enhancing public understanding.

Sections 76.6, 76.7, and 76.8 are being repealed because the language is superfluous as a result of amendments to Tex. Gov't Code Chapter 820.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rules will be in effect:

- (1) the proposed amendments will not create or eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation of new employee positions or eliminate existing employee positions;
- (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed amendments will not require an increase or decrease in fees paid to the agency;
- (5) the proposed amendments will not create a new rule or regulation;
- (6) the proposed amendments will expand existing rule provisions to incorporate statutory amendments and will repeal existing rule provisions that are now superfluous due to statutory amendments;
- (7) the proposed amendments will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the proposed amendments will not positively or adversely affect the state's economy.

Ms. Robin Hardaway, Director of Customer Benefits, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the amendments; and small businesses, micro-businesses, and rural communities will not be affected.

Ms. Hardaway has determined that the proposed amendments align with the eligibility and benefit standards for individuals participating in the current retirement plans and that the proposed amendments do not constitute a taking. Ms. Hardaway has also determined that, to her knowledge, there are no known anticipated economic effects to persons who are required to comply with the amendments as proposed and the proposed amendments do not impose a cost on regulated persons.

Ms. Hardaway has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of adopting and complying with the amendments would be that the proposed amendments align the cash balance benefit with statutory amendments and new statutory provisions and the amendments clarify the intent of the rules and their interaction with other rules and statutes, thus enhancing public understanding.

Comments on the proposed amendments may be submitted to Cynthia C. Hamilton, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at *General.Counsel@ers.texas.gov*. The deadline for receiving comments is March 3, 2025, at 10:00 a.m.

34 TAC §§76.1, 76.3 - 76.5, 76.9 - 76.12

The amendments are proposed under Tex. Gov't Code §815.102, which authorizes the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the board, and Tex. Gov't Code §820.004 and §840A.004, which authorize the board to adopt rules necessary to implement cash balance retirement benefits.

No other statutes are affected by the proposed amendments.

§76.1. Definitions.

For purposes of this chapter:

(1) "Cash balance benefit" means the retirement benefit established by Tex. Gov't Code Chapter 820 or Chapter 840A.

(2) "Annuitant" means an individual who is receiving a cash balance annuity established by Tex. Gov't Code Chapter 820 or Chapter 840A, including[, but not limited to,] a retiree, a beneficiary [under §76.6 of this chapter], and an alternate payee under a Qualified Domestic Relations Order.

§76.3. Proportionate Service Purchases.

(a) An individual participating in the Proportionate Retirement Program under Tex. Gov't Code Chapter 803 who did not establish and maintain ERS membership prior to September 1, 2022, may purchase previously canceled [established] service credit in an amount equal to withdrawn member contributions but only for the purpose of establishing service credit and making a deposit under Tex. Gov't Code Chapter 820, including Section 820.032(c)(2) regarding eligibility to participate in the State Employees Group Benefits Program. The system shall receive an employer matching contribution for any individual purchasing previously canceled [established] service credit under this section.

(b) Tex. Gov't Code Chapter 840A does not authorize the purchase of service credit previously canceled in the Judicial Retirement

System of Texas Plan Two. An individual who is a cash balance group member under Chapter 840A may only purchase service credit previously canceled in another retirement system under Tex. Gov't Code §803.202 or §803.203.

§76.4. Optional Retirement Program.

For the sole purpose of determining eligibility to receive a cash balance retirement annuity under Tex. Gov't Code Chapter 820, the system shall consider service performed as a participant in the optional retirement program under Tex. Gov't Code Chapter 830 as if it were service for which credit is established in the system. Each full or partial month of service shall count as one-twelfth of a year of creditable service.

§76.5. Factor Tables.

The board shall adopt actuarial assumptions, mortality tables, reduction factors, and other factors applicable to cash balance group members and may adjust them from time to time as provided by Tex. Gov't Code §815.105 or §840.005.

§76.9. Annual Interest Rate.

(a) The annual interest rate established by Tex. Gov't Code §820.102 or §840A.103 shall be applied to a cash balance group member's accumulated account balance, adjusted for compounding, at the beginning of each month before any contribution is deposited.

(b) The system shall not recalculate any annuity based on annual interest.

§76.10. Gain Sharing Interest Rate.

(a) Under Tex. Gov't Code §820.103 and §840A.104, the system shall calculate the gain sharing interest rate based on the investment returns of the total combined ERS retirement trust fund as of August 31 of each of the applicable fiscal years, using the Global Investment Performance Standards for calculating and reporting investment performance. The total combined ERS retirement trust fund does not include amounts associated with the State Employees Group Benefits Program or the TexaSaver program.

~~[(b) Each fiscal year, the system shall apply the gain sharing interest rate as follows:]~~

~~[(1) for a cash balance group member, the rate shall be multiplied by the member's accumulated account balance as of the end of the preceding fiscal year;]~~

~~[(2) for a cash balance annuitant, the rate shall be multiplied by the amount of the annuitant's cash balance annuity payment as of the end of the preceding fiscal year; and]~~

~~[(3) for an annuitant who retired after August 31 but before the application of the gain sharing interest rate, the rate shall be multiplied by the amount of the annuitant's initial cash balance annuity payment.]~~

~~(b) [(e)] A person may not receive gain sharing interest as both a cash balance group member and a cash balance annuitant during the same fiscal year.~~

~~(c) [(d)] The gain sharing interest rate shall be applied no earlier than December 1.~~

§76.11. Return of Excess Contributions.

(a) Except as provided by subsection (c) of this section, when a person who receives a cash balance or disability retirement annuity dies, a lump-sum death benefit is payable from the retirement annuity reserve account in the amount, if any, by which the balance in the retiree's individual account [in the employees saving account] at the time

of service retirement exceeds the total of annuity payments payable before the retiree's death.

(b) The benefit provided by subsection (a) of this section is payable to a person designated by the retiree at the time of retirement in a signed and witnessed document filed with the system. If a retiree does not designate a beneficiary or if the beneficiary does not survive the retiree, the benefit is payable to the retiree's estate.

(c) A death benefit may not be paid under subsections (a) and (b) of this section if the retiree selected an optional cash balance annuity [under §76.6 of this chapter].

(d) If the person designated as the beneficiary of an optional cash balance annuity, other than one selected under Tex. Gov't Code §820.0535(c)(3), §820.0535(c)(4), §840A.054(c)(3), or §840A.054(c)(4) [§76.6(e)(3) or §76.6(e)(4) of this chapter], predeceases the retiree, a lump-sum death benefit is payable from the retirement annuity reserve account in the amount, if any, by which the balance in the retiree's individual account [in the ~~employees saving account~~] at the time of service retirement exceeds the sum of annuity payments payable to the retiree before death.

(e) The benefit provided by subsection (d) of this section is payable to the deceased retiree's estate.

(f) If a beneficiary dies while receiving an optional cash balance annuity, other than one selected under Tex. Gov't Code §820.0535(c)(3), §820.0535(c)(4), §840A.054(c)(3), or §840A.054(c)(4) [§76.6(e)(3) or §76.6(e)(4) of this chapter], a lump-sum death benefit is payable from the retirement annuity reserve account in the amount, if any, by which the balance in the retiree's individual account [in the ~~employees saving account~~] at the time of service retirement exceeds the sum of annuity payments payable to the retiree and the beneficiary before the beneficiary's death.

(g) If a beneficiary dies while receiving a cash balance annuity selected under Tex. Gov't Code §814.302, [as described in §76.6(e)(1) of this chapter, or Tex. Gov't Code] §814.304(a), or §839.302, a lump-sum death benefit is payable from the retirement annuity reserve account in the amount, if any, by which the balance in the member's individual account [in the ~~employees saving account~~] at the time of death exceeds the sum of annuity payments payable to the beneficiary before the beneficiary's death.

(h) The benefits provided by subsections (f) and (g) of this section are payable to the deceased beneficiary's estate.

(i) A beneficiary designation that names a former spouse as beneficiary is invalid unless the designation is made after the date of the divorce.

§76.12. Uniformed Services Employment and Reemployment Rights Act.

To the extent that the Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to cash balance group [system] members, a member:

(1) Shall be entitled to contributions, benefits, and credited service for the period of qualified military service to the extent required by USERRA; Internal Revenue Code §414(u); and effective January 1, 2007, Internal Revenue Code §401(a)(37); and

(2) May claim service credit for military service not previously established by paying a contribution for each month of service credit in an amount equal to the greater of:

(A) The amount that the member contributed for the first full month of membership service that is after the member's date

of release from active military duty and that is credited in the system; or

(B) \$18.

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

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34 TAC §§76.6 - 76.8

The repeals are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board, and Tex. Gov't Code §820.004 and §840A.004, which explicitly authorize the board to adopt rules as necessary to implement cash balance retirement benefits and include implied authority to repeal rules as necessary to implement cash balance retirement benefits.

No other statutes are affected by the proposed repeals.

§76.6. Optional Cash Balance Retirement Benefits.

§76.7. Change in Annuity Selection.

§76.8. Partial Lump-Sum Option.

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.16

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §211.16, Establishment or Continued Operation of an Appointing Entity. This

proposed amended rule conforms with the amendments made to Texas Occupations Code §1701.163 by Senate Bill 1445 (88R). The proposed amended rule would allow law enforcement agencies in existence before June 1, 2024, to use personally owned patrol vehicles.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.163 to establish minimum standards with respect to the creation or continued operation of a law enforcement agency. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

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

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Minimum Standards for Law Enforcement Agencies. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code

§1701.163 requires the Commission to adopt rules to establish minimum standards with respect to the creation or continued operation of a law enforcement agency.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Minimum Standards for Law Enforcement Agencies. No other code, article, or statute is affected by this proposal.

§211.16. Establishment or Continued Operation of an Appointing Entity.

(a) To establish that an agency or a prospective agency meets the minimum standards for the creation or continued operation of a law enforcement agency, the agency must provide evidence that the agency:

- (1) provides public benefit to the community;
- (2) has sustainable funding sources that meet or exceed the continued operating expenses outlined in a line-item budget for the agency;
- (3) has physical resources available to officers, including:
 - (A) at least one firearm per officer on duty;
 - (B) at least one less lethal force weapon per officer on duty;
 - (C) effective communications equipment, specifically:
 - (i) at least one radio communication device per officer on duty performing patrol, courtroom security, traffic enforcement, responding to calls for service, assigned to a controlled access point, acting as a visual deterrent to crime, surveillance, warrant execution, and service of civil process; and
 - (ii) at least one cell phone device per officer on duty who may have contact with the general public and is not performing any of the duties described in (i);
 - (D) at least one bullet-resistant vest per officer on duty with vest panels that:
 - (i) have been certified as compliant by the National Institute of Justice (NIJ);
 - (ii) are within the ballistic performance warranty period listed by the manufacturer on the affixed tags; and
 - (iii) have never been shot or otherwise compromised;
 - (E) at least one uniform per officer whose duties include any of the following:
 - (i) performing patrol;
 - (ii) courtroom security;
 - (iii) traffic enforcement;
 - (iv) responding to calls for service;
 - (v) assigned to a controlled access point;
 - (vi) acting as a visual deterrent to crime;
 - (vii) warrant execution; or
 - (viii) service of civil process;
 - (F) at least one motor vehicle owned and insured by an agency created on or after June 1, 2024; and
 - (G) patrol vehicles provided to officers whose duties include either performing patrol, traffic enforcement, or responding to

calls for service that [owned, insured, and equipped by the agency and provided to officers whose duties include any of the following]:

(i) are owned, insured, and equipped by the agency [performing patrol]; or

(ii) may be personally owned for agencies in existence before June 1, 2024, that have not provided agency-owned patrol vehicles from June 1, 2024, to the present; [traffie enforcement; or]

~~(iii) responding to calls for service;~~

(4) has physical facilities, including:

(A) an evidence room or other acceptable secure evidence storage for officers whose duties include any of the following:

(i) performing patrol;

(ii) traffic enforcement;

(iii) criminal investigations;

(iv) responding to calls for service; or

(v) executing search or arrest warrants;

(B) a dispatch area for any agency appointing and employing telecommunicators; and

(C) a public area including written notices posted and visible 24 hours a day explaining:

(i) how to receive the most immediate assistance in an emergency;

(ii) how to make a nonemergency report of a crime; and

(iii) how to make a compliment or complaint on a member of the agency by mail, online, or by phone;

(5) has policies, including policies on:

(A) use of force;

(B) vehicle pursuit;

(C) professional conduct of officers;

(D) domestic abuse protocols;

(E) response to missing persons;

(F) supervision of part-time officers;

(G) impartial policing;

(H) medical and psychological examination of licensees;

(I) active shooters;

(J) barricaded subjects;

(K) evidence collection and handling;

(L) eyewitness identification;

(M) misconduct investigations;

(N) hiring a license holder;

(O) personnel files;

(P) uniform and dress code;

(Q) training required to maintain licensure; and

(R) outside and off-duty employment;

(6) has an established administrative structure, including:

(A) an organizational chart for the agency that illustrates the division and assignment of licensed and unlicensed personnel;

(B) a projection for the number of full-time peace officers, part-time peace officers, and unpaid peace officers that the agency would employ during the year if at full staffing; and

(C) the number of School Resource Officer (SRO) positions employed by the agency and working in schools if the agency is not an independent school district (ISD) police department;

(7) has liability insurance for the agency and any [its] vehicles used for agency purposes;

(8) has a defined process by which the agency will receive by mail, online, and by phone and document compliments and complaints on its employees; and

(9) any other information the commission requires.

(b) An entity authorized by law to establish a law enforcement agency and appoint licensees must first complete training offered and required by the commission on the establishment and continued operation of a new agency. The entity may then make application for an agency number by submitting the current agency number application form, any associated application fee, and evidence that they meet the requirements of this rule.

(c) An entity authorized by Local Government Code, §361.022 to operate a correctional facility to house inmates, in this state, convicted of offenses committed against the laws of another state of the United States, and appoint jailers requiring licensure by the commission, may make application for an agency number by submitting the current agency number application form, any associated application fee, and a certified copy of the contract under which the facility will operate.

(d) A political subdivision wanting to establish a consolidated emergency telecommunications center and appoint telecommunicators, as required by Texas Occupations Code, §1701.405, may make application for an agency number by submitting the current agency number application form, any associated application fee and a certified copy of the consolidation contract.

(e) The Texas Department of Criminal Justice - Pardon and Parole Division, a community supervision and corrections department, or a juvenile probation department may make application for an agency number if seeking firearms training certificates for parole officers, community supervision and corrections officers, or juvenile probation officers by submitting the current agency number application form and any associated application fee.

(f) All law enforcement agencies must complete and submit an annual report due between January 1st and March 1st of each year documenting their continued compliance with the requirements of this rule.

(g) The effective date of this section for agencies not in existence before June 1, 2024, is June 1, 2024. The effective date of this section for agencies already in existence before June 1, 2024, is September 1, 2025.

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500132
Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
Earliest possible date of adoption: March 2, 2025
For further information, please call: (512) 936-7700



37 TAC §§211.27 - 211.29

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §211.27, Reporting Responsibilities of Individuals, §211.28, Responsibility of a Law Enforcement Agency to Report an Arrest, and §211.29, Responsibilities of Agency Chief Administrators. These proposed amended rules would remove the requirement of licensees and appointing law enforcement agencies to report to the Commission any arrests, pending criminal charges, or criminal dispositions. These proposed amended rules would also require law enforcement agencies to report to the Commission the failure by an applicant or licensee of a medical examination (L-2), psychological examination (L-3), fitness for duty examination (FFDE), or drug screen, which conforms with the addition of Texas Occupations Code §1701.167 made by Senate Bill 1445 (88R).

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years these proposed amended rules will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendments.

Mr. Beauchamp has determined that for each year of the first five years these proposed amended rules will be in effect, there will be a positive benefit to the public by eliminating duplicative reporting requirements regarding criminal offenses and by conforming with Texas Occupations Code §1701.167 to require the reporting to the Commission of a failed examination. There will be no anticipated economic costs to persons required to comply with the proposed amendments.

Mr. Beauchamp has determined that for each year of the first five years these proposed amended rules will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendments.

Mr. Beauchamp has determined that for each year of the first five years these proposed amended rules will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendments.

Mr. Beauchamp has determined the following:

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

(6) the proposed rules do not expand, limit, or repeal an existing regulation;

(7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rules do not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rules. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rules are proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.153, Reports from Agencies and Schools, §1701.167, Policy Regarding Examination of a License Holder or Applicant, and §1701.306, Psychological and Physical Examination. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.153 requires the Commission to establish reporting standards and procedures for matters the Commission considers necessary for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.167 requires the reporting to the Commission of a failed examination. Texas Occupations Code §1701.306 requires the Commission to adopt rules to establish appropriate standards and measures to be used by a law enforcement agency in reporting medical (L-2) and psychological (L-3) examinations.

The amended rules as proposed affect or implement Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.153, Reports from Agencies and Schools, §1701.167, Policy Regarding Examination of a License Holder or Applicant, and §1701.306, Psychological and Physical Examination. No other code, article, or statute is affected by this proposal.

§211.27. *Reporting Responsibilities of Individuals.*

(a) Within thirty days, a licensee or person meeting the requirements of a licensee shall report to the commission:

- (1) any name change;
- (2) a permanent mailing address other than an agency address;
- (3) all subsequent address changes; and

~~{(4) an arrest, charge, or indictment for a criminal offense above the grade of Class C misdemeanor, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, including the name of the arresting agency, the style, court, and cause number of the charge or indictment, if any;}~~

~~{(5) the final disposition of the criminal action; and}~~

~~(4) [(6)] receipt of a dishonorable discharge from the armed forces of the United States.~~

(b) The effective date of this section is May 1, 2025 ~~[June 1, 2022]~~.

§211.28. *Responsibility of a Law Enforcement Agency to Report an Arrest.*

(a) When an agency receives information that it has arrested or charged a licensee ~~[an individual that is required to report under §211.27 of this title]~~ for any offense above a Class C misdemeanor, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, the chief administrator or their designee must report such arrest to the commission in the format currently prescribed by the commission within 30 business days of notice of the arrest, including the:

- (1) name, date of birth and PID of licensee (if available);
 - (2) name, address, and telephone number of the arresting agency;
 - (3) date and nature of the arrest;
 - (4) arresting agency incident, booking, or arrest number;
- [and]
- (5) name, address, and telephone number of the court in which such charges are filed or such arrest is filed; and[-]
 - (6) copies of all related offense reports and charging documents.

(b) The effective date of this section is May 1, 2025 ~~[July 14, 2014]~~.

§211.29. *Responsibilities of Agency Chief Administrators.*

(a) An agency chief administrator is responsible for making any and all reports and submitting any and all documents required of that agency by the commission.

(b) An individual who is appointed or elected to the position of the chief administrator of a law enforcement agency shall notify the Commission of the date of appointment and title, through a form prescribed by the Commission within 30 days of such appointment.

(c) An agency chief administrator must comply with the appointment and retention requirements under Texas Occupations Code, Chapter 1701.

(d) An agency chief administrator must report to the commission within 30 days, any change in the agency's name, physical location, mailing address, electronic mail address, or telephone number.

(e) An agency chief administrator must report, in a standard format, incident-based data compiled in accordance with Texas Occupations Code §1701.164.

(f) Line of duty deaths shall be reported to the commission in current peace officers' memorial reporting formats.

(g) An agency chief administrator has an obligation to determine that all appointees are able to safely and effectively perform the essential job functions. An agency chief administrator may require a fit for duty review upon identifying factors that indicate an appointee may no longer be able to perform job-related functions safely and effectively. These factors should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical or psychological condition or impairment.

(h) An agency chief administrator shall notify the commission of any failed medical (L-2) or psychological (L-3) examination within 30 days on a form prescribed by the commission. An agency chief administrator shall notify the commission upon a final determination of a failed fit-for-duty examination (FFDE) or drug screen within 30 days on a form prescribed by the commission.

(i) ~~[(h)]~~ An agency must provide training on employment issues identified in Texas Occupations Code §1701.402 and field training.

~~(j) [(i)]~~ An agency must provide continuing education training required in Texas Occupations Code §1701.351 and §1701.352.

~~(k) [(j)]~~ Before an agency appoints any licensee to a position requiring a commission license it shall complete the reporting requirements of Texas Occupations Code §1701.451.

~~(l) [(k)]~~ An agency appointing a person who does not hold a commission license must file an application for the appropriate license with the commission.

~~(m) [(l)]~~ An agency must notify the commission electronically following the requirements of Texas Occupations Code §1701.452, when a person under appointment with that agency resigns or is terminated.

~~(n) [(m)]~~ An agency chief administrator must comply with orders from the commission regarding the correction of a report of resignation/termination or request a hearing from SOAH.

~~[(n)]~~ An agency shall notify the commission electronically within 30 days, when it receives information that a person under appointment with that agency has been arrested, charged, indicted, or convicted for any offense above a Class C misdemeanor, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence.[-]

(o) Except in the case of a commission error, an agency that wishes to report a change to any information within commission files about a licensee shall do so in a request to the commission, containing:

- (1) the licensee's name, date of birth, last four digits of the social security number, or PID;
- (2) the requested change; and
- (3) the reason for the change.

(p) An agency chief administrator may not appoint an applicant subject to pending administrative action based on:

- (1) enrollment or licensure ineligibility; or
- (2) statutory suspension or revocation.

(q) The effective date of this section is May 1, 2025 ~~[February 1, 2016]~~.

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500133

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 936-7700



37 TAC §211.41

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §211.41, Procurement Protests and Records. This proposed new rule conforms with the Texas Government Code §2155.076 and 34 Texas Administrative Code §§20.531 - 20.538. The proposed new rule would

provide vendors a process for protesting agency procurement actions consistent with rules adopted by the Comptroller.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed new rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be a positive benefit to the public by conforming with Texas Government Code §2155.076 to establish a process for protesting agency procurement actions. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

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

The Commission will accept comments regarding the proposed new rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed pursuant to Texas Government Code §2155.076, Protest Procedures, and Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Government Code §2155.076 requires the Commission to adopt rules to establish protest procedures for resolving vendor protests relating to purchasing issues. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and for the Commission's internal management and con-

trol and to contract as the Commission considers necessary for certain services, facilities, studies, and reports.

The new rule as proposed affects or implements Texas Government Code §2155.076, Protest Procedures, and Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

No other code, article, or statute is affected by this proposal.

§211.41. Procurement Protests and Records.

(a) Any actual or prospective bidder who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest the award of the contract by submitting a protest to the Executive Director of the commission.

(1) Such protests must be in writing and received in the Executive Director's office within ten business days after such aggrieved person knows, or should have known, of the occurrence of the action, which is protested.

(2) A formal protest must be sworn to by affidavit before a notary public and contain the following information or documentation:

(A) a specific identification of the complaint;

(B) a specific description of each act alleged to have violated the statutory or regulatory provision(s) pursuant to Chapter 2260 of the Texas Government Code;

(C) a precise statement of the relevant facts;

(D) an identification of the issue or issues to be resolved;

(E) argument and authorities in support of the protest; and

(F) a statement that copies of the protest have been mailed or delivered to the commission.

(3) Copies of the protest must be mailed or delivered by the protesting party to the commission and other interested parties.

(b) In the event of a timely protest or appeal under this policy, the commission shall consider the protest and reply in writing before proceeding further with the solicitation or with the award of the contract unless the Executive Director makes a written determination that the award of the contract without delay is necessary to protect interests of the state.

(c) The Chief Financial Officer, or their designee, shall have the authority, prior to appeal to the Executive Director, to settle and resolve the dispute concerning the solicitation or award of a contract. The Chief Financial Officer may solicit written responses to the protest from other interested parties. This does not prohibit a party from submitting a written response without solicitation. If the protest is not resolved by mutual agreement, the Chief Financial Officer will issue a written determination on the protest.

(d) If the Chief Financial Officer determines that no rules or statutory violations have occurred, they shall inform the protesting party, the Executive Director, and other interested parties in writing setting forth the reasons for the determination.

(e) If the Chief Financial Officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, they shall inform the protesting party, the Executive Director, and other interested parties in writing setting forth the reasons for the determination and the appropriate remedial action.

(f) If the Chief Financial Officer determines that a violation of the rules or statutes has occurred in a case where a contract has been

awarded, they shall so inform the protesting party, the Executive Director, and other interested parties in writing setting forth the reasons for the determination, which may include voiding the contract.

(g) The Chief Financial Officer's determination on a protest may be appealed by an interested party to the Executive Director.

(1) An appeal of the Chief Financial Officer's determination must be in writing and must be received in the Executive Director's office no later than ten business days after the date of the Chief Financial Officer's determination.

(2) The appeal shall be limited to review of the Chief Financial Officer's determination.

(3) Copies of the appeal must be mailed or delivered by the appealing party to the commission and other interested parties and must contain an affidavit that such copies have been provided.

(h) If a timely protest of a solicitation or contract award is filed under this section, the Executive Director may delay the solicitation or award of the contract unless the contract must be awarded without delay to protect the best interests of the state.

(i) The Executive Director shall review the protest, the Chief Financial Officer's determination, and the appeal. The Executive Director may refer the matter to the Commissioners for consideration or issue a decision on the protest.

(j) When a protest has been referred to the Commissioners, copies of the appeal, responses of interested parties, if any, and the Executive Director's recommendation shall be delivered to the Commissioners, the appealing party, and other interested parties. The Commissioner's determination of the appeal shall be made on the record and reflected in the minutes of an open meeting and shall be final.

(k) Unless good cause for delay is shown or the Executive Director determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed in a timely manner will not be considered.

(l) A decision issued either by the Commissioners, or in writing by the Executive Director, shall be the final administrative action.

(m) The commission shall maintain sufficient records and reports to verify compliance with applicable law, including:

(1) each contract entered into by the commission;

(2) all contract solicitation documents related to the contract;

(3) all documents that reflect and identify the basis for any decisions relating to a procurement, including actions taken that deviate from requirements or recommendations in the state procurement manual or contract management guide;

(4) all purchase orders, change orders, and invoices associated with the contract;

(5) all contract amendments, renewals, or extensions executed by the commission; and

(6) all other documents necessary to record the full execution and completion of each contract.

(n) The commission may destroy the contract and related documents after the seventh anniversary of the date:

(1) the contract is completed or expires; or

(2) all issues that arise from any litigation, claim, negotiation, audit, Public Information Act request, administrative review, or other action involving the contract or related documents are resolved.

(o) The effective date of this section is May 1, 2025.

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500134

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 936-7700



CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS

37 TAC §215.9

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §215.9, Training Coordinator. This proposed amended rule conforms with the amendments made to Texas Occupations Code §1701.167 by Senate Bill 1445 (88R). The proposed amended rule would require training coordinators to report to the Commission the failure by an applicant of a medical examination (L-2) or psychological examination (L-3).

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.167 to require the reporting to the Commission of a failed examination. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

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

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

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

- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does not expand, limit, or repeal an existing regulation;
- (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.153, Reports from Agencies and Schools, §1701.167, Policy Regarding Examination of a License Holder or Applicant, and §1701.306, Psychological and Physical Examination. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.153 requires the Commission to establish reporting standards and procedures for matters the Commission considers necessary for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.167 requires the reporting to the Commission of a failed examination. Texas Occupations Code §1701.306 requires the Commission to adopt rules to establish appropriate standards and measures to be used by a law enforcement agency in reporting medical (L-2) and psychological (L-3) examinations.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.153, Reports from Agencies and Schools, §1701.167, Policy Regarding Examination of a License Holder or Applicant, and §1701.306, Psychological and Physical Examination. No other code, article, or statute is affected by this proposal.

§215.9. *Training Coordinator.*

- (a) A training coordinator must hold a valid instructor license or certificate and must be a full-time paid employee of that Training Provider.
- (b) The training coordinator must:
 - (1) ensure compliance with commission rules and guidelines;[-]
 - (2) prepare, maintain, and submit the following reports within the time frame specified:
 - (A) reports of training:
 - (i) basic licensing course shall be submitted prior to students attempting a licensing exam; and
 - (ii) within 30 days of completion of continuing education course;
 - (B) self-assessment reports as required by the commission;

- (C) a copy of advisory board minutes during an on-site evaluation;
- (D) training calendars-schedules must be available for review and posted on the internet, or another public venue, no later than 30 days prior to the beginning of each calendar quarter or academic semester. A continually updated and posted (live) calendar will meet this requirement; and
- (E) any other reports or records as requested by the commission;
- (3) be responsible for the administration and conduct of each course, including those conducted at ancillary sites, and specifically:
 - (A) appointing and supervising qualified instructors;
 - (B) maintaining course schedules and training files. At a minimum, training files shall contain:
 - (i) complete lesson plan;
 - (ii) clear learning objectives;
 - (iii) instructor biography indicating subject matter expertise and teaching experience;
 - (iv) approved class roster and original sign-in sheet;
 - and
 - (v) course evaluation;
 - (C) enforcing all admission, attendance, retention, and other standards set by the commission and approved by the advisory board;
 - (D) securing and maintaining all facilities necessary to meet the inspection standards of this section;
 - (E) controlling the discipline and demeanor of each student and instructor during class;
 - (F) distributing a current version of the Texas Occupations Code, Chapter 1701 and commission rules to all students at the time of admission to any course that may result in the issuance of a license;
 - (G) distributing learning objectives to all students at the beginning of each course;
 - (H) ensuring that all learning objectives are taught and evaluated;
 - (I) proctoring or supervising all examinations to ensure fair, honest results; and
 - (J) maintaining training files, records of tests, and other evaluation instruments for a period of five years;[-]
- (4) receive all commission notices on behalf of the training provider and forward each notice to the appointing authority; [~~and~~]
- (5) attend or have a designee attend each academy coordinator's workshop conducted by the commission. No person may serve as a representative for more than one provider per conference. Each representative must be affiliated with the training provider; and[-]
- (6) notify the commission of any failed medical (L-2) or psychological (L-3) examination within 30 days on a form prescribed by the commission.
- (c) If the position of training coordinator becomes vacant, upon written request from the chief administrator of the training

provider the commission may, at the discretion of the executive director, waive the requirements for a period not to exceed six months.

(d) Upon written request from the chief administrator of a training provider that does not have a full-time paid staff, the commission may, at the discretion of the executive director, waive the requirements in subsection (a) of this section.

(e) The effective date of this section is May 1, 2025 [May 1, 2018].

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500135

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 936-7700



CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.7

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §217.7, Reporting Appointment and Separation of a Licensee. This proposed amended rule conforms with the recommendations made by an advisory committee and approved by the Commission in the Hiring Procedures Model Policy. The proposed amended rule would require all applicants and licensees to be fingerprinted and subjected to a criminal background check before being appointed by a law enforcement agency.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with the Hiring Procedures Model Policy. There will be minimal anticipated economic costs to persons required to comply with the proposed amendment due to increases in the number of times an individual may be fingerprinted.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does expand an existing regulation by requiring fingerprinting prior to every appointment of a licensee;
- (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.303, License Application; Duties of Appointing Entity, and §1701.451, Preemployment Procedure. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.303 requires an agency to have a licensee's criminal history record information and to have a licensee fingerprinted to disclose any criminal record if there has been a 180 break in service. Texas Occupations Code §1701.451 requires an agency to obtain and review criminal history record information before appointing a licensee.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.303, License Application; Duties of Appointing Entity, and §1701.451, Preemployment Procedure. No other code, article, or statute is affected by this proposal.

§217.7. *Reporting Appointment and Separation of a Licensee.*

(a) Before a law enforcement agency may appoint a person licensed or seeking a license as a peace officer, county jailer, or telecommunicator the agency head or designee must:

- (1) obtain the person's written consent for the agency to view the person's employment records;
- (2) obtain a copy of the Personal Status Report (PSR) maintained by the commission;
- (3) obtain a completed, signed, and notarized Personal History Statement (PHS);
- (4) obtain a Computerized Criminal History (CCH) from TCIC and NCIC;
- (5) obtain proof of eligibility after separation from the military, if applicable;
- (6) conduct and document a background investigation;

(7) for peace officers, obtain proof of weapons qualification within the 12 months preceding appointment;

(8) for current licensees, electronically request and obtain the F-5 Return (F5R) from the commission, contact each of the person's previous law enforcement employers, and document the contact on the F5 return; ~~and~~

(9) obtain new proof that the person has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(10) ~~[(9)]~~ in addition to the requirements listed in this section:

(A) For a licensee with more than 180 days since their last appointment:

(i) obtain a new declaration of psychological and emotional health (L3 Form); and

(ii) obtain a new declaration of the lack of any drug dependency or illegal drug use (L2 Form); and

~~[(iii) obtain new proof that the licensee has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record.]~~

(B) For a person's initial appointment:

(i) obtain proof of meeting educational requirements;

(ii) obtain proof of meeting U.S. citizenship requirements;

(iii) ~~[obtain new proof that the person has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;]~~ obtain a new declaration of psychological and emotional health (L3 Form), if more than 180 days from the graduation of the basic licensing course;

~~[(iv) obtain a new declaration of psychological and emotional health (L3 Form), if more than 180 days from the graduation of the basic licensing course;]~~

(iv) ~~[(v)]~~ obtain a new declaration of medical eligibility and lack of any drug dependency or illegal drug use (L2 Form), if more than 180 days from the graduation of the basic licensing course; and

(v) ~~[(vi)]~~ submit an appointment application (L1 Form) and receive an approval of the application before the person discharges any duties related to the license sought; and[-]

(11) ~~[(10)]~~ For current licensees, submit an [a Statement of Appointment Application (L1 Form) within 7 days of the appointment.

(b) When a person licensed by the commission separates from an agency, the agency shall, within 7 business days:

(1) submit a Separation report (Form F5) to the commission; and

(2) provide a copy to the licensee in a manner prescribed by Texas Occupations Code section 1701.452.

(c) A law enforcement agency that is given a signed consent form shall make the person's employment records available to a hiring law enforcement agency as authorized by Texas Occupations Code section 1701.451.

(d) An agency must retain records kept under this section while the person is appointed and for a minimum of five years after

the licensee's separation date with that agency. The records must be maintained under the control of the agency head or designee in a format readily accessible to the commission.

(e) The effective date of this section is May 1, 2025 ~~[February 1, 2020]~~.

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

Filed with the Office of the Secretary of State on January 16, 2025.

TRD-202500136

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: March 2, 2025

For further information, please call: (512) 936-7700



CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

37 TAC §219.2

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §219.2, Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police. The proposed amended rule would increase the types of federal criminal investigators that may receive reciprocity to be considered for a license.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by increasing the number of qualified candidates for licensure consideration. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

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

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

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

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rule-making Authority, and §1701.255, Enrollment Qualifications. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and to establish minimum standards related to the competence and reliability, including the education, training, physical, and mental standards, for licensing as an officer, county jailer, public security officer, or telecommunicator. Texas Occupations Code §1701.255 requires the Commission to adopt rules establishing minimum qualifications for a person to enroll in a law enforcement training program.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.255, Enrollment Qualifications. No other code, article, or statute is affected by this proposal.

§219.2. Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police.

(a) To be eligible to take a state licensing examination, an out of state, federal criminal investigator, or military police must comply with all provisions of §219.1 of this chapter and this section.

(b) A prospective out-of-state peace officer, federal criminal investigator, or military police applicant for peace officer licensing in Texas must:

(1) meet all statutory licensing requirements of the state of Texas and the rules of the commission;

(2) successfully complete a supplementary peace officer training course, the curriculum of which is developed by the commission, any other courses, as required by the commission; and

(3) successfully pass the Texas Peace Officer Licensing Examination as provided in §219.1 of this chapter.

(c) Requirements (Peace Officers): Applicants who are peace officers from other U.S. states must meet the following requirements:

(1) provide proof of successful completion of a state POST-approved (or state licensing authority) basic police officer training academy;

(2) have honorably served (employed, benefits eligible) as a sworn full time paid peace officer for 2 continuous years. Service time applied to this section must have been obtained following completion of a state POST-approved [POST approved] basic training course;

(3) be subject to continued employment or eligible for re-hire (excluding retirement); and

(4) the applicant's license or certificate must never have been, nor currently be in the process of being, surrendered, suspended, or revoked.

(d) Requirements (Federal): [~~The~~] Texas Code of Criminal Procedure [~~Procedures~~] Article 2A.002 [~~Section 2.122~~] recognizes certain named criminal investigators of the United States as having the authority to enforce selected state laws by virtue of their authority. These individuals are deemed to have the equivalent training for licensure consideration. The Executive Director may identify other federal criminal investigators not listed in Texas Code of Criminal Procedure Article 2A.002 whose training and work experience are deemed to be appropriate for licensure consideration.

(e) Qualifying Federal Officers must:

(1) have successfully completed an approved federal agency law enforcement training course (equivalent course topics and hours) at the time of initial certification or appointment;

(2) have honorably served (employed, benefits eligible) in one of the aforementioned federal full time paid capacities for 2 continuous years. Service time applied to this section must have been obtained following completion of a federal agency law enforcement approved basic training course; and

(3) be subject to continued employment or eligible for re-hire (excluding retirement).

(f) Requirements (Military): Must have a military police military occupation specialty (MOS) or air force specialty code (AFSC) classification approved by the commission.

(g) Qualifying military personnel must provide proof of:

(1) successfully completed basic military police course for branch of military served; and

(2) active duty service for 2 continuous years. Service time applied to this section must have been obtained following completion of an approved basic military police course.

(h) The applicant must make application and submit any required fee(s) in the format currently prescribed by the commission to take the peace officer licensing exam. The applicant must comply with the provisions of §219.1 of this chapter when attempting the licensing exam.

(i) Required documents must accompany the application:

(1) a certified or notarized copy of the basic training certificate for a peace officer, a certified or notarized copy of a federal agent's license or credentials, or a certified or notarized copy of the peace officer license or certificate issued by the state POST or proof of military training;

(2) a notarized statement from the state POST, current employing agency or federal employing agency revealing any disciplinary action(s) that may have been taken against any license or certificate issued by that agency or any pending action;

(3) a notarized statement from each applicant's employing agency confirming time in service as a peace officer or federal officer or agent;

(4) a certified or notarized copy of the applicant's valid state-issued driver's license;

(5) a certified copy of the applicant's military discharge (DD-214), if applicable; and

(6) for applicants without a valid Texas drivers license, a passport-sized color photograph (frontal, shoulders and face), signed with the applicant's full signature on the back of the photograph.

(j) The commission may request that applicants submit a copy of the basic and advanced training curricula for equivalency evaluation and final approval.

(k) All out-of-state, federal, and military applicants will be subject to a search of the National Decertification Database (NDD), NCIC/TCIC, and National Criminal History Databases to establish eligibility.

(l) Any applicant may be denied because of disciplinary action, including suspension or revocation, or misconduct in another jurisdiction.

(m) All documents must bear original certification seals or stamps.

(n) The effective date of this section is May 1, 2025 [~~February 1, 2020~~].

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

Filed with the Office of the Secretary of State on January 16, 2025.

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Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: March 2, 2025

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