Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP) without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7675). The rule will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2024 SLIHP.

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

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

Mr. Bobby Wilkinson, Executive Director, 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 the repeal, and simultaneous adoption by reference the 2024 SLIHP, as required by Tex. Gov't Code 2306.0723.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2024 SLIHP.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated more germane rule that will adopt by reference the 2024 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period for the rule was held Friday, December 22, 2023, to Monday, January 22, 2024, to receive input on the repealed section. Written comments were submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email info@tdhca.state.tx.us. A public hearing for the draft 2024 SLIHP was held on January 9, 2024, in Austin, Texas. While the Department received public comment on the draft 2024 SLIHP, no comments were received specifically on the repeal and new rule.

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

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

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

Filed with the Office of the Secretary of State on March 8, 2024.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: December 22, 2023
For further information, please call: (512) 483-1148

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10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP) without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7676). The rule will not be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2024 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2024 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2022, through August 31, 2023).

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it is exempt under item (c)(9) because it is necessary to implement legislation. Tex. Gov't Code §2306.0721 requires that the Department produce a state low income housing plan, and Tex. Gov't Code §2306.0722 requires that the Department produce an annual low income housing report. Tex. Gov't Code §2306.0723 requires that the Department consider the annual low income housing report to be a rule. This rule provides for adherence to that statutory requirement. Further no costs are associated with this action, and therefore no costs warrant being offset.

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

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

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

1. The new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2024 SLIHP, as required by Tex. Gov't Code 2306.0723.

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

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

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

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

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

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.0723.

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

2. There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the rule will adopt by reference the 2024 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule has no economic effect on local employment because the rule will adopt by reference the 2024 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule will adopt by reference the 2024 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2024 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2024 SLIHP.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the new rule was held between Friday, December 22, 2023 and Monday, January 22, 2024. The public comment period for the draft 2024 SLIHP was also held between December 22, 2023 and January 22, 2024. A public hearing for the draft 2024 SLIHP was held on January 9, 2024, in Austin, Texas. Written comments were accepted by email and mail. While the Department received public comment on the draft 2024 SLIHP, no comments were received specifically on the repeal and new rule.

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

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

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

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Bobby Wilkinson
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For further information, please call: (512) 483-1148

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CHAPTER 2. ENFORCEMENT

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 10 TAC §2.302 are not included in the print version of the Texas Register. The figures are available in the on-line version of the March 22, 2024, issue of the Texas Register.)

The Texas Department of Housing and Community Affairs (the Department) adopts amended 10 TAC Chapter 2, Enforcement, Subchapter A General, Subchapter C Administrative Penalties, and Subchapter D, Debarment from Participation in Programs Administered by the Department, as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8082). Sections 2.302 and 2.401 are adopted with changes and will be republished. The remaining sections are adopted without changes and will not be republished. The amendments will add reference to a new inspection protocol, NSPIRE, and brings this rule into consistency with changes recently made to Chapter 1, Subchapter C, relating to previous participation reviews and the removal of references to the now defunct Executive Award Review and Advisory Committee (EARAC).

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

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 rule action would be in effect, the actions do not create or eliminate a government program, but relate to changes to an existing activity, the enforcement of the Department's program rules.

2. The amendment to the rule will not require a change in the number of employees of the Department;

3. The amendment to the rule will not require additional future legislative appropriations;

4. The amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The amendment to the rule will not create a new regulation, but provides clarification to an existing regulation;

6. The amendment to the rule will not repeal an existing regulation;

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

8. The amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the adding a new federally required inspection standard and bringing the rule into consistency with other Department rules. There will not be any economic cost to any individual required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from December 22, 2023, through January 22, 2024. Comment was received from two commenters: Texas Housers (1) and Disability Rights Texas (2). Response to the public comment is provided below.

General Comment

Comment Summary: Commenter 1 commented generally on the availability of information relating to penalties and enforcement. Though records of enforcement actions are included in board materials, those documents are hundreds of pages long and are not easily accessible for everyday Texans. The commenter recommends that TDHCA make records on penalties and enforcement actions (e.g., number of administrative penalties or enforcement orders) more publicly available, such as including a summary of such information in the SLIHP or reporting this information on TDHCA's website.

Staff Response: Enforcement actions are considered by the Board during an open meeting, and then copies of their decisions are posted online at https://www.tdhca.texas.gov/tdhca-orders. There is no need to create further summaries of that activity. No revision to the rule is needed.

§2.103(e), Evaluation of Persons in Control of Developments, Programs, or activities at the time the Event of Noncompliance occurred.

Comment Summary: Commenter 1 approves of the proposed addition. Owners who sell or lose their problematic properties should not be able to walk away from those issues and continue in the program. Given issues we have dealt with at properties that are sold with existing conditions concerns, the commenter recommends an enhanced probationary period for properties sold with existing Events of Noncompliance to ensure that tenants at those properties do not fall through the cracks.

Staff Response: Staff appreciates the support. No revisions are recommended.

§2.302(c), Administrative Penalty Process.

Comment Summary: Commenter 1 recommends that the Department define how often properties must report to the Enforcement Committee when a plan for correction is in place beyond stating that plan progress shall be "regularly reported."

Staff Response: While staff agrees with this conceptually, the length of time between when a property should report to the Committee varies based on the type of corrections being required. Staff may require a specific reporting frequency in the case of each enforcement action, but would be hindered (or potentially create unnecessary burdens) if this duration was standardized. No revisions are recommended.

§2.302(f)(3), Result of Informal Conference.

Comment Summary: Commenter 1 requests that the Department update the text to include a requirement for a clear timeline to hold property owners and managers accountable for timely repairs and corrections. "An agreement to resolve the matter through corrective action without penalty with a clear timeline..."

Staff Response: Staff concurs and the rule has been revised to reflect this addition.

§2.302(h), Issuance of Notice of Violation.

Comment Summary: Commenter 1 asked that the rule be updated to require notification to tenants. "Not later than fourteen (14) days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party and tenants at the property." The commenter strongly advocates for notification of violations to tenants so they can be informed and involved in resolving issues. The rules around enforcement and debarment do not mention tenants at these properties even though they are the experts on property conditions and are directly impacted by violations.

Staff Response: Staff concurs that notification to tenants is fair and reasonable; however, since tenants are not a direct part of the compliance monitoring process or the contested case hearing process with the State Office of Administrative Hearings, and it is impractical for the Department to deliver notices to individual tenants when there is an enforcement action, a separate and more tenant-oriented Notice of Violation for Property Posting will accompany the Notice of Violation to the Responsible Party. The Responsible Party will be required to print and post this Notice of Violation for Property Posting in two prominent places on the property subject to the Notice, and provide photographic proof of the posting.

§2.302(k), Findings Related to Noncompliance with Required Accessibility Requirements:.

Comment Summary: Commenters 1 and 2 both support penalty floors for accessibility and casualty loss violations to make administrative penalties for non-compliance less subjective. The penalty table should not allow TDHCA staff to waive penalties relating to serious health and safety violations and should prioritize timely repairs to prevent harm, such as displacement of residents. Commenter 2 referred to a specific case presented to the Department's Board in September 2023 in which a property took more than two years to correct 43 accessibility violations. They felt that there should not be a situation in which near total elimination of all penalties, even for those related to serious health and safety violations, is permissible. This harms the people TDHCA is meant to serve. The commenter felt that the situation did not merit the vast amount of financial penalty forgiveness it was allowed.

Both commenters specifically request that under the Finding related to Noncompliance with required accessibility requirements, that the maximum first time administrative penalty be revised from "Up to $1,000 per violation, plus an optional $100 per day for each accessibility deficiency that remains uncorrected 6 months from the corrective action deadline" to "Up to $1,000 per violation, plus: a mandatory minimum $50 per day per violation for each accessibility deficiency that remains uncorrected between 6 and 9 months from the corrective action deadline; a mandatory minimum $75 per day per violation for each accessibility deficiency that remains uncorrected between 9 and 12 months from the corrective action deadline; and a mandatory minimum $100 per day per violation for each accessibility deficiency that remains uncorrected more than 12 months from the corrective action deadline."

The commenters also recommend that for that same finding, the penalty for those with a previous penalty, be revised from "Up to $1,000 per violation, plus an optional $100 per day for each accessibility deficiency that remains uncorrected 6 months from the corrective action deadline" to "Up to $1,000 per violation, plus: a mandatory $50 per day per violation for each accessibility deficiency that remains uncorrected between 6 and 9 months from the corrective action deadline; a mandatory $75 per day per violation for each accessibility deficiency that remains uncorrected between 9 and 12 months from the corrective action deadline; and a mandatory $100 per day per violation for each accessibility deficiency that remains uncorrected more than 12 months from the corrective action deadline."

Staff Response: Staff understands these concerns, however, Tex. Gov't. Code §2306.042 requires TDHCA to consider the following factors for all administrative penalty assessments: seriousness of the violation, the history of previous violations, the amount necessary to deter future violations, efforts made to correct the violation, and any other matter that justice may require. The Department has a standardized penalty schedule for the maximum potential penalty amount, but individual factors must also be considered as they are not conducive to standardization. A minimum mandatory amount would result in a penalty being assessed without regard to the statutorily-required consideration of the enumerated factors. No changes are recommended to the rule.

§2.302(k), Findings Related to Casualty Loss.

Both commenters also had concerns with the Finding related to Casualty Loss. They feel it is critical that LIHTC properties are rebuilt quickly after a disaster to prevent tenants from being displaced. Low income Texans, including people with disabilities, do not have many options available to them when it comes to

secondary living arrangements. Ensuring that tenants have a safe place to live is too important for there to be significant flexibility when it comes to making the repairs necessary to prevent displacement of residents after a disaster. Timely repairs can help prevent the dangerous situations faced by people with disabilities during a disaster.

The commenters specifically suggest that under Finding related to Casualty loss not corrected during restoration period, that that maximum first time administrative penalty be revised from "Up to $100 per unit per day" to "Up to $100 per unit per day, including a mandatory minimum $50 per unit per day for each casualty loss violation that remains uncorrected between 6 and 9 months from the restoration period; a mandatory minimum $75 per unit per day for each casualty loss violation that remains uncorrected between 9 and 12 months from the corrective action deadline; and a mandatory $100 per unit per day for each casualty loss violation that remains uncorrected more than 12 months from the corrective action deadline".

The commenters also recommend that for that same finding, that the penalty for those with a previous penalty, be revised from "Up to $500 per unit per day" to "Up to $500 per unit per day, including a mandatory minimum $250 per unit per day for each casualty loss violation that remains uncorrected between 6 and 9 months from the corrective action deadline; a mandatory minimum $400 per unit per day for each casualty loss violation that remains uncorrected between 9 and 12 months from the corrective action deadline; and a mandatory $500 per unit per day for each casualty loss violation that remains uncorrected more than 12 months from the corrective action deadline."

Staff Response: Staff understands these concerns, however, Tex. Gov't. Code §2306.042 requires TDHCA to consider the following factors for all administrative penalty assessments: seriousness of the violation, the history of previous violations, the amount necessary to deter future violations, efforts made to correct the violation, and any other matter that justice may require. The Department has a standardized penalty schedule for the maximum potential penalty amount, but individual factors must also be considered as they are not conducive to standardization. A minimum mandatory amount would result in a penalty being assessed without regard to the statutorily-required consideration of the enumerated factors. No revisions are recommended.

§§2.401(d)(1), 2.401(e)(1)(B), and 2.401(e)(2)(B), Temporary reduction of NSPIRE score threshold.

Comment Summary: Commenter 1 requests that the rule remove the proposed text allowing the Compliance Division to temporarily decrease the NSPIRE score threshold below 50. Scores range from 0 to 100 and HUD considers a score below 60 to be failing; 50 is already a very low score. If this text remains, TDHCA should not allow the threshold to drop below 30, which is the score HUD has set as a threshold that triggers referral to HUD's Enforcement Center. The commenter also request that TDHCA update §2.401(e)(2)(B) to state that changes to the score threshold will be temporary to align with §§2.401(d)(1) and 2.401(e)(1)(B).

Staff Response: Staff declines to remove the temporary decrease language because NSPIRE is a new inspection standard and the Department does not yet have a large enough inspection sample to confirm whether this is the appropriate score threshold for mandatory debarment from future participation in Department programs. Staff agrees with the final sentence of the comment, and has updated §2.401(e)(2)(B) to incorporate the temporary language from §§2.401(d)(1) and 2.401(e)(1)(B).

§2.401(e)(2)(A), Enforcement Committee threshold for referrals.

Comment Summary: Commenter 1 would like to see the Department remove the proposed text allowing the Enforcement Committee to increase the threshold for share of properties that have been referred to the Enforcement Committee above 50%. The proposed text would make it easier for the worst LIHTC owners to evade enforcement. If this text remains, the commenter suggests that TDHCA should update the language so that the change is temporary, in line with §§2.401(d)(1) and 2.401(e)(1)(B).

Staff Response: Staff understands the Commenter's position, however, it is important for the Department to retain discretion regarding the thresholds for automatic referral for debarment from its programs. Debarment is an extreme remedy, and this rule section establishes definitions for what is considered repeated noncompliance that justifies mandatory debarment, and this threshold has not been shown to assist "the worst" LIHTC owners to evade enforcement. No revisions are recommended.

SUBCHAPTER A. GENERAL

10 TAC §§2.101 - 2.104

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 amendment affects no other code, article, or statute.

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

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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) 483-1148

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SUBCHAPTER C. ADMINISTRATIVE PENALTIES

10 TAC §2.301, §2.302

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 amendment affects no other code, article, or statute.

§2.302. Administrative Penalty Process.

(a) The Executive Director will appoint an Enforcement Committee, as defined in §2.102 of this chapter (relating to Definitions).

(b) The referring division will recommend the initiation of administrative penalty proceedings to the Committee by referral to the secretary of the Committee (Secretary). At the time of referral for a multifamily rental Development, the referral letter from the referring Division will require the Responsible Party who Controls the Develop-

ment to provide a listing of the Actively Monitored Developments in their portfolio. The Secretary will use this information to help determine whether mandatory Debarment should be simultaneously considered by the Enforcement Committee in accordance with §2.401(e)(2) of this section, related to repeated violations.

(c) The Secretary shall promptly contact the Responsible Party. If fully acceptable corrective action documentation is submitted to the referring division before the Secretary sends an informal conference notice, the referral shall be closed with no further action provided that the Responsible Party is not subject to consideration for Debarment and provided that the referring division does not wish to move forward with the referral based upon a pattern of repeated violations. If the Secretary is not able to facilitate resolution, but receives a reasonable plan for correction, such plan shall be reported to the Committee to determine whether to schedule an informal conference, modify the plan, or accept the plan. If accepted, plan progress shall be regularly reported to the Committee, but an informal conference will not be held unless the approved plan is substantively violated, or an informal conference is later requested by the Committee or the Responsible Party. Plan examples include but are not limited to: a rehabilitation plan with a scope of work or contracts already in place, plans approved by the Department as part of the Previous Participation Review process provided for in 10 TAC Subchapter C for an ownership transfer or funding application, plans approved by the Executive Director, plans approved by the Asset Management Division, and/or plans relating to newly transferred Developments with unresolved Events of Noncompliance originating under prior ownership. Should the Secretary and Responsible Party fail to come to, an agreement or closer of the referral, or if the Responsible Party or ownership group's prior history of administrative penalty referrals does not support closure, or if consideration of Debarment is appropriate, the Secretary will schedule an informal conference with the Responsible Party to attempt to reach an agreed resolution.

(d) When an informal conference is scheduled, a deadline for submitting Corrective Action documentation will be included, providing a final opportunity for resolution. If compliance is achieved at this stage, the referral will be closed with a warning letter provided that factors, as discussed below, do not preclude such closure. Closure with a warning letter shall be reported to the Committee. Factors that will determine whether it is appropriate to close with a warning letter include, but are not limited to:

(1) Prior Enforcement Committee history relating to the Development or other properties in the ownership group;

(2) Prior Enforcement Committee history regarding similar federal or state Programs;

(3) Whether the deadline set by the Secretary in the informal conference notice has been met;

(4) Whether the Committee has set any exceptions for certain finding types; and

(5) Any other factor that may be relevant to the situation.

(e) If an informal conference is held:

(1) Notwithstanding the Responsible Party's attendance or presence of an authorized representative, the Enforcement Committee may proceed with the informal conference;

(2) The Responsible Party may, but is not required to be, represented by legal counsel of their choosing at their own cost and expense;

(3) The Responsible Party may bring to the meeting third parties, employees, and agents with knowledge of the issues;

(4) Assessment of an administrative penalty and Debarment may be considered at the same informal conference; and

(5) In order to facilitate candid dialogue, an informal conference will not be open to the public; however, the Committee may include such other persons or witnesses as the Committee deems necessary for a complete and full development of relevant information and evidence.

(f) An informal conference may result in the following, which shall be reported to the Executive Director:

(1) An agreement to dismiss the matter with no further action;

(2) A compliance assistance notice issued by the Committee, available for Responsible Parties appearing for the first time before the Committee for matters which the Committee determines do not necessitate the assessment of an administrative penalty, but for which the Committee wishes to place the Responsible Party on notice with regard to possible future penalty assessment;

(3) An agreement to resolve the matter through corrective action without penalty with a clear timeline included. If the agreement is to be included in an order, a proposed agreed order will be prepared and presented to the Board for approval;

(4) An agreement to resolve the matter through corrective action with the assessment of an administrative penalty which may be probated in whole or in part, and may, where appropriate, include additional action to promote compliance such as requirements to obtain training. In this circumstance, a proposed agreed order will be prepared and presented to Department's Governing Board for approval;

(5) A recommendation by the Committee to the Executive Director to determine that a violation occurred, and to issue a report to the Board and a Notice of Violation to the Responsible Party, seeking the assessment of administrative penalties through a contested case hearing with the State Office of Administrative Hearings (SOAH); or

(6) Other action as the Committee deems appropriate.

(g) Upon receipt of a recommendation from the Committee regarding the issuance of a report and assessment of an administrative penalty under subsection (f)(5), the Executive Director shall determine whether a violation has occurred. If needed, the Executive Director may request additional information and/or return the recommendation to the Committee for further development. If the Executive Director determines that a violation has occurred, the Executive Director will issue a report to the Board in accordance with §2306.043 of the Texas Government Code.

(h) Not later than 14 days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party, along with a Notice of Violation for Property Posting (which shall be printed and posted in two prominent places on the property subject to the Notice, and photographic proof of the posting shall be made). The Notice of Violation issued by the Executive Director will include:

(1) A summary of the alleged violation(s) together with reference to the particular sections of the statutes and rules alleged to have been violated;

(2) A statement informing the Responsible Party of the right to a hearing before the SOAH, if applicable, on the occurrence of the violation(s), the amount of penalty, or both;

(3) Any other matters deemed relevant, including the requirements regarding the Notice of Violation for Property Posting; and

(4) The amount of the recommended penalty. In determining the amount of a recommended administrative penalty, the Executive Director shall take into consideration the statutory factors at Tex. Gov't Code §2306.042 the penalty schedule shown in the tables in subsection (k) of this section and in the instance of a proceeding to assess administrative penalties against a Responsible Party administering the annual block grant portion of CDBG, CSBG, or LIHEAP, whether the assessment of such penalty will interfere with the uninterrupted delivery of services under such program(s). The Executive Director shall further take into account whether the Department's purposes may be achieved or enhanced by the use of full or partial probation of penalties subject to adherence to specific requirements and whether the violation(s) in question involve disallowed costs.

(i) Not later than 20 days after the Responsible Party receives the Notice of Violation, the Responsible Party may accept the requirements of the Notice of Violation or request a SOAH hearing.

(j) If the Responsible Party requests a hearing or does not respond to the Notice of Violation, the Executive Director, with the approval of the Board, shall cause the hearing to be docketed before a SOAH administrative law judge in accordance with §1.13 of this title (relating to Contested Case Hearing Procedures), which outlines the remainder of the process.

(k) Penalty schedules.
Figure 1: 10 TAC §2.302(k)
Figure 2: 10 TAC §2.302(k)
Figure 3: 10 TAC §2.302(k)

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 483-1148

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SUBCHAPTER D. DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

10 TAC §2.401

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 amendment affects no other code, article, or statute.

§2.401. General.

(a) The Department may debar a Responsible Party, a Consultant and/or a Vendor who has exhibited past failure to comply with any condition imposed by the Department in the administration of its programs. A Responsible Party, Consultant or Vendor may be referred to the Committee for Debarment for any of the following:

(1) Refusing to provide an acceptable plan to implement and adhere to procedures to ensure compliant operation of the program after being placed on Modified Cost Reimbursement;

(2) Refusing to repay disallowed costs;

(3) Refusing to enter into a plan to repay disallowed costs or egregious violations of an agreed repayment plan;

(4) Meeting any of the ineligibility criteria referenced in §11.202 of this title (relating to Ineligible Applicants and Applications) or other ineligibility criteria outlined in a Program Rule, with the exception of: ineligibility related to conflicts of interest disclosed to the Department for review, and ineligibility identified in a previous participation review in conjunction with an application for funds or resources (unless otherwise eligible for Debarment under this Subchapter D);

(5) Providing fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission with regard to any documentation, certification or other representation made to the Department;

(6) Failing to correct Events of Noncompliance as required by an order that became effective after April 1, 2021, and/or failing to pay an administrative penalty as required by such order, within six months of a demand being issued by the Department. In this circumstance, if the Debarment process is initiated but the Responsible Party fully corrects the findings of noncompliance to the satisfaction of the referring division and pays the administrative penalty as required by the order before the Debarment is finalized by the Board, the Debarment recommendation may be cancelled or withdrawn by Committee recommendation and Executive Director concurrence. This type of referral would be initiated by the Secretary;

(7) Controlling a multifamily Development that was foreclosed after April 1, 2021, where the foreclosure or deed in lieu of foreclosure terminates a subordinate TDHCA LURA;

(8) Controlling a multifamily Development and allowing a change in ownership after April 1, 2021, without Department approval;

(9) Transferring a Development, after April 1, 2021, without regard for a Right of First Refusal requirement;

(10) Being involuntary removed, or replaced due to a default by the General Partner under the Limited Partnership Agreement, after April 1, 2021;

(11) Controlling a multifamily Development and failing to correct Events of Noncompliance before the expiration of a Land Use Restriction Agreement, after the effective date of this rule;

(12) Refusing to comply with conditions approved by the Board that were recommended by the Executive Award Review Advisory Committee after April 1, 2021;

(13) Having any Event of Noncompliance that occurs after April 1, 2021, that causes the Department to be required to repay federal funds to any federal agency including, but not limited to the U.S. Department of Housing and Urban Development; and/or

(14) Submitting a written certification that non-compliance has been corrected when it is determined that the Event of Noncompliance was not corrected. For certain Events of Noncompliance, in lieu of documentation, the Compliance Division accepts a written certification that noncompliance has been corrected. If it is determined that the Event of Noncompliance was not corrected, a Person who signed the certification may be recommended for debarment;

(15) Refusing to provide an amenity required by the LURA after April 1, 2021;

(16) Failing to reserve units for Section 811 PRA participants after April 1, 2021;

(17) Failing to notify the Department of the availability of 811 PRA units after April 1, 2021;

(18) Taking "choice limiting" actions prior to receiving HUD environmental clearance (24 CFR §58.22);

(19) Substandard construction, as defined by the Program, and repeated failure to conduct required inspections;

(20) Repeated failure to provide eligible match. 24 CFR §92.220, 24 CFR §576.201, and as required by NOFA;

(21) Repeated failure to report program income. 24 CFR §200.80, 24 CFR §570.500, 24 CFR §576.407(c), 24 CFR §92. 503, (as applicable), and 10 TAC §20.9, or as defined by Program Rule;

(22) Participating in activities leading to or giving the appearance of "Conflict of Interest". As applicable, in 2 CFR Part 215 2 CFR Part 200. 24 CFR §93.353, §92.356 24 CFR, §570.489, 24 CFR §576.404, 10 TAC §20.9, or as defined by Program Rule;

(23) Repeated material financial system deficiencies. As applicable, 2 CFR Part 200, 24 CFR §§, 92.205, 92.206, 92.350, 92.505, and 92.508, 2 CFR Part 215, 2 CFR Part 225 (if applicable), 2 CFR Part 230 (, 10 TAC §20.9, Uniform Grant Management Standards, and Texas Grant Management Standards (as applicable), and as defined by Program Rule.

(24) Repeated violations of Single Audit or other programmatic audit requirements;

(25) Failure to remain a CHDO for Department committed HOME funds;

(26) Commingling of funds, Misapplication of funds;

(27) Refusing to submit a required Audit Certification Form, Single Audit, or other programmatic audit;

(28) Refusing to timely respond to reports/provide required correspondence;

(29) Failure to timely expend funds; and

(30) A Monitoring Event determines that 50% or more of the client or household files reviewed do not contain required documentation to support income eligibility or indicate that the client or household is not income eligible.

(b) The Department shall debar any Responsible Party, Consultant, or Vendor who is debarred from participation in any program administered by the United States Government.

(c) Debarment for violations of the Department's Multifamily Programs. The Department shall debar any Responsible Party who has materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including but not limited to a material or repeated violation of a land use restriction agreement (LURA) or Contract. Subsection (d) of this section provides the criteria the Department will use to determine if there has been a material violation of a LURA. Subsections (e)(1) and (e)(2) of this section provide the criteria the Department shall use to determine if there have been repeated violations of a LURA.

(d) Material violations of a LURA. A Responsible Party will be considered to have materially violated a LURA, Program Agreement, or condition imposed by the Department and shall be referred to the committee for mandatory Debarment if they:

(1) Control a Development that has, on more than one occasion scored 50 or less on a UPCS inspection or has, on more than one occasion scored 50 or less on a NSPIRE inspection, or any combination thereof. The Compliance Division may temporarily decrease this NSPIRE score threshold with approval by the Executive Director, for a period of time not longer than one year, so long as the score threshold is applied evenly to all properties;

(2) Refuse to allow a monitoring visit when proper notice was provided or failed to notify residents, resulting in inspection cancellation, or otherwise fails to make units and records available;

(3) Refuse to reduce rents to less than the highest allowed under the LURA;

(4) Refuse to correct a UPCS, NSPIRE, or final construction inspection deficiency after the effective date of this rule;

(5) Fail to meet minimum set aside by the end of the first year of the credit period (HTC Developments only) after April 1, 2021; or

(6) Excluding an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program after April 1, 2021.

(e) Repeated Violations of a LURA that shall be referred to the Committee for Debarment.

(1) A Responsible Party shall be referred to the Committee for mandatory Debarment if they Control a Development that, during two Monitoring Events in a row is found to be out of compliance with the following Events of Noncompliance:

(A) No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement;

(B) Any Uniform Physical Condition Standards Violations that result in a score of 70 or below in sequential UPCS inspections after April 1, 2021 or NSPIRE violations that result in a score of 50 or below in sequential inspections after the effective date of this rule, or any combination thereof. The Compliance Division may temporally decrease this NSPIRE score threshold with approval by the Executive Director, for a period not to exceed one year, so long as the score threshold is applied evenly to all properties;

(C) Refuse to submit all or parts of the Annual Owner's Compliance Report for two consecutive years after April 1, 2021; or

(D) Gross rents exceed the highest rent allowed under the LURA or other deed restriction.

(2) Repeated violations in a portfolio. Persons who control five or more Actively Monitored Developments will be considered for Debarment based on repeated violations in a portfolio. A Person shall be referred to be committee if an inspection or referral, after April 1, 2021, indicates the following:

(A) 50% or more of the Actively Monitored Developments in the portfolio have been referred to the Enforcement Committee within the last three years. The Enforcement Committee may increase this threshold at its discretion. For example, if three properties in a five-property portfolio are monitored in the same month, and then referred to the Enforcement Committee at the same time, it may be appropriate to increase the 50% threshold; or,

(B) 50% or more of the Actively Monitored Developments in the portfolio score a 70 or less during a Uniform Physical Conditions Standards inspection or score 50 or less during a NSPIRE inspection, or any combination thereof. The Compliance Division may decrease this NSPIRE score threshold with approval by the Executive Director, for a period not to exceed one year, so long as the score threshold is applied evenly to all properties.

(f) Debarment for violations of Department Programs, with the exception of the Non-Discretionary funds in the Community Services Block Grant program. Material or repeated violations of conditions imposed in connection with the administration of Programs administered by the Department. Administrators, Subrecipients, Responsible Parties, contractors, multifamily owners, and related parties shall be referred to the Committee for consideration for Debarment for violations including but not limited to:

(1) 50% or more loan defaults in the first 12 months of the loan agreement after April 1, 2021;

(2) The following Davis Bacon Act Violations:

(A) Refusing to pay restitution (underpayment of wages). 29 CFR §5.31.

(B) Refusing to pay liquidated damages (overtime violations). 29 CFR §5.8.

(C) Repeated failure to pay full prevailing wage, including fringe benefits, for all hours worked. 29 CFR §5.31.

(3) The following violations of the Uniform Relocation Act and requirements of §104(d):

(A) Repeated failure to provide the General Information Notice to tenants prior to application. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352 and HUD Handbook 1378.

(B) Repeated failure to provide all required information in the General Information Notice. 49 CFR §24.203, 24 CFR §570.606, 24 CFR §92.353, 24 CFR §93.352, or HUD Handbook 1378.

(C) Repeated failure to provide the Notice of Eligibility and/or Notice of Non-displacement on or before the Initiation of Negotiations date. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(D) Repeated failure to provide all required information in the Notice of Eligibility and/or Notice of Non-displacement. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(E) Repeated failure to provide 90 Day Notices to all "displaced" tenants and/or repeated failure to provide 30 Day Notices to all "non-displaced" tenants. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(F) Repeated failure to perform and document "decent, safe and sanitary" inspections of replacement housing. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(G) Refusing to properly provide Uniform Relocation Act or §104(d) assistance. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §570.606 and §104(d) of the Housing & Community Development Act of 1974 - 24 CFR Part 42.

(4) Refusing to reimburse excess cash on hand;

(5) Using Department funds to demolish a homeowner's dwelling and then refusing to rebuild;

(6) Drawing down Department funds for an eligible use and then refusing to pay a properly submitted request for payment to a subgrantee or vendor with the drawn down funds.

(g) The referring division shall provide the Responsible Party with written notice of the referral to the Committee, setting forth the facts and circumstances that justify the referral for Debarment consideration.

(h) The Secretary shall then offer the Responsible Party the opportunity to attend an Informal Conference with the Committee to discuss resolution of the. In the event that the Debarment referral was the result of a violated agreed order or a determination that 50% or more of the Actively Monitored Developments in their portfolio have been referred to the Enforcement Committee, the above written notice of the referral to the Committee and the informal conference notice shall be combined into a single notice issued by the Secretary.

(i) A Debarment Informal Conference may result in the following, which shall be reported to the Executive Director:

(1) A determination that the Department did not have sufficient information and/or that the Responsible Party does not meet any of the criteria for Debarment;

(2) An agreed Debarment, with a proposed agreed order to be prepared and presented to the Board for approval;

(3) A recommendation by the Committee to the Executive Director for Debarment;

(4) A request for further information, to be considered during a future meeting; or,

(5) If Debarment is not mandatory, an agreement to dismiss the matter with no further action, an agreement to dismiss the matter with corrective action being taken, or any other action as the Committee deems appropriate, which will then be reported to the Executive Director.

(j) The Committee's recommendation to the Executive Director regarding Debarment shall include a recommended period of Debarment. Recommended periods of Debarment will be based on material factors such as repeated occurrences, seriousness of underlying issues, presence or absence of corrective action taken or planned, including corrective action to install new responsible persons and ensure they are qualified and properly trained. Recommended periods of Debarment if based upon HUD Debarment, shall be for the period of the remaining HUD Debarment; or, if based upon criminal conviction, shall be up to ten (10) years or until fulfillment of all conditions of incarceration and/or probation, whichever is greater.

(k) The Executive Director shall accept, reject, or modify the Debarment recommendation by the Committee and shall provide written notice to the Responsible Party of the determination, and an explanation of the determination if different than the Committee's recommendation, including the period of Debarment, if any. The Responsible Party may appeal the Debarment determination in writing to the Board as described in §1.7 of this title (relating to Appeals Process).

(l) The Debarment recommendation will be brought to the next Board meeting for which the matter can be properly posted. The Board reserves discretion to impose longer or shorter Debarment periods than those recommended by staff based on its finding that such longer or shorter periods are appropriate when considering all factors and/or for the purposes of equity or other good cause. An action on a proposed Debarment of an Eligible Entity under the CSBG Act will not become final until and unless proceedings to terminate Eligible Entity status have occurred, resulting in such termination and all rights of appeal or review have run or Eligible Entity status has been voluntarily relinquished.

(m) Until the Responsible Party's Debarment referral is fully resolved, the Responsible Party may not participate in new Department financing and assistance opportunities.

(n) Any person who has been debarred is prohibited from participation as set forth in the final order of Debarment for the term of their Debarment. Unless specifically stated in the order of Debarment, Debarment does not relieve a Responsible Party from its current obligations, or prohibit it from continuing its participation in any existing engagements funded through the Department, nor limit its responsibilities and duties thereunder. The Board will not consider modifying the terms of the Debarment after the issuance of a final order of Debarment.

(o) If an Eligible Entity under the CSBG Act meets any of the criteria for Debarment in this rule, the Department may recommend the Eligible Entity for Debarment. However, that referral or recommendation shall not proceed until the termination of the Eligible Entity's status under the CSBG Act has concluded, and no right of appeal or review remains.

(p) All correspondence under this rule shall be delivered electronically.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 483-1148

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CHAPTER 20. SINGLE FAMILY PROGRAMS UMBRELLA RULE

10 TAC §§20.1 - 20.15

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, consisting of sections §§20.1 - 20.15, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7678). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule, while adopting a new updated rule under separate action.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to making changes to an existing activity;

2. The repeal does not require a change in the number of employees of the Department;

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

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

5. The repeal will repeal an existing regulation;

6. The repeal will not increase or decrease the number of individuals subject to the rule's applicability; and

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

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

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

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the 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.

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.

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.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023, and January 22, 2024. No comment was received.

The Board adopted the final order adopting the repeal on February 6, 2024.

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

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

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

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Bobby Wilkinson
Executive Director
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For further information, please call: (512) 483-1148

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10 TAC §§20.1 - 20.15

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7679), the new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, consisting of §§20.1 - 20.15. The rules will not be republished. The purpose of the new chapter is to implement a more germane rule and better align administration to state requirements.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rules would be in effect:

1. The new rules do not create or eliminate a government program, but relates to making changes to an existing activity;

2. The new rules do not require a change in the number of employees of the Department;

3. The new rules do not require additional future legislative appropriations;

4. The new rules do not result in an increase or a decrease in fees paid to the Department;

5. The new rules do not create a new regulation;

6. The new rules will not repeal an existing regulation;

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

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

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 these rules and determined that the proposed rules will not create an economic effect on small or micro-businesses or rural communities.

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

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will 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 rules.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of the rules will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new rules.

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

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023, and January 22, 2024. No comment was received.

The Board adopted the final order adopting the new rule on March 7, 2024.

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

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

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

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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 23, Single Family HOME Program Rule, §§23.1, 23.2, 23.20 - 23.29, 23.30 - 23.32, 23.40 - 23.42, 23.50 - 23.52, 23.60 - 23.62 and 23.70 - 23.72, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7690). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action. The repeals will not be republished.

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

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

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

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

significant enough to reduce work load to a degree that any existing employee positions are eliminated.

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Single Family HOME Program.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed chapter 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 has also determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023, and January 22, 2024. Comments regarding the repeal were accepted in writing and by e-mail.

The Board adopted the final order adopting the repeal on February 6, 2024.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

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

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

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

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SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

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

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

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

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SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

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

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

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

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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) 483-1148

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SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §§23.40 - 23.42

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

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

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

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SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.50 - 23.52

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

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

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

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SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.60 - 23.62

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

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

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

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SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §§23.70 - 23.72

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

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

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

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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 23, Single Family HOME Program Rule, consisting of §§23.1, 23.2, 23.20 - 23.29, 23.30 - 23.32, 23.40 - 23.42, 23.50 - 23.52, 23.60 - 23.62 and 23.70 - 23.72, as proposed in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7693). Section 23.51 is adopted with changes and will be republished. The remaining sections are adopted without changes and will not be republished. The purpose of the new chapter is to update the rule to implement a more germane rule and better align administration to state and federal requirements.

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

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

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

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

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family HOME Program activities, including Homeowner Reconstruction Assistance, Contract for Deed, Tenant-Based Rental Assistance, Single Family Development, and Homebuyer Assistance with New Construction.

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

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

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

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

6. The new rule will not expand or repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family HOME Program.

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this 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 new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under the Single Family HOME Program that are subject to the new rule for which the no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the 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 new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the 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 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 participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the HOME Program provides reimbursement to those entities whom are subject to the rule for the cost of compliance with the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the Single Family HOME Program is a federally funded program, and no increase in the requirement to match federal funds is in the rule.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023 and January 22, 2024. Comments regarding the proposed repeal were accepted in writing and by e-mail with comment received from: (1) Phyllis McIntyre, a resident of Guadalupe County, (2) Karen Walker of Langford Community Management Services, and (3) Wade Bienski of Affordable Care Housing.

Section 23.20 Availability of Funds and Regional Allocation formula.

COMMENT SUMMARY: Commenter (1) expressed concern about challenges to navigating the Department website. Specifically noted was the Help for Texans website. Commenter suggested residents have the ability to apply for funds directly to the Department as opposed to working through an Administrator.

STAFF RESPONSE: Staff appreciates the comment and recognizes the challenges associated with navigating the Department website. However, staff feels these challenges will be mitigated with the recent launch of a more streamlined, user-friendly Department website.

Staff appreciates that the network of Administrators of HOME funds does cover all areas of the state, and actively reaches out to units of local government when a constituent residing in a non-Participating Jurisdiction contacts TDHCA; however, the Department is not able to effectively administer HOME funds directly, and our planning documents require that funds are distributed through local Administrators that are able to provide oversight of the HOME Program activities. No changes are recommended in response to this comment.

Section 23.31 Homeowner Reconstruction Assistance (HRA) General Requirements.

COMMENT SUMMARY: Commenter (2) expressed a preference for a greater increase in General Administrative costs than the one percent increase (to a total of five percent of project hard costs) by the Department. Commenter noted an administrative burden caused by the complex nature of managing a HOME Program, and noted a belief that more Administrators would participate should the increase of General Administrative cost be raised.

STAFF RESPONSE: Staff appreciates the comment and recognizes the detailed and complex administrative support required to successfully operate a HOME program. Greater percentage increases were proposed for Contract for Deed and Homebuyer Assistance with New Construction because usage of funds for these programs has not kept pace with their planned use; and they are more complex activities due to an acquisition component. The proposed increase in administrative funds for Homeowner Reconstruction Assistance (HRA) activities was made in recognition of rising costs and complexity; however, as the total amount of administrative funds also increases alongside construction costs increases, additional funds have been made available through proportional increase. Demand for these activities remains robust. Additionally, HOME funds have a statutory limit of ten percent on funds that may be used for Administration, and as a greater share of HOME funds overall are programmed for HRA, an additional increase may place the Department at risk of a shortfall of Administrative funding. No changes are recommended in response to this comment.

Section 23.51 Tenant-Based Rental Assistance (TBRA) General Requirements.

COMMENT SUMMARY: Commenter (3) expressed concern that the option to elect a combination of funds for soft costs alongside a reduced percentage of funds for Administration was proposed to be replaced with a greater percentage of funds available for Administration. Commenter expressed that funds available to their organization under the proposed model would decrease and cause a cost burden for their organization. Commenter predicts that this change will cause a decline in Administrator participation, who already struggle with staffing and time constraints during HOME program administration.

STAFF RESPONSE: Staff recognizes the importance of Administrators in the distribution of HOME funds to Texans. Staff appreciates the comment and recognizes the importance of administrative dollars to support Administrators, and appreciates that some Administrators in lower cost areas may be impacted negatively if soft costs are not eligible for reimbursement. Staff agrees with the commenter, and proposes to include eligibility of the prior mechanism which allowed for soft cost reimbursement and a reduced Administrative percentage, as well as maintaining the increase for Administrative costs for Administrators who elect to forgo soft cost reimbursement.

The Board adopted the final order adopting the new rule on March 7, 2024.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

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

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

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

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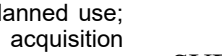

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

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

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

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

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SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

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

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

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SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §§23.40 - 23.42

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

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

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

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SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.50 - 23.52

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

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

§23.51. Tenant-Based Rental Assistance (TBRA) General Requirements.

(a) Households assisted under the general set-aside must participate in a self-sufficiency program, as described in the Administrator's policies and procedures.

(b) The amount of assistance will be determined using the HUD Housing Choice Voucher method.

(c) A Household certifying to zero income must also complete a questionnaire that includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's adjusted monthly income. The maximum Household contribution toward gross monthly rent at initial occupancy is limited to 40 percent of the Household's gross monthly income.

(e) Activity funds are limited to:

(1) Rental subsidy: Each rental subsidy term is limited to no more than 24 months. Total lifetime assistance to a Household may not exceed 36 months cumulatively, except that a maximum of 24 additional months of assistance, for a total of 60 months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; or

(C) the Administrator submits documentation evidencing that:

(i) no Public Housing Authority within a 50 mile radius of the Household's address during their participation in TBRA has opened their waitlist during the term of the Household's participation in TBRA, or has excluded the Household's application for placement on the waiting list for any reason other than eligibility or failure to respond to required notices, such as a randomized drawing of applications that may be placed on the waitlist; and

(ii) no waiting list was opened during the term of the Household's participation in TBRA for any HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; or

(iii) the Household is not eligible for placement on a waiting list for any HUD Section 811 Supportive Housing for Persons

with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; and

(D) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(E) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) Security deposit: no more than the amount equal to two month's rent for the unit.

(3) Utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the Date of Assistance. The payment standard utilized by the Administrator must be:

(1) For metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;

(2) For nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) For a HOME assisted unit, the current applicable HOME rent; or

(4) The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in Section 1.204 of this Title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) Administrators must select one method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. All costs must be reasonable and customary for the Administrator's Service Area. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional one percent of Direct Activity Costs if Match is provided in an amount equal to five percent or more of Direct Activity Costs:

(1) Funds for Administrative costs are limited to four percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to $1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area; or

(2) Funds for Administrative costs are limited to ten percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

(h) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one month if a tenant moves out of an assisted unit prior to the lease end date.

(i) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with Section 10.802 of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in Section 10.802 of this Title) will govern).

(k) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity without prior written consent of the Department.

(l) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 483-1148

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SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.60 - 23.62

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

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

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

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SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §§23.70 - 23.72

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

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

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

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CHAPTER 24. TEXAS BOOTSTRAP LOAN PROGRAM RULE

10 TAC §§24.1 - 24.12

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, §§24.1 - 24.12 without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7714). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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 repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to making changes to an existing activity;

2. The repeal does not require a change in the number of employees of the Department;

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

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

5. The repeal will repeal an existing regulation;

6. The repeal will not increase or decrease the number of individuals subject to the rule's applicability; and

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

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

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

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal 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.

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

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

implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023, and January 22, 2024. No comment was received.

The Board adopted the final order adopting the repeal on March 7, 2024.

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

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

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

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10 TAC §§24.1 - 24.12

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7715), the new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, §§24.1 - 24.12. The rules will not be republished. The purpose of the new chapter is to implement a more germane rule and better align administration to state requirements.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to making changes to an existing activity;

2. The new rule does not require a change in the number of employees of the Department;

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

4. The new rule does not result in an increase or a decrease in fees paid to the Department;

5. The new rule does not create a new regulation;

6. The new rule will not repeal an existing regulation;

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

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

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 rule and determined that the new rule will not create an economic effect on small or micro-businesses or rural communities.

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

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will 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.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new rule.

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

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023, and January 22, 2024. No comment was received.

The Board adopted the final order adopting the new rule on March 7, 2024.

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

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

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

Filed with the Office of the Secretary of State on March 8, 2024.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: December 22, 2023
For further information, please call: (512) 483-1148

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CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §§26.1 - 26.7

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter A, General Guidance, consisting of §§26.1 - 26.7, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7720). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the 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 Texas Housing Trust Fund.

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration the Texas Housing Trust Fund.

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed 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 has also determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023 and January 22, 2024 and no comment on the repeal was received.

The Board approved the final order adopting the repeal on March 7, 2024.

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

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

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

Filed with the Office of the Secretary of State on March 8, 2024.

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Bobby Wilkinson
Texas Department of Housing and Community Affairs
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Proposal publication date: December 22, 2023
For further information, please call: (512) 483-1148

10 TAC §§26.1 - 26.7

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter A, consisting of §§26.1 - 26.7, without changes to the text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7721). The rules will not be republished. The purpose of the new chapter is to implement a more germane rule and better align administration to state requirements.

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

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

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

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

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Texas Housing Trust Fund.

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

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

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

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

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

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

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this 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 new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 20 rural communities currently participating in the Texas Housing Trust Fund that are subject to the new rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the 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 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 rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the 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 participation in the programs funded with the Texas Housing Trust Fund is at the discretion of the eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

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

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

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023 and January 22, 2024. Comments regarding the rule were accepted in writing and by e-mail, and public comment was received from Tanya Lavelle of Disability Rights Texas. Staff has summarized the comment as well as staff's response in the preamble. Staff does not recommend changes in response to the public comment.

Section 26.3(c)(2) Allocation of Funds.

COMMENT SUMMARY: Commenter requested that, to ensure that persons with disabilities can benefit equally from Texas Housing Trust Fund (Texas HTF) projects, language be added to update the purpose of funds made available for housing to include accessibility alongside decent, safe, and sanitary housing.

STAFF RESPONSE: Staff has reviewed the comment, and the language included in §26.3(c)(2) mirrors the language regulating the use of the Texas HTF in Tex. Gov't Code §2306.202 related to decent, safe, and sanitary housing. Staff agrees that accessibility is also a statutory requirement and housing constructed with state or federal funds by the Department must meet the requirements of Tex. Gov't Code §2306.514; however, as the existing language mirrors the statute, no change is recommended in response to this comment.

The Board adopted the final order adopting the new rule on March 7, 2024.

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

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

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

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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) 483-1148

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.2

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §311.2, Application Procedure. Section 311.2 is adopted with changes to the text as proposed in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6712). The changes to the rule removed the planning timeline of 21 days for an applicant to submit the application form as well as clarified the language to mirror the actual licensing processed used today. This rule will be republished.

EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of the adopted amendment is to address the changes in the Texas Racing Act made during the 88th Legislative Session. Effective September 1, 2023, the Texas Occupations Code § 2025.260, Temporary Licenses was repealed, and the statute was amended to conform with licensing standards found in Chapter 53, Texas Occupations Code, which, among other standards applies the requirements for a criminal background check before a license is issued. The adopted rule amends §311.2 to update the language to allow for online license submissions as well as provide notice that applicants must go through a qualification process including a criminal background check before they are licensed.

PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended December 16, 2023. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6712). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings on October 30, 2023, and January 25, 2024.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code §§ 2023.057; 2025.001 which authorize TXRC adopt rules as necessary to align the Texas Rules of Racing with the updated version of the Texas Racing Act which provides the authority to implement and administer the occupational licensing program.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§ 2023.057; 2025.001.

§311.2. Application Procedure.

(a) General Requirements. To request a license from the Commission, a person must apply to the Commission on forms prescribed by the executive director.

(b) Application Submission.

(1) Except as provided in paragraphs (2) and (3) of this subsection, an applicant for an occupational license must file the appropriate application form and related documents at the licensing office at a licensed racetrack or through an online process established by the executive director. All applications must be submitted to the agency before the applicant engages in an activity that requires an occupational license under 16 TAC §311.1.

(2) Examinations. The Commission may require the applicant for an occupational license to demonstrate the applicant's knowledge, qualifications, and proficiency for the license applied for by an examination prescribed by the Commission.

(c) Issuance of License.

(1) The executive director may review any application to determine eligibility for an occupational license and deny a license based on eligibility factors set forth in the enabling statute or if the executive director or designee determines:

(A) grounds for denial of the license exist under §311.6 of this title (relating to Denial, Suspension, and Revocation of Licenses); or

(B) if the applicant or a member of the applicant's family or household currently holds a Commission license, after considering the nature of the licenses sought or held by the applicant, issuing a license to the applicant would create a conflict of interest that might affect the integrity of pari-mutuel racing.

(2) An occupational licensee may not act in any capacity other than that for which he or she is licensed.

(3) The executive director or designee may issue a license subject to the applicant satisfying one or more conditions which reasonably relate to the applicant's qualifications or fitness to perform the duties of the license sought.

(d) License Badge.

(1) The Commission shall issue a certificate identification card in the form of a license badge to each individual licensed under this subchapter.

(2) The badge must bear the seal of the Commission.

(3) The badge must contain:

(A) the licensee's full name;

(B) the licensee's photograph;

(C) the category of license;

(D) the month and year in which the license expires;

(E) a color code that designates whether the licensee has access to the stable or kennel area; and

(F) the license number assigned by the Commission.

(4) If a badge issued under this section is lost or stolen, the licensee shall immediately notify the Commission and may apply for a duplicate badge with the same terms as the original badge. To apply for a duplicate badge, the licensee must:

(A) file a sworn affidavit stating that the badge was lost, stolen, or destroyed;

(B) surrender any remaining portion of the badge; and

(C) pay a duplicate badge fee in an amount set by the Commission.

(e) License provisions for military service members, military spouses, and military veterans.

(1) The terms "military service member," "military spouse," and "military veteran" shall have the same meaning as those terms are defined in Texas Occupations Code, Chapter 55.

(2) Credit for Military Service. Military service members and military veterans will receive credit toward any experience requirements for a license as appropriate for the particular license type and the specific experience of the military service member or veteran.

(3) Credit for holding a current license issued by another jurisdiction. Military service members, military spouses, and military veterans who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the license in this state will receive credit toward any experience requirements for a license as appropriate for the particular license type.

(4) Supporting documentation must be submitted with the license application.

(5) The executive director may waive any prerequisite to obtaining a license for an applicant who is a military service member, military veteran, or military spouse, after reviewing the applicant's credentials.

(6) Expedited license procedure. As soon as practicable after a military service member, military veteran, or military spouse files an application for a license, the commission will process the application and issue the license to an applicant who qualifies under this section.

(7) License application and examination fees will be waived for the initial application of an applicant who qualifies under this subsection.

(8) Military spouse acting under out-of-state license. A military spouse who holds a racing license issued by another jurisdiction and who wishes to participate in racing in Texas under that license shall submit to the Commission the information required by Section 55.0041 of the Texas Occupations Code. Upon receipt of such information, the Commission shall determine whether the requirements of Section 55.0041 are satisfied and notify the military spouse that the person is authorized to act under that section if it confirms, through communication with the other jurisdiction or through other means, that:

(A) the jurisdiction that issued the license on which the military spouse is relying to act in Texas has substantially equivalent license requirements; and

(B) the military spouse is licensed in good standing in the other jurisdiction.

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

Filed with the Office of the Secretary of State on March 7, 2024.

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Amy F. Cook
Executive Director
Texas Racing Commission
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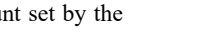
For further information, please call: (512) 833-6699



SUBCHAPTER B. SPECIFIC LICENSEES

16 TAC §311.101

INTRODUCTION

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §311.101, Horse Owners. Section 311.101 is adopted without changes to the text as proposed in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6714). This rule will not be republished.

EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of the adopted amendment is to address the changes in the Texas Racing Act made during the 88th Legislative Session. Effective September 1, 2023, the Texas Occupations Code § 2025.260, Temporary Licenses was repealed, and the statute was amended to conform with licensing standards found in Chapter 53, Texas Occupations Code, which, among other standards applies the requirements for a criminal background check before a license is issued. The adopted rule amends §311.101 to update the language to allow for online license submissions as well as provide notice that applicants must go through a qualification process including a criminal background check before they are licensed.

PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended December 16, 2023. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the *Texas Register* on November 17, 2023 (48 TexReg 6714). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings held on October 30, 2023, and January 25, 2024.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

STATUTORY AUTHORITY

The adopted rule amendment is adopted under Texas Occupations Code §§ 2023.057; 2025.001 which authorize TXRC adopt rules as necessary to align the Texas Rules of Racing with the updated version of the Texas Racing Act which provides the authority to implement and administer the occupational licensing program.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§ 2023.057; 2025.001.

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

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Amy F. Cook
Executive Director
Texas Racing Commission
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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER E. TRAINING FACILITIES

16 TAC §313.501

INTRODUCTION

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §313.501, Training Facility License. Section 313.501 is adopted without changes to the text as proposed in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6716). This rule will not be republished.

EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this adopted rule is to reduce training facility licensing costs to offset any costs required by rule amendments to §313.504 and §313.505, which require increased safety protocols for equine and human athletes participating in Texas horseracing.

COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings held on October 30, 2023, and January 25, 2024.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended December 16, 2023. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the *Texas Register* on November 17, 2023, (48 TexReg 6719). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

STATUTORY AUTHORITY

The adopted rule amendment is adopted under Texas Occupations Code § 2023.003; which authorizes the Commission to adopt rules as necessary to license Training Facilities that engage in activities designed to prepare equine and human athletes for live racing events.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§ 2023.003.

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

Filed with the Office of the Secretary of State on March 7, 2024.

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Amy F. Cook
Executive Director
Texas Racing Commission
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For further information, please call: (512) 833-6699

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16 TAC §313.504

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §313.504, Operational Requirements. Section 313.504 is adopted without changes to the text as proposed in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6717). This rule will not be republished.

JUSTIFICATION

The adopted rule requires a comparable level of emergency response capabilities to address serious injuries that are currently required at licensed racetracks during live racing at training facilities when the activities performed, including schooling races, official works and exercise riding are performed in preparation for a live racing event. The requirement for an e-wagering plan to address the prohibition on wagering at training facilities is also included in the adopted rule. Additional language changes update the term "executive secretary" to "executive director" for consistency throughout the Texas Rules of Racing.

HOW THE RULE WILL FUNCTION

The adopted rule requires an increased presence of staff and safety protocols for activities conducted in preparation for live horse races to prevent and respond to injuries during periods where training facilities are operating.

SUMMARY OF COMMENTS

No comments were received by the agency during the period when the proposed rules were posted for public comment in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rule amendment is adopted under Texas Occupations Code § 2023.003; which authorizes the Commission to adopt rules as necessary to license Training Facilities that engage in activities designed to prepare equine and human athletes for live racing events.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§ 2023.003.

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

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401003
Amy F. Cook
Executive Director
Texas Racing Commission
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For further information, please call: (512) 833-6699

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16 TAC §313.505

INTRODUCTION

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §313.505, Workout Requirements. Section 313.505 is adopted without changes to the text as proposed in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6719). This rule will not be republished.

EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this adopted rule is to reduce training facility licensing costs to offset any costs required by rule amendments to §313.504 and §313.505, which require increased safety protocols for equine and human athletes participating in Texas horseracing.

PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended December 16, 2023. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the *Texas Register* on November 17, 2023 (48 TexReg 6719). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings held on October 30, 2023, and January 25, 2024.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

STATUTORY AUTHORITY

The adopted rule amendment is adopted under Texas Occupations Code § 2023.003; which authorizes the Commission to adopt rules as necessary to regulate Training Facilities that engage in activities designed to prepare equine and human athletes for live racing events.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§ 2023.003.

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

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Amy F. Cook
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Texas Racing Commission
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For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 1. GENERAL PROVISIONS

16 TAC §321.1

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §321.1, Definitions and General Provisions. Section 321.1 is adopted with changes to the text to correct capitalization and alphabetization as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8088). This rule will be republished.

EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002. The adopted rule more accurately describes the systems used to protect the betting public as well as modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended January 28, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8088). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings held on October 30, 2023, and January 25, 2024.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code § 2027.002; which authorizes the Commission to adopt rules as necessary to regulate pari-mutuel wagering activities to protect the betting public and to modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code § 2027.002.

§321.1. Definitions and General Provisions.

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

(1) ASCII formatted flat file--a data file containing structured data which is both record and field delimited containing only characters found in the American Standard Code for Information Interchange (ASCII) specification.

(2) Betting interest--a single race animal or a group of race animals coupled pursuant to the Rules which the totalisator system designates as an interest on which a patron may wager.

(3) Closed-loop subscriber-based system--a system with a minimum of a device or combination of devices authorized and operated for placing, receiving, or otherwise making a wager and by which a person must subscribe in order to be able to place, receive, or otherwise make a bet or wager that has an effective customer verification and age verification system; and appropriate data security standards to prevent unauthorized access to a person.

(4) Export simulcast--a race simulcast from a racetrack facility.

(5) Firmware--the system software permanently stored in a computer or ticket issuing machine's read-only memory or elsewhere in the circuitry that cannot be modified by the user.

(6) Guest racetrack--a racetrack facility at which a simulcast race is received and offered for wagering purposes; a receiving location, as defined in the Act, §2021.003.

(7) Host racetrack--a racetrack facility at which a race is conducted and simulcast for wagering purposes; a sending track, as defined in the Act, §2021.003.

(8) Import simulcast--a simulcast race received at a racetrack facility.

(9) Intelligent Terminal--a terminal or peripheral device which contains code extending beyond that which is necessary to allow the terminal to communicate with the central controlling device to which it is directly attached or to control the presentation of data on the display unit of the device.

(10) Log--an itemized list of each command, inquiry, or transaction given to a computer during operation.

(11) Major Revision--a specific release of a hardware or software product, including additional functionality, major user interface revisions, or other program changes that significantly alter the basic function of the application.

(12) Minor Revision--an incrementally improved version of hardware or software, usually representing an error (bug) fix, or a minor improvement in program performance which does not alter basic functionality.

(13) Multi-leg wager--a wagering pool that involves more than one race.

(14) Player Tracking System--a system that provides detailed information about pari-mutuel play activity of patrons who volunteer to participate. The system can be used to customize highly specific promotions and tailor rewards to encourage incremental visits by patrons. The system should be able to produce customized informational reports based on such parameters as type of wager, type of race, favorite race meet, or other parameters deemed helpful by the association in supporting the patron.

(15) Remote site--a racetrack or other location at which wagering is occurring that is linked via the totalisator system to a racetrack facility for pari-mutuel wagering purposes.

(16) Report--a summary of betting activity.

(17) Resultant--the profit-per-dollar wagered in a pari-mutuel pool computation.

(18) Ticketless Electronic Wagering (E-wagering)--

(A) a form of pari-mutuel wagering in which wagers are placed and cashed through a licensed totalisator vendor via an electronic ticketless account system operated in accordance with §2021.002 of this Act; or

(B) a closed-loop subscriber-based system, which includes:

(i) a device or combination of devices authorized and operated for placing, receiving, or otherwise making a wager and by which a person must subscribe to be able to place, receive, or otherwise make a bet or wager;

(ii) an effective customer verification and age verification system; and

(iii) appropriate data security standards to prevent unauthorized access to a person:

(I) who seeks to make a bet or wager outside the racetrack's enclosure;

(II) who seeks to make a bet or wager on any live or simulcast race not available to other persons within the racetrack's enclosure; and

(III) who is a minor; and

(C) where wagers are automatically debited and credited to the account holder.

(19) TIM--ticket-issuing machine.

(20) TIM-to-Tote network--a wagering network consisting of a single central processing unit and the TIMs at any number of remote sites.

(21) Totalisator operator--the individual assigned to operate the totalisator system at a racetrack facility.

(22) Totalisator system--a computer system that registers and computes the wagering and payoffs in pari-mutuel wagering.

(23) Tote-to-tote network--a wagering network in which each wagering location has a central processing unit.

(24) User--a totalisator company employee authorized to use the totalisator system in the normal course of business.

(b) A reference in this chapter to the mutuel manager includes the mutuel manager's designee, in accordance with §313.53 of this title (relating to Mutuel Manager) or §315.36 of this title (relating to Mutuel Manager.)

(c) A request required to be made in writing under this chapter may be transmitted via hand delivery, e-mail, facsimile, courier service, or U.S. mail.

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

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401004
Amy F. Cook
Executive Director
Texas Racing Commission
Effective date: March 27, 2024
Proposal publication date: December 29, 2023
For further information, please call: (512) 833-6699

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16 TAC §321.21

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §321.21, Certain Wagers Prohibited. Section 321.21 is adopted without changes to the text as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8090). This rule will not be republished.

EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002. The adopted rule incorporates the statutory authority under Texas Occupations Code § 2027.002 to clarify the limits of e-wagering systems.

PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended January 28, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8090). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings on October 30, 2023, and January 25, 2024.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code § 2027.002; which authorizes the Commission to adopt rules as necessary to regulate pari-mutuel wagering activities to protect the betting public and to modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code § 2027.002.

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

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Amy F. Cook
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SUBCHAPTER D. SIMULCAST WAGERING
DIVISION 1. GENERAL PROVISIONS

16 TAC §321.413

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §321.413, Duties of Guest Racetrack. Section 321.413 is adopted without changes to the text as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8091). This rule will not be republished.

EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this rule amendment is to modernize the language used to appropriately describe systems, procedures and technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002. The adopted rule more accurately describes the systems and processes used to protect the betting public and modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended January 28, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8091). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings on October 30, 2023, and January 25, 2024.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Com-

mission is specifically exempt under Texas Government Code §2001.0045(c)(7).

STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code § 2027.002; which authorizes the Commission to adopt rules as necessary to regulate pari-mutuel wagering activities to protect the betting public and to modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code § 2027.002.

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

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Amy F. Cook
Executive Director
Texas Racing Commission
Effective date: March 27, 2024
Proposal publication date: December 29, 2023
For further information, please call: (512) 833-6699

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16 TAC §321.417

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §321.417, Emergency Procedures. Section 321.417 is adopted without changes to the text as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8093). This rule will not be republished.

EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002. The adopted rule more accurately describes the systems and procedures used to protect the betting public as well as modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended January 28, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8093). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings on October 30, 2023, and January 25, 2024.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code § 2027.002; which authorizes the Commission to adopt rules as necessary to regulate pari-mutuel wagering activities to protect the betting public and to modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code § 2027.002.

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

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Amy F. Cook
Executive Director
Texas Racing Commission
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For further information, please call: (512) 833-6699

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SUBCHAPTER E. TICKETLESS ELECTRONIC WAGERING

DIVISION 1. CONDUCT OF E-WAGERING

16 TAC §321.607

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §321.607, E-Wagering Account Restrictions. Section 321.607 is adopted without changes to the text as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8094). This rule will not be republished.

EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002. The adopted rule more accurately describes the systems used to protect the betting public as well as modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended January 28, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8094). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings on October 30, 2023, and January 25, 2024.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code § 2027.002; which authorizes the Commission to adopt rules as necessary to regulate pari-mutuel wagering activities to protect the betting public and to modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code § 2027.002.

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

Filed with the Office of the Secretary of State on March 7, 2024.

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Amy F. Cook
Executive Director
Texas Racing Commission
Effective date: March 27, 2024
Proposal publication date: December 29, 2023
For further information, please call: (512) 822-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

SUBCHAPTER A. STATE BOARD OF EDUCATION RULES

19 TAC §33.2

The State Board of Education (SBOE) adopts an amendment to §33.2, concerning distributions to the Available School Fund (ASF). The amendment is adopted without changes to the proposed text as published in the December 22, 2023 issue of the *Texas Register* (48 TexReg 7733) and will not be republished. The adopted amendment reinserts information related to the Permanent School Fund (PSF) distribution policy that was mistakenly repealed when 19 TAC Chapter 33 was revised to implement Senate Bill (SB) 1232, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: SB 1232, 87th Texas Legislature, Regular Session, 2021, established the Texas PSF Corporation and transferred responsibilities to manage and invest the fund to the Texas PSF Corporation. As a result, SBOE rules in Chapter 33 were significantly revised and reorganized effective March 1, 2023.

The adopted amendment reinstates mistakenly repealed language in §33.2 that addresses the SBOE's responsibilities to determine a rate for PSF distributions to the ASF.

The SBOE approved the amendment for first reading and filing authorization at its November 17, 2023 meeting and for second reading and final adoption at its February 2, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date would ensure the reinstated provisions become effective as soon as possible. The effective date is 20 days after filing as adopted with the *Texas Register.*

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 22, 2023, and ended at 5:00 p.m. on January 22, 2024. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Constitution, Article VII, §5(a)(2), which authorizes the State Board of Education (SBOE) to make distributions from the Permanent School Fund (PSF) to the available school fund with certain limits; and Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent investor standard and make investments it deems appropriate.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Constitution, Article VII, §5(a)(2) and (f).

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

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401108
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 31, 2024
Proposal publication date: December 22, 2023
For further information, please call: (512) 475-1497

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CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS

The State Board of Education (SBOE) adopts new §§67.21, 67.23, 67.25, 67.81, and 67.83, concerning state review and approval of instructional materials. Sections 67.21, 67.23, 67.25, and 67.83 are adopted with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8095) and will be republished. Section 67.81 is adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8095) and will not be republished. The adopted new rules implement House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, by defining the criteria to be used in the review and approval of instructional materials by the SBOE and the Texas Education Agency (TEA); defining requirements

for publisher participation in the instructional materials review and approval (IMRA) process; and establishing rules for the annual request for instructional materials for review and future proclamations, contracts for instructional materials, and criteria for publishers required to host parent portals.

REASONED JUSTIFICATION: Texas Education Code (TEC), Chapter 31, addresses instructional materials in public education and permits the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials. HB 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised TEC, Chapter 31, including several provisions under SBOE authority. HB 1605 also added a new provision to TEC, Chapter 48, to provide additional funding to school districts and charter schools that adopt and implement SBOE-approved materials. In addition, the bill added requirements related to adoption of essential knowledge and skills in TEC, Chapter 28.

At the June 2023 SBOE meeting, the Committee of the Full Board held a work session to receive an overview presentation on HB 1605 from the commissioner of education and begin discussing preliminary decisions and next steps. The June 2023 SBOE HB 1605 Work Session Presentation shared during the work session is available on the TEA website at https://tea.texas.gov/about-tea/leadership/state-board-of-education/sboe-2023/sboe-2023-june/sboe-hb1605-working-session-slidedeck-062223.pdf.

At the August-September 2023 meeting, the Committee of the Full Board discussed the IMRA process and discussed the approach to developing the quality rubric criteria and process.

At the November 2023 SBOE meeting, the Committee of the Full Board discussed proposed new 19 TAC Chapter 67.

The adopted new sections implement HB 1605 and incorporate the feedback provided by the board.

The following changes were made to the rules since approved for first reading and filing authorization.

Section 67.21(d)(1) was modified at adoption to include the Texas Prekindergarten Guidelines and the English Language Proficiency Standards (ELPS).

Section 67.23(d)(1) was modified at adoption to include the Texas Prekindergarten Guidelines and the ELPS.

Section 67.25(1) was modified at adoption to include the Texas Prekindergarten Guidelines and the ELPS.

Section 67.83(c) was modified at adoption to clarify that a publisher must host an instructional materials parent portal.

In response to public comment, §67.83(c)(1) was modified at adoption to include a reference to the materials not allowed to be posted to the publisher parent portal outlined in TEC, §31.154(c).

In response to public comment, §67.83(c)(2) was modified at adoption to refer to a single-sign-on capability instead of using the term, "interoperable." Language was also added to include a 60-day period for publishers to come into compliance with the rule.

Section 67.83(c)(1)-(6) was modified at adoption to make nonsubstantive technical edits.

In response to public comment, new §67.83(e) was added at adoption to clarify the consequences of being out of compliance with the 60-day requirement in §67.83(c)(2).

The SBOE approved the new sections for first reading and filing authorization at its December 13, 2023 meeting and for second reading and final adoption at its February 2, 2024 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date would allow for the implementation of the IMRA process to occur in the summer of 2024 as planned by the SBOE. The effective date is 20 days after filing as adopted with the *Texas Register.*

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 29, 2023, and ended at 5:00 p.m. on January 29, 2024. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of public comments received and corresponding responses.

General Comments

Comment. The National Parents Union commented that Texas has served as a "beacon for other states" in terms of setting high standards for quality education. The commenter expressed concern, however, regarding the suitability rubric, stating that it "may contribute to culture wars and distractions in our classrooms."

Response. The SBOE agrees that the new rules will support the board in setting high standards for quality educational materials. The comment related to the suitability rubric is outside the scope of the proposed rulemaking as the rubric is not adopted in rule.

Comment. A Texas parent expressed excitement at seeing the use of evidence-based strategies for teaching students. The parent also expressed a hope that the evaluation tools do not become an avenue for injecting politics and culture wars in the classroom.

Response. The SBOE agrees. The new rules will establish the use of rubrics to measure instructional materials using evidence-based strategies for teaching.

Comment: The Network of Concerned Citizens provided comments concerning content in science instructional materials.

Response. This comment is outside the scope of the proposed rulemaking.

§67.81. Instructional Materials Contract

Comment. Concerning §67.81(c)(1), The Commit Partnership requested that the rules clarify the provisions related to the standardization of contract term lengths and maintain a standard contract duration for all SBOE-approved instructional materials unless the SBOE anticipates making substantive changes to the Texas Essential Knowledge and Skills (TEKS) in a specified subject area/grade level. The commenter suggested that the contract term not exceed the IMRA cycle review for the applicable subject and grade to maintain district flexibility.

Response. The SBOE disagrees with the recommendation to change the standard term for an instructional materials contract. The review of materials will happen annually; therefore, the suggested language would limit instructional materials contracts executed by TEA on behalf of the SBOE and publishers to one year. There is still a cycle for instructional materials, but this cycle will now be determined by the TEKS revision schedule and approval of aligned rubrics for IMRA by the SBOE.

To address the commenter's concern for school district flexibility in setting an initial term for instructional materials procurement contracts, the proposed contract term would be standard for all approved materials and become the default maximum length of time a district could purchase materials on EMAT under the contract. School districts, under the new rule, are not obligated to execute a contract for the full initial term, but rather are able to set their own initial term within the bounds of the SBOE-determined contract.

Comment. Texas American Federation of Teachers stated the organization is opposed to any potential amendments to the rules requiring evidence of effectiveness of instructional materials to be considered for contract renewal.

Response. The SBOE agrees that the ability for TEA to consider implementation effectiveness would be difficult given the many factors that influence the effectiveness of instructional materials.

§67.83. Publisher Parent Portal

Comment. Concerning proposed new §67.83(d), Texas Classroom Teachers Association (TCTA) stated there are specific prohibitions missing that are mentioned in TEC, §31.154. TCTA also requested that proposed new §67.83(d) add language quoting TEC, §31.154(c), to provide clarity regarding the specific types of instructional materials that are explicitly prohibited from being included in the portal.

Response. The SBOE disagrees with replicating statute in administrative code rule since rules are meant to clarify where statute is not clear. However, the SBOE agrees that the rule could clarify the prohibition in statute and took action to amend §67.83(c)(1) at adoption to add, "excluding materials outlined in TEC, §31.154(c)."

Comment. Concerning proposed new §67.83(c)(1), Savvas Learning Company, Accelerate Learning, and Houghton Mifflin Harcourt expressed concerns that online access to exams in teaching materials in the parent portal would compromise the validity of those exams.

Response. The SBOE agrees that assessments should be excluded from the requirement and took action to amend §67.83(c)(1) at adoption to add, "excluding materials outlined in TEC, §31.154(c)."

Comment. Concerning proposed new §67.83(c)(2), Savvas Learning Company, Accelerate Learning, and Houghton Mifflin Harcourt expressed concerns that the interoperability requirements for publishers' materials in a parent portal are too broad. In addition, the commenters stated that, as publishers, they will not know if their materials are interoperable until a school district purchases their instructional materials. The commenters suggested specific rule text changes.

Response. The SBOE agrees that the use of the term "interoperable" could be open to interpretation. However, the SBOE disagrees that the recommended language from the commenters is the appropriate manner to address the concern. Instead, the SBOE has modified the rule at adoption to focus on the desired functionality over the method of implementation. Specifically, the rule was modified to clarify that the parent portal must be "capable of single-sign-on" with a school district's learning management system (LMS).

In addition, new language in §67.83(c)(2) was added at adoption to address the comment related to publishers knowing whether their materials are interoperable. Section 67.83(c)(2) will allow a period for a publisher to come into compliance with the single-sign-on feature within 60 days of a school district purchase of materials. Section 67.83(e) was added at adoption to allow TEA to recommend to the SBOE the removal of a publisher's materials from the approved list of instructional materials if the publisher does not make their portal capable of single-sign-on with a school district's LMS unless the delay is due to a delay by the district or its LMS vendor.

Comment. Concerning §67.83(c)(2), Instructional Material Coordinators' Association of Texas (IMCAT) expressed concerns regarding the LMS interoperability and the possibility that an LMS vendor may refuse to comply or charge a school district an additional cost to comply.

Response. This comment is outside of the scope of the proposed rulemaking.

SUBCHAPTER B. STATE REVIEW AND APPROVAL

19 TAC §§67.21, 67.23, 67.25

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §26.006, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts and open-enrollment charter schools to make available access to instructional materials for parents via a parent portal if applicable; TEC, §31.003(a), as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE; TEC, §31.151, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the SBOE to determine the standard terms and conditions of instructional materials contracts; and TEC, §31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to adopt standards for entities that supply instructional materials reviewed by TEA to make instructional materials supplied by the entity available on a parent portal hosted by the entity.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§26.006, 31.003(a), 31.022, 31.023, and 31.151, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, and 31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023.

§67.21. Proclamations, Public Notice, and Requests for Instructional Materials for Review.

(a) Upon the adoption of revised Texas Essential Knowledge and Skills (TEKS) or Texas Prekindergarten Guidelines (TPG), the State Board of Education (SBOE) shall determine if the extent of the revisions have created a need to remove instructional materials from the list approved under Texas Education Code, §31.022.

(b) The SBOE shall issue a proclamation calling for instructional materials if the determination in subsection (a) of this section results in a decision that a proclamation is necessary. The proclamation shall serve as notice to:

(1) all publishers to submit instructional material for review for the subject and grade level or course(s); and

(2) all publishers with approved instructional materials for the subject and grade level or course(s) that to remain on the list of approved materials, the publisher must submit new or revised materials or new information demonstrating alignment of current instructional materials to the revised TEKS or TPG.

(c) The Texas Education Agency shall issue an annual request for instructional materials to notify all publishers and the public that submissions of instructional materials aligned to quality rubrics and the suitability rubric approved by the SBOE are being invited for review.

(d) Each proclamation and annual request for instructional materials for review shall contain the following:

(1) information about and reference to applicable TEKS, TPG, and English Language Proficiency Standards in each subject for which submissions are being invited;

(2) the student enrollment of the courses or grade levels called for, to the extent that it is available, for the school year prior to the year in which the proclamation or annual request for instructional materials is issued;

(3) the requirement that a publisher grant electronic access to the instructional materials being submitted that complies to the specifications in the proclamation or annual request for instructional materials for review and may not submit a print copy;

(4) specifications for providing computerized files to produce accessible formats of approved instructional materials;

(5) specifications for ensuring that electronic instructional materials are fully accessible to students with disabilities; and

(6) a schedule of instructional materials review and approval procedures.

§67.23. Requirements for Publisher Participation in Instructional Materials Review and Approval (IMRA).

(a) A publisher with approved materials shall comply with product standards and specifications.

(b) Publishers participating in the adoption process are responsible for all expenses incurred by their participation.

(c) A publisher may not submit instructional materials for review that have been authored or contributed to by a current employee of the Texas Education Agency (TEA). This does not apply to open education resource instructional materials as developed by TEA in accordance with Texas Education Code, Chapter 31, Subchapter B-1.

(d) On or before the deadline established in the schedule of approval procedures, publishers shall submit correlations of instructional materials submitted for review in a format designated by the commissioner of education. Correlations shall be provided for materials designed for student use and materials designed for teacher use and include:

(1) evidence of coverage of each student expectation, in the context of the lesson, of the Texas Essential Knowledge and Skills or Texas Prekindergarten Guidelines and applicable English Language Proficiency Standards required by the proclamation or the request for instructional materials for review; and

(2) evidence of alignment to the quality rubric indicators.

(e) On or before the deadline established in the schedule of approval procedures, publishers shall certify that after exercising reasonable efforts, the submitted material complies with suitability standards and all applicable state laws.

(f) A publisher that intends to offer instructional materials for review and approval shall comply with additional requirements included in a proclamation or the annual request for instructional materials for review.

§67.25. Consideration and Approval of Instructional Materials by the State Board of Education.

The State Board of Education (SBOE) shall review the results of the instructional materials reviews completed by a review panel and submitted by the commissioner of education in accordance with Texas Education Code (TEC), §31.022 and §31.023. Instructional materials may be placed on the list of approved instructional materials only if they meet the following criteria:

(1) for full-subject and partial-subject tier one instructional materials for foundation subjects as defined by TEC, §28.002(a)(1), the product components cover 100% of the Texas Essential Knowledge and Skills (TEKS) and applicable English Language Proficiency Standards (ELPS) for the specific grade level and subject area when the proclamation or request for instructional materials was issued. In determining the percentage of the TEKS and ELPS covered by instructional materials, each student expectation shall count as an independent element of the standards;

(2) materials have been reviewed through the process required by TEC, §31.023;

(3) materials are free from factual error, defined as a verified error of fact or any error that would interfere with student learning, including significant grammatical or punctuation errors;

(4) materials meet the Web Content Accessibility Guidelines (WCAG) and meet the technical specifications of the Federal Rehabilitation Act, Section 508, as specified when a request for instructional materials or proclamation was issued;

(5) materials conform to or exceed in every instance the latest edition of the Manufacturing Standards and Specifications for Textbooks (MSST), developed by the State Instructional Materials Review Association, when the proclamation or request for instructional materials was issued;

(6) materials are compliant with the suitability standards adopted by the SBOE and are compliant with all applicable state laws; and

(7) materials provide access to a parent portal as required by TEC, §31.154.

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

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Cristina De La Fuente-Valadez
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SUBCHAPTER D. DUTIES OF PUBLISHERS AND MANUFACTURERS

19 TAC §67.81, §67.83

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §26.006, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts and open-enrollment charter schools to make available access to instructional materials for parents via a parent portal if applicable; TEC, §31.003(a), as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE; TEC, §31.151, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the SBOE to determine the standard terms and conditions of instructional materials contracts; and TEC, §31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to adopt standards for entities that supply instructional materials reviewed by TEA to make instructional materials supplied by the entity available on a parent portal hosted by the entity.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§26.006, 31.003(a), 31.022, 31.023, and 31.151, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, and 31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023.

§67.83. Publisher Parent Portal.

(a) Standards under this section apply to any publisher that supplies instructional materials that are reviewed by a review panel under Texas Education Code (TEC), §31.022 and §31.023, and placed on the list of approved instructional materials by the State Board of Education (SBOE) as outlined in TEC, §31.022.

(b) Standards under this section apply to any instructional materials, including:

(1) full-subject tier one instructional material;

(2) open education resource instructional material;

(3) partial-subject tier one instructional material; and

(4) supplemental instructional material.

(c) A publisher must host an instructional materials parent portal that:

(1) includes in the portal all components placed on the list of instructional materials approved by the SBOE, including teacher- and student-facing materials, excluding materials outlined in TEC, §31.154(c);

(2) for each school district or open-enrollment charter school that purchases the instructional materials, makes the parent portal capable of single-sign-on with the learning management system or online learning portal used by the district or charter school to assign, distribute, present, or make available instructional materials as defined by TEC, §31.002, to students. If a publisher is unable to make instructional materials operational at the time of purchase by a school district or open-enrollment charter school, the publisher has 60 days from the date of purchase to make its portal operational with the learning management system of the school district or charter school that purchased the materials;

(3) for instructional materials not available in a digital format, contains the instructional materials component International Standard Book Number (ISBN) or part number, title, edition, and author to allow a parent to locate a physical copy of the material;

(4) allows access beginning not later than 30 days before the school year begins and concluding not earlier than 30 days after the school year ends;

(5) optimizes the portal for viewing on large monitors, laptops, tablets, and smartphone devices; and

(6) meets Web Content Accessibility Guidelines (WCAG) identified in the associated proclamation or annual request for instructional materials for review and any technical standards required by the Federal Rehabilitation Act, Section 508.

(d) A publisher hosting an instructional materials parent portal may not:

(1) include any instructional materials as defined by TEC, §31.002, that were not reviewed and placed on the approved materials list; or

(2) include any instructional materials on the portal that would undermine, subvert, or impede any local education agency or open-enrollment charter school from complying with TEC, §31.1011.

(e) For instructional materials that do not meet the single-sign-on capability requirements within the time period established under subsection (c)(2) of this section, the Texas Education Agency shall recommend to the SBOE the removal of the publisher's instructional materials from the list of approved materials unless the failure to meet the functionality is due to inaction by the school district or charter school or the district's or school's learning management system provider. The SBOE may remove the publisher's material from the approved list.

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

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Cristina De La Fuente-Valadez
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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS
DIVISION 2. CONTRACTING TO PARTNER TO OPERATE A DISTRICT CAMPUS

19 TAC §97.1075, §97.1079

The Texas Education Agency (TEA) adopts amendments to §97.1075 and §97.1079, concerning contracting to partner to operate a district campus. The amendments are adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8099) and will not be republished. The adopted amendments would remove language regarding the finality of decisions under §97.1075 and §97.1079 as a result of two court cases invalidating the provisions.

REASONED JUSTIFICATION: Section 97.1075 describes the requirements for contracting to partner to operate a campus under Texas Education Code (TEC), §11.174, including requirements related to conferred authorities, performance contracts, and ongoing monitoring. Section 97.1079 describes the criteria and determination processes for districts applying for benefits under TEC, §11.174(a)(2). Each rule includes a provision regarding the finality of the commissioner of education's decisions under the rule and the inability of districts to appeal those decisions. Due to recent court cases invalidating the provisions, the adopted amendments remove §97.1075(k) and §97.1079(f).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 29, 2023, and ended February 5, 2024. No public comments were received.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §11.174, which requires the commissioner to adopt rules to administer the provisions for contracts regarding district campus operations; and TEC, §48.252, which requires the commissioner to adopt rules to administer the provisions for entitlements for district charter partnerships.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §11.174 and §48.252.

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

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING
SUBCHAPTER C. ADOPTIONS BY REFERENCE

19 TAC §109.41

The State Board of Education (SBOE) adopts an amendment to §109.41, concerning budgeting, accounting, and auditing. The amendment is adopted without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7734) and will not be republished. The amendment adopts by reference the updated Financial Accountability System Resource Guide (FASRG), Version 19, which includes allowable costs for dyslexia and related disorders added by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023. Although no changes were made to §109.41 since published as proposed, the FASRG adopted by reference does include changes to Modules 1-6 at adoption.

REASONED JUSTIFICATION: The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers and is adopted by reference under §109.41. Revisions to the FASRG align the content with current governmental accounting and auditing standards, remove obsolete requirements, and remove descriptions and discussions of best practices and other non-mandatory elements.

Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the Account Code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the Account Code section of the FASRG (Module 1).

The FASRG, Version 19, contains six modules on the following topics: Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices; Module 2, Special Supplement - Charter Schools; Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts; Module 4, Auditing; Module 5, Purchasing; and Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System.

State law provides authority for both the SBOE and the commissioner of education to adopt rules on financial accounting. To accomplish this, the SBOE and the commissioner each adopt the FASRG by reference under separate rules. The SBOE adopts the FASRG by reference under §109.41, and the commissioner adopts the FASRG by reference under 19 TAC §109.5001.

The following changes were made to Modules 1-6 of the FASRG.

Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices

Module 1 aligns with current governmental accounting standards. Module 1 includes the following changes. Updates were made to accounting codes and accounting guidance, which will

include allowable costs for dyslexia and related disorders added by House Bill 3928, 88th Texas Legislature, Regular Session, and previous guidance was clarified. School districts and charter schools will be required to maintain proper budgeting and financial accounting and reporting systems. In addition, school districts will be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the Governmental Accounting Standards Board (GASB).

In response to public comment, Module 1, FAR Appendices, was modified at adoption to provide clearer guidance and add clarity through grammatical edits for the use of accounting codes.

In addition, all references to the Elementary and Secondary Act (ESEA) have been updated at adoption to the Every Student Succeeds Act (ESSA).

Module 2, Special Supplement - Charter Schools

Module 2 aligns with current financial accounting reporting standards. Module 2 includes the following significant changes. Updates were made to accounting codes and accounting guidance, including a requirement for the recording of Teacher Retirement System (TRS) on-behalf revenue and payments and the calculation for the amounts, and previous guidance would be clarified. The module establishes financial and accounting requirements for Texas public charter schools to ensure uniformity in accounting in conformity with GAAP. The module also includes current guidance that complements the American Institute of Certified Public Accountants (AICPA) *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States Government Accountability Office (GAO). These requirements will facilitate preparation of financial statements that conform to GAAP established by the Financial Accounting Standards Board (FASB).

At adoption, all references to the ESEA have been updated to the ESSA.

Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts

Module 3 aligns with current financial accounting standards. Module 3 includes the following changes. Updates were made to accounting codes and accounting guidance, which include allowable costs for dyslexia and related disorders added by House Bill 3928, 88th Texas Legislature, Regular Session, 2023, as well as the addition of accounting codes for TRS on-behalf payments, and previous guidance was clarified. Charter schools will be required to maintain proper budgeting and financial accounting and reporting systems that are in conformity with Texas Education Data Standards in the TSDS PEIMS. In addition, charter schools will be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the FASB. The module also includes current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements will facilitate preparation of financial statements that conform to GAAP established by the FASB.

In response to public comment, Module 3 was modified at adoption to provide clearer guidance and add clarity through grammatical edits for the use of accounting codes.

In addition, all references to the ESEA have been updated at adoption to the ESSA.

Module 4, Auditing

Module 4 aligns with current auditing standards. Module 4 includes the following changes. Updates were made to accounting codes and accounting guidance, and previous guidance was clarified. The module establishes auditing requirements for Texas public school districts and charter schools and includes current requirements from Texas Education Code (TEC), §44.008, as well as Code of Federal Regulations, Title 2, Part 200, Subpart F, Audit Requirements, that implement the federal Single Audit Act. The module also includes current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements will facilitate preparation of financial statements that conform to GAAP established by the GASB.

At adoption, all references to the ESEA have been updated to the ESSA.

Module 5, Purchasing

Module 5 aligns with current purchasing laws and standards. Module 5 includes the following changes. Updates were made to purchasing guidance that has changed from previous legislation. Purchasing rules that needed additional explanation were clarified. School districts and charter schools will be required to establish procurement policies and procedures that align with their unique operating environment and ensure compliance with relevant statutes and policies.

In response to public comment, Module 5 was modified at adoption to provide clearer guidance and add clarity through grammatical edits.

Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System

Module 6 includes the following changes. Updates were made to clarify language that needed additional explanation, and other changes were made due to changes in law. School districts and charter schools will be required to maintain proper budgeting and financial accounting and reporting systems. The module provides information to assist local school officials' understanding of the numerous options for use of the state compensatory education allotment and provides current guidance for compliance.

In response to public comment, Module 6 was modified at adoption to add reference to the impact of HB 1416, 88th Texas Legislature, Regular Session, 2023, on the State Compensatory Education (SCE) program and to provide clearer guidance and add clarity through grammatical edits.

The FASRG is posted on the Texas Education Agency (TEA) website at https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide.

The SBOE approved the amendment for first reading and filing authorization at its November 17, 2023 meeting and for second reading and final adoption at its February 2, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date would ensure the provisions of the FASRG align with current governmental accounting and auditing standards for school districts and charter schools as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 22, 2023, and ended at 5:00 p.m. on January 22, 2024. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of public comments received and corresponding responses.

Module 1: Financial Accounting and Reporting (FAR) Appendices and Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts

Comment: Texas Council of Administrators of Special Education (TCASE) commented that some language stated for program intent code (PIC) 37 (Dyslexia or Related Disorders - Screening, Evaluation, and Identifications) and PIC 43 (Dyslexia or Related Disorders - Special Education) in Module 1: FAR Appendices, Section A.8.4 and Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts, Section 3.8.4 could create confusion, and TCASE suggested clarification for the language. Specifically, TCASE requested clarification on the use of the term "tools for evaluation" in the list of allowed costs for PIC 37, as special education funds are used for evaluation; suggested adding reference to dyslexia certifications in addition to training as allowable costs for PIC 37; suggested clarifying that "services, such as instructional accommodations" include personnel costs, including those incurred through contracting with private providers, as allowed costs for PIC 37; suggested that the costs to exclude from PIC 43 be revised to be consistent with language in PIC 37 because the word "tools" is not referenced at exclusionary costs for PIC 43; commented that costs for more individuals with various certification should be included as allowed costs for PIC 43 in addition to licensed dyslexia therapists and certified academic language therapists; and commented that deleting language referring to contracts with private providers for both PIC 37 and 43 makes it unclear on how contracted costs should be coded.

Response: The SBOE agrees that amending language for costs to include in PIC 37 will clarify costs that are allowed to be coded to the PIC. The following changes have been made to the FASRG at adoption.

Language has been modified from "Dyslexia screening, progress monitoring, and/or evaluation tools" to "Tools and instruments used to screen, progress monitor, and/or evaluate for dyslexia and related disorders." PIC 37 is used for coding expenses from revenue received from the dyslexia allotment under TEC, §48.103. Any types of tools or instruments purchased by a local education agency with its dyslexia allotment to screen, progress monitor, or evaluate for dyslexia can be coded to this PIC.

Language has been modified from "Dyslexia identification training for evaluation personnel" to "Training in the identification of dyslexia for evaluation personnel," and "Costs related to certification, licensure, and/or training to become providers of dyslexia instruction" has been added to the list of costs to include in PIC 37.

To clarify that costs for contracted personnel can be coded to PIC 37, the following language has been added to the costs to include in PIC 37: "Personnel costs for the screening, evaluation, and identification of students with dyslexia."

The SBOE disagrees that revising the costs to exclude from PIC 43 regarding "tools" is necessary but agrees that amending language for the costs that are allowed to be coded to PIC 43 will provide clarification. Therefore, for PIC 43, the FASRG has been modified at adoption to replace "Salary for personnel providing dyslexia instruction to identified students" and "Licensed dyslexia therapist or certified academic language therapist positions and/or stipends for licensed dyslexia therapists or certified academic language therapists" with "Personnel costs for licensed, trained, or certified providers of dyslexia instruction." The amended language clarifies allowable providers as described in the SBOE's Dyslexia Handbook, which is adopted in 19 TAC §74.28.

Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts

Comment: A certified public accountant commented that the word "finance" should be added after "right-of-use" in the inclusion chart for function code 71 (Debt Service) in Module 3 to specify that function code 71 should be used for interest on right-of-use finance leases.

Response: The SBOE agrees that function 71 should be used for interest on right-of-use finance leases. Language has been modified at adoption for function code 71 in Module 3, Section 3.3, to specify that it should be used for right-of-use finance leases.

Module 5: Purchasing

Comment: Texas Association of School Business Officials recommended that the word "local" be deleted from the definition of the purchase of newspaper advertising below the competitive procurement threshold in section 5.10 of Module 5 to state, "Newspaper Advertising. The purchasing of advertising from newspapers for the purpose of communicating with the general public of information concerning the district that is legally mandated, such as elections and procurement opportunities, when paid directly to the publisher."

Response: The SBOE agrees that the word "local" may be deleted to remove the specification for the purchase of advertising from local newspapers. However, language in Module 5, Section 5.10, has been modified at adoption to specify newspapers of general circulation in the geographic boundaries of the school district. The language has been updated to read, "Newspaper Advertising. The purchasing of advertising from newspapers of general circulation in the geographic boundaries of the school district for the purpose of communicating with the general public of information concerning the district that is legally mandated, such as elections and procurement opportunities, when paid directly to the publisher."

Module 6: State Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System

Comment: An education service center representative requested that HB 1416, 88th Texas Legislature, Regular Session, 2023, be added to the part of section 6.1 of Module 6 that summarizes the impact of the SCE program as a result of HB 4545, 87th Texas Legislature, Regular Session, 2021. The representative also requested that the language "with the help of required stakeholders" be included in the part of section 6.1 of Module 6 that describes expenses related to reducing the dropout rate to the allowable use of SCE funds. Additionally, the representative recommended that the term "district comprehensive needs assessment" be replaced with "district improvement plan" in the last paragraph under section 6.2.2 of Module 6.

Response: The SBOE agrees and has modified the FASRG at adoption to update Module 6, sections 6.1 and 6.2.2, with the suggested language.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.102(c)(32), which requires the State Board of Education (SBOE) to adopt rules concerning school district budgets and audits of school district fiscal accounts as required under TEC, Chapter 44, Subchapter A; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles; TEC, §44.007(b), which requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor; TEC, §44.007(c), which requires a record to be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE; TEC, §44.007(d), which requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Texas Student Data System Public Education Information Management System.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.102(c)(32), 44.007(a)-(d), and 44.008(b).

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

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SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTING GUIDELINES

19 TAC §109.5001

The Texas Education Agency (TEA) adopts an amendment to §109.5001, concerning budgeting, accounting, and auditing. The amendment is adopted without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7736) and will not be republished. The amendment adopts by reference the updated Financial Accountability System Resource Guide (FASRG), Version 19, which includes allowable costs for dyslexia and related disorders added by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023. Although no changes were made to §109.41 since published as proposed, the FASRG adopted by reference does include changes to Modules 1-6 at adoption.

REASONED JUSTIFICATION: The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers and is adopted by reference under §109.5001. Revisions to the FASRG align the content with current governmental accounting and auditing standards, remove obsolete requirements, and remove descriptions and discussions of best practices and other non-mandatory elements.

Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting process means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the Account Code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the Account Code section of the FASRG (Module 1).

The FASRG, Version 19, contains six modules on the following topics: Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices; Module 2, Special Supplement - Charter Schools; Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts; Module 4, Auditing; Module 5, Purchasing; and Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System.

State law provides authority for both the State Board of Education (SBOE) and the commissioner of education to adopt rules on financial accounting. To accomplish this, the SBOE and the commissioner each adopt the FASRG by reference under separate rules. The SBOE adopts the FASRG by reference under 19 TAC §109.41, and the commissioner adopts the FASRG by reference under §109.5001.

During the January-February 2024 SBOE meeting, the SBOE approved §109.41 for second reading and final adoption. At that time, the SBOE approved the following changes to the FASRG since published as proposed. These changes impact the FASRG adopted by reference in new §109.5001.

Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices

Module 1 aligns with current governmental accounting standards. Module 1 includes the following changes. Updates were made to accounting codes and accounting guidance, which will include allowable costs for dyslexia and related disorders added by House Bill 3928, 88th Texas Legislature, Regular Session, and previous guidance was clarified. School districts and charter schools will be required to maintain proper budgeting and

financial accounting and reporting systems. In addition, school districts will be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the Governmental Accounting Standards Board (GASB).

In response to public comment, Module 1, FAR Appendices, was modified at adoption to provide clearer guidance and add clarity through grammatical edits for the use of accounting codes.

In addition, all references to the Elementary and Secondary Act (ESEA) have been updated at adoption to the Every Student Succeeds Act (ESSA).

Module 2, Special Supplement - Charter Schools

Module 2 aligns with current financial accounting reporting standards. Module 2 includes the following significant changes. Updates were made to accounting codes and accounting guidance, including a requirement for the recording of Teacher Retirement System (TRS) on-behalf revenue and payments and the calculation for the amounts, and previous guidance would be clarified. The module establishes financial and accounting requirements for Texas public charter schools to ensure uniformity in accounting in conformity with GAAP. The module also includes current guidance that complements the American Institute of Certified Public Accountants (AICPA) *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States Government Accountability Office (GAO). These requirements will facilitate preparation of financial statements that conform to GAAP established by the Financial Accounting Standards Board (FASB).

At adoption, all references to the ESEA have been updated to the ESSA.

Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts

Module 3 aligns with current financial accounting standards. Module 3 includes the following changes. Updates were made to accounting codes and accounting guidance, which includes allowable costs for dyslexia and related disorders added by House Bill 3928, 88th Texas Legislature, Regular Session, 2023, as well as the addition of accounting codes for TRS on-behalf payments, and previous guidance was clarified. Charter schools will be required to maintain proper budgeting and financial accounting and reporting systems that are in conformity with Texas Education Data Standards in the TSDS PEIMS. In addition, charter schools will be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the FASB. The module also includes current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements will facilitate preparation of financial statements that conform to GAAP established by the FASB.

In response to public comment, Module 3 was modified at adoption to provide clearer guidance and add clarity through grammatical edits for the use of accounting codes.

In addition, all references to the ESEA have been updated at adoption to the ESSA.

Module 4, Auditing

Module 4 aligns with current auditing standards. Module 4 includes the following changes. Updates were made to accounting codes and accounting guidance, and previous guidance was clarified. The module establishes auditing requirements for Texas public school districts and charter schools and includes current requirements from Texas Education Code (TEC), §44.008, as well as Code of Federal Regulations, Title 2, Part 200, Subpart F, Audit Requirements, that implement the federal Single Audit Act. The module also includes current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements will facilitate preparation of financial statements that conform to GAAP established by the GASB.

At adoption, all references to the ESEA have been updated to the ESSA.

Module 5, Purchasing

Module 5 aligns with current purchasing laws and standards. Module 5 includes the following changes. Updates were made to purchasing guidance that has changed from previous legislation. Purchasing rules that needed additional explanation were clarified. School districts and charter schools will be required to establish procurement policies and procedures that align with their unique operating environment and ensure compliance with relevant statutes and policies.

In response to public comment, Module 5 was modified at adoption to provide clearer guidance and add clarity through grammatical edits.

Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System

Module 6 includes the following changes. Updates were made to clarify language that needed additional explanation, and other changes were made due to changes in law. School districts and charter schools will be required to maintain proper budgeting and financial accounting and reporting systems. The module provides information to assist local school officials' understanding of the numerous options for use of the state compensatory education allotment and provides current guidance for compliance.

In response to public comment, Module 6 was modified at adoption to add reference to the impact of HB 1416, 88th Texas Legislature, Regular Session, 2023, on the State Compensatory Education (SCE) program and to provide clearer guidance and add clarity through grammatical edits.

The FASRG is posted on the TEA website at https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 22, 2023, and ended January 22, 2024. Following is a summary of public comments received and agency responses.

Module 1: Financial Accounting and Reporting (FAR) Appendices and Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts

Comment: Texas Council of Administrators of Special Education (TCASE) commented that some language stated for program intent code (PIC) 37 (Dyslexia or Related Disorders - Screening, Evaluation, and Identifications) and PIC 43 (Dyslexia or Related Disorders - Special Education) in Module 1: FAR Appendices, Section A.8.4 and Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts, Section 3.8.4 could create confusion, and TCASE suggested clarification for the language.

Specifically, TCASE requested clarification on the use of the term "tools for evaluation" in the list of allowed costs for PIC 37, as special education funds are used for evaluation; suggested adding reference to dyslexia certifications in addition to training as allowable costs for PIC 37; suggested clarifying that "services, such as instructional accommodations" include personnel costs, including those incurred through contracting with private providers, as allowed costs for PIC 37; suggested that the costs to exclude from PIC 43 be revised to be consistent with language in PIC 37 because the word "tools" is not referenced at exclusionary costs for PIC 43; commented that costs for more individuals with various certification should be included as allowed costs for PIC 43 in addition to licensed dyslexia therapists and certified academic language therapists; and commented that deleting language referring to contracts with private providers for both PIC 37 and 43 makes it unclear on how contracted costs should be coded.

Response: The agency agrees that amending language for costs to include in PIC 37 will clarify costs that are allowed to be coded to the PIC. The following changes have been made to the FASRG at adoption.

Language has been modified from "Dyslexia screening, progress monitoring, and/or evaluation tools" to "Tools and instruments used to screen, progress monitor, and/or evaluate for dyslexia and related disorders." PIC 37 is used for coding expenses from revenue received from the dyslexia allotment under TEC, §48.103. Any types of tools or instruments purchased by a local education agency with its dyslexia allotment to screen, progress monitor, or evaluate for dyslexia can be coded to this PIC.

Language has been modified from "Dyslexia identification training for evaluation personnel" to "Training in the identification of dyslexia for evaluation personnel," and "Costs related to certification, licensure, and/or training to become providers of dyslexia instruction" has been added to the list of costs to include in PIC 37.

To clarify that costs for contracted personnel can be coded to PIC 37, the following language has been added to the costs to include in PIC 37: "Personnel costs for the screening, evaluation, and identification of students with dyslexia."

The agency disagrees that revising the costs to exclude from PIC 43 regarding "tools" is necessary but agrees that amending language for the costs that are allowed to be coded to PIC 43 will provide clarification. Therefore, for PIC 43, the FASRG has been modified at adoption to replace "Salary for personnel providing dyslexia instruction to identified students" and "Licensed dyslexia therapist or certified academic language therapist positions and/or stipends for licensed dyslexia therapists or certified academic language therapists" with "Personnel costs for licensed, trained, or certified providers of dyslexia instruction." The amended language clarifies allowable providers as described in the SBOE's Dyslexia Handbook, which is adopted in 19 TAC §74.28.

Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts

Comment: A certified public accountant commented that the word "finance" should be added after "right-of-use" in the inclusion chart for function code 71 (Debt Service) in Module 3 to specify that function code 71 should be used for interest on right-of-use finance leases.

Response: The agency agrees that function 71 should be used for interest on right-of-use finance leases. Language has been modified at adoption for function code 71 in Module 3, Section 3.3, to specify that it should be used for right-of-use finance leases.

Module 5: Purchasing

Comment: Texas Association of School Business Officials recommended that the word "local" be deleted from the definition of the purchase of newspaper advertising below the competitive procurement threshold in section 5.10 of Module 5 to state, "Newspaper Advertising. The purchasing of advertising from newspapers for the purpose of communicating with the general public of information concerning the district that is legally mandated, such as elections and procurement opportunities, when paid directly to the publisher."

Response: The agency agrees that the word "local" may be deleted to remove the specification for the purchase of advertising from local newspapers. However, language in Module 5, Section 5.10, has been modified at adoption to specify newspapers of general circulation in the geographic boundaries of the school district. The language has been updated to read, "Newspaper Advertising. The purchasing of advertising from newspapers of general circulation in the geographic boundaries of the school district for the purpose of communicating with the general public of information concerning the district that is legally mandated, such as elections and procurement opportunities, when paid directly to the publisher."

Module 6: State Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System

Comment: An education service center representative requested that HB 1416, 88th Texas Legislature, Regular Session, 2023, be added to the part of section 6.1 of Module 6 that summarizes the impact of the SCE program as a result of HB 4545, 87th Texas Legislature, Regular Session, 2021. The representative also requested that the language "with the help of required stakeholders" be included in the part of section 6.1 of Module 6 that describes expenses related to reducing the dropout rate to the allowable use of SCE funds. Additionally, the representative recommended that the term "district comprehensive needs assessment" be replaced with "district improvement plan" in the last paragraph under section 6.2.2 of Module 6.

Response: The agency agrees and has modified the FASRG at adoption to update Module 6, sections 6.1 and 6.2.2, with the suggested language.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.055(b)(32), which requires the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapters 39 and 39A; TEC, §44.001(a), which requires the commissioner to establish advisory guidelines relating to the fiscal management of a school district; TEC, §44.001(b), which requires the commissioner to report annually to the State Board of Education (SBOE) the status of school district fiscal management as reflected by the advisory guidelines and by statutory requirements; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles; TEC, §44.007(b), which requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor; TEC, §44.007(c), which requires a record to be kept of

all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE; TEC, §44.007(d), which requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Texas Student Data System Public Education Information Management System.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§7.055(b)(32), 44.001(a) and (b), 44.007(a)-(d), and 44.008(b).

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

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401113
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE

SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §112.26

The State Board of Education (SBOE) adopts an amendment to §112.26, concerning Grade 6 science. The amendment is adopted without changes to the proposed text as published in the December 22, 2023 issue of the *Texas Register* (48 TexReg 7738) and will not be republished. The adopted amendment corrects punctuation errors in the student expectation in §112.26(b)(11)(A).

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the September 2019 meeting, SBOE members were asked to designate content advisors for the review and revision of the science Texas Essential Knowledge and Skills (TEKS). In December 2019, applications to serve on science TEKS review work groups were posted on the Texas Education Agency (TEA) website. Additionally, in December 2019, TEA distributed a survey to collect information from educators regarding the review and revision of the science TEKS. TEA staff provided applications for the science review work groups to SBOE members on a monthly basis from December 2019 to June 2020 and in September, October, and December 2020. At the January 2020 SBOE meeting, the SBOE provided specific guidance for the TEKS review work groups.

Also in January 2020, science TEKS review content advisors met in a face-to-face meeting to develop consensus recommendations regarding revisions to the science TEKS to share with future work groups. At that time, the content advisors met with representatives from Work Group A to discuss the consensus recommendations. Work Group A convened in February 2020 to review survey results, content advisor consensus recommendations, and the SBOE's guidance to work groups to develop recommendations for how science TEKS review work groups can address these areas. Work Group B was convened virtually in June 2020 to develop recommendations for four high school science courses: Biology, Chemistry, Integrated Physics and Chemistry, and Physics. In November 2020, the SBOE approved for second reading and final adoption proposed new §§112.41-112.45 for implementation beginning in the 2023-2024 school year.

Work Group D was convened for monthly meetings from November 2020-February 2021 to develop recommendations for TEKS for five additional high school science courses: Aquatic Science, Astronomy, Earth and Space Science, Environmental Systems, and a new course Specialized Topics in Science. In June 2021, the board gave final approval to the additional high school science courses. Specialized Topics in Science was approved for implementation beginning in the 2022-2023 school year. Aquatic Science, Astronomy, Earth and Space Science, and Environmental Systems were approved for implementation beginning in the 2024-2025 school year.

Between August and November 2020, Work Group C convened for a series of virtual meetings to develop recommendations for the Grades 6-8 science TEKS. Work Group E was convened for monthly meetings between January and March 2021 to develop recommendations for the science TEKS for Kindergarten-Grade 5. Work Groups C and E were reconvened in May and June 2021 to address public feedback and revise their draft recommendations. Work Group F was convened for a series of virtual meetings in July 2021 to address SBOE feedback provided at the April and June 2021 SBOE meetings, vertically align the elementary and middle school standards, meet with content advisors, and finalize the draft recommendations for the Kindergarten-Grade 8 TEKS for science. At the September 2021 SBOE meeting, the board approved for first reading and filing authorization proposed new TEKS for Kindergarten-Grade 5 science. At the November 2021 SBOE meeting, the board approved for second reading and final adoption proposed new 19 TAC §§112.1-112.7 and 112.25-112.28.

Following adoption of the revised standards, an error was discovered in one Grade 6 student expectation. An additional comma changed the intended meaning of the student expectation. The adopted amendment removes the comma and makes a technical edit to punctuation at the end of the student expectation.

The SBOE approved the amendment for first reading and filing authorization at its November 17, 2023 meeting and for second reading and final adoption at its February 2, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date

would correct an error prior to the implementation of the new standards in the 2024-2025 school year. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 22, 2023, and ended at 5:00 p.m. on January 22, 2024. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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

Filed with the Office of the Secretary of State on March 11, 2024.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.29

The Texas Board of Architectural Examiners (Board) adopts amendments to 22 Texas Administrative Code §1.29. The amendments are adopted without changes to the proposed text published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 115). The rule will not be republished.

Reasoned Justification. The adopted rules implement Senate Bill 422 (88th Regular Session, 2023), which amends provisions in Texas Occupations Code Chapter 55, relating to the licensure of military service members, military veterans, and military spouses.

Previously, the Texas Legislature enacted a procedure under Texas Occupations Code §55.0041 that allows certain military spouses licensed in other states to engage in a business or occupation without becoming licensed in Texas. Through Senate Bill 422, the legislature extended this provision to apply to military service members. Under amended §55.0041(a), a military service member may engage in a business or occupation for which a license is required without obtaining the applicable license if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military service member seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a temporary license to an individual who qualifies to practice their profession under §55.0041(a). In such a case, the agency cannot charge a fee for the issuance of the license.

Senate Bill 422 also amended the law to impose deadlines upon agencies in considering applications under Texas Occupations Code Chapter 55. Under these amendments, a licensing agency has no more than 30 days from the submission of required documentation to approve a qualifying military service member or military spouse seeking to practice under Tex. Occ. Code § 55.0041. Additionally, an amendment to Tex. Occ. Code §55.005 requires a licensing agency to process and approve an application for licensure from a qualifying military service member, military veteran, or military spouse within 30 days.

In this rulemaking action the Board implements Senate Bill 422 by amending 22 Texas Administrative Code §1.29(b)(3) to adopt a 30-day processing deadline for the consideration of an application submitted by a military service member, military veteran, or military spouse.

Additionally, the Board implements Senate Bill 422 by amending §1.29(c). Previously, the Board adopted this rule to implement a temporary architectural registration procedure for qualifying military spouses pursuant to Tex. Occ. Code §55.0041. Because Senate Bill 422 expanded §55.0041 to apply to qualifying military service members, the Board amends §1.29(c) to do the same. The adopted rule implements two additional Senate Bill 422 amendments to §55.0041 by requiring the Board to issue a temporary registration to a qualifying military service member or military spouse within 30 days, and by clarifying that a military spouse's temporary registration is not impacted by a divorce or similar event.

Finally, the Board adopts non-substantive amendments to §1.29(c)(7) and §1.29(c)(8)(B) to improve the clarity of the rule.

Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rule.

Statutory Authority. Amendments to §1.29 are adopted under the authority of Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture. The amended rule implements Occupations Code §55.0041, which requires the Board to adopt the rule.

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

Filed with the Office of the Secretary of State on March 8, 2024.

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.29

The Texas Board of Architectural Examiners (Board) adopts amendments to 22 Texas Administrative Code §3.29. The amendments are adopted without changes to the proposed text published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 117).

Reasoned Justification. The adopted rules implement Senate Bill 422 (88th Regular Session, 2023), which amends provisions in Texas Occupations Code Chapter 55, relating to the licensure of military service members, military veterans, and military spouses.

Previously, the Texas Legislature enacted a procedure under Texas Occupations Code §55.0041 that allows certain military spouses licensed in other states to engage in a business or occupation without becoming licensed in Texas. Through Senate Bill 422, the legislature extended this provision to apply to military service members. Under amended §55.0041(a), a military service member may engage in a business or occupation for which a license is required without obtaining the applicable license if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military service member seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a temporary license to an individual who qualifies to practice their profession under §55.0041(a). In such a case, the agency cannot charge a fee for the issuance of the license.

Senate Bill 422 also amended the law to impose deadlines upon agencies in considering applications under Texas Occupations Code Chapter 55. Under these amendments, a licensing agency has no more than 30 days from the submission of required documentation to approve a qualifying military service member or military spouse seeking to practice under Tex. Occ. Code § 55.0041. Additionally, an amendment to Tex. Occ. Code §55.005 requires a licensing agency to process and approve an application for licensure from a qualifying military service member, military veteran, or military spouse within 30 days.

In this rulemaking action the Board implements Senate Bill 422 by amending 22 Texas Administrative Code §3.29(b)(3) to adopt a 30-day processing deadline for the consideration of an application for registration as a landscape architect submitted by a military service member, military veteran, or military spouse.

Additionally, the Board implements Senate Bill 422 by amending §3.29(c). Previously, the Board adopted this rule to implement a temporary landscape architectural registration procedure for qualifying military spouses pursuant to Tex. Occ. Code §55.0041. Because Senate Bill 422 expanded §55.0041 to apply to qualifying military service members, the Board amends §3.29(c) to do the same. The adopted rule implements two additional Senate Bill 422 amendments to §55.0041 by requiring the Board to issue a temporary registration to a qualifying military service member or military spouse within 30 days, and by clarifying that a military spouse's temporary registration is not impacted by a divorce or similar event.

Finally, the Board adopts non-substantive amendments to §3.29(b)(2)(A), §3.29(c)(7) and §3.29(c)(8)(B) to improve the clarity of the rule.

Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rule.

Statutory Authority. Amendments to §3.29 are adopted under the authority of Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture. The amended rule implements Occupations Code §55.0041, which requires the Board to adopt the rule.

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

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.39

The Texas Board of Architectural Examiners (Board) adopts amendments to 22 Texas Administrative Code §5.39. The amendments are adopted without changes to the proposed text published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 120). The rule will not be republished.

Reasoned Justification. The adopted rules implement Senate Bill 422 (88th Regular Session, 2023), which amends provisions in Texas Occupations Code Chapter 55, relating to the licensure of military service members, military veterans, and military spouses.

Previously, the Texas Legislature enacted a procedure under Texas Occupations Code §55.0041 that allows certain military spouses licensed in other states to engage in a business or occupation without becoming licensed in Texas. Through Senate Bill 422, the legislature extended this provision to apply to military

service members. Under amended §55.0041(a), a military service member may engage in a business or occupation for which a license is required without obtaining the applicable license if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military service member seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a temporary license to an individual who qualifies to practice their profession under §55.0041(a). In such a case, the agency cannot charge a fee for the issuance of the license.

Senate Bill 422 also amended the law to impose deadlines upon agencies in considering applications under Texas Occupations Code Chapter 55. Under these amendments, a licensing agency has no more than 30 days from the submission of required documentation to approve a qualifying military service member or military spouse seeking to practice under Tex. Occ. Code § 55.0041. Additionally, an amendment to Tex. Occ. Code §55.005 requires a licensing agency to process and approve an application for licensure from a qualifying military service member, military veteran, or military spouse within 30 days.

In this rulemaking action the Board implements Senate Bill 422 by amending 22 Texas Administrative Code §5.39(b)(3) to adopt a 30-day processing deadline for the consideration of an application for registration as a registered interior designer submitted by a military service member, military veteran, or military spouse.

Additionally, the Board implements Senate Bill 422 by amending §5.39(c). Previously, the Board adopted this rule to implement a temporary interior designer registration procedure for qualifying military spouses pursuant to Tex. Occ. Code §55.0041. Because Senate Bill 422 expanded §55.0041 to apply to qualifying military service members, the Board amends §5.39(c) to do the same. The adopted rule implements two additional Senate Bill 422 amendments to §55.0041 by requiring the Board to issue a temporary registration to a qualifying military service member or military spouse within 30 days, and by clarifying that a military spouse's temporary registration is not impacted by a divorce or similar event.

Finally, the Board adopts non-substantive amendments to §5.39(b)(2)(A), §5.39(c)(7) and §5.39(c)(8)(B) to improve the clarity of the rule.

Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rule.

Statutory Authority. Amendments to §5.39 are adopted under the authority of Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of registered interior design. The amended rule implements Occupations Code §55.0041, which requires the Board to adopt the rule.

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

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Lance Brenton
General Counsel
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For further information, please call: (512) 305-8519

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGIST

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER B. LICENSING REQUIREMENTS

22 TAC §463.9

The Texas Behavioral Health Executive Council adopts amended §463.9, relating to Licensed Specialist in School Psychology. Section 463.9 is adopted with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5435) and will be republished.

Reasoned Justification.

The adopted rule amendments allow applicants who were licensed in other states to provide school psychological services or applicants with graduate degrees in related disciplines to psychology to be eligible to apply for licensure as an LSSP so long as the applicant also meets the coursework, examinations, and internship requirements.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

Two commenters discussed the efforts by the Texas State Board of Examiners of Psychologists (TSBEP) to streamline and improve licensing processes, particularly in response to a directive from the Texas Legislature following the tragedy in Uvalde. The commenters advocate for utilizing National Association of School Psychologists (NASP) resources to inform licensing decisions, particularly for those from related fields seeking to become school psychologists. Specifically, the commenters proposed NASP's concept of respecialization and professional retraining which is a process by which an individual with experience or graduate preparation in a related field expands their current knowledge and skills through a formal program to achieve a credential as a school psychologist. The commenters highlight the shortage of school psychologists and the increasing number of educational diagnosticians in Texas, suggesting the need for alternative pathways like a school psychology associate credential. The commenters support the addition of paths for individuals credentialed in other jurisdictions and aligning coursework requirements with NASP standards. The commenters emphasize the complexity of the school psychologist shortage and the importance of innovative solutions.

List of interested groups or associations for the rule.

The Texas Association of School Psychologists.

Summary of comments for the rule.

Six commenters discussed the efforts by TSBEP to streamline and improve licensing processes, particularly in response to a directive from the Texas Legislature following the tragedy in Uvalde. The commenters advocate for utilizing NASP resources to inform licensing decisions, particularly for those from related fields seeking to become school psychologists. Specifically, the commenters proposed NASP's concept of respecialization and professional retraining which is a process by which an individual with experience or graduate preparation in a related field expands their current knowledge and skills through a formal program to achieve a credential as a school psychologist. The commenters highlight the shortage of school psychologists and the increasing number of educational diagnosticians in Texas, suggesting the need for alternative pathways like a school psychology associate credential. The commenters support the addition of paths for individuals credentialed in other jurisdictions and aligning coursework requirements with NASP standards. The commenters emphasize the complexity of the school psychologist shortage and the importance of innovative solutions.

A commenter stated that making it easier for people who are already experienced and knowledgeable in the field to come and work for schools if they so desire can only do good.

A commenter requests the allowance of certification for licensure to address a critical shortage of evaluators in Texas. The commenter highlights the need for more evaluators, and states that because of this shortage schools are increasingly forced to use outside vendors, with higher rates, to meet their needs for the assessment of students.

A commenter expressed overall support for specific changes in §463.9(d)(3)(B), (C), and (D) related to graduate degrees and reciprocity for practicing school psychology in another jurisdiction. Since the emphasis is placed on the importance of applicants providing evidence of graduate-level coursework in all specified areas. However, the commenter opposes a minor change proposed in §463.9(d)(3)(A), arguing that the proposed language uses the term "course" but the term "program" which is currently used in the rule, better aligns with the rule's intent. The commenter's opposition is grounded in the belief that fulfilling the requirements in subsection (e) necessitates applicants coming from a comprehensive program rather than completing just one course.

A commenter expressed that they appreciated the intent behind adding the "school-based" language to the rule, but the commenter expresses concerns that such a change may impose an undue burden on TSBEP staff in verifying course curriculum details. The commenter asserts that school psychologists already undergo extensive training during a 1200-hour internship in school settings, emphasizing the importance of establishing foundations in assessment and intervention practices and where their education is put into practice in a school setting.

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Agency Response.

The Council thanks the commenters for their supportive comments.

The Council acknowledges that the commenters are correct, there is a shortage of LSSP or school psychologists in Texas. The Council, along with TSBEP, have attempted to take steps toward correcting this problem, and one such action is the adoption of this rule.

The rule, in §463.9(c), currently recognizes graduates from training programs accredited by NASP as having met all training and internship requirements for licensure as an LSSP. So, the rule already utilizes NASP resources to shape licensure requirements.

The change to §463.9(d)(3)(A), which accepts applicants that hold a certificate of completion from a graduate-level training program designed to train individuals from related disciplines in the practice of school psychology, appears to align with NASP's concept of respecialization and professional retraining so the Council does not see the need for any rule change regarding this issue.

Regarding the concept of issuing an LSSP-Associate license or certification for licensure, as some commenters have suggested, these concepts are far beyond the scope of what was originally proposed. Therefore any such alternative licensure concepts cannot be adopted at this time. Further research and development would be needed before any adoption and implementation of such alternative licensure ideas could be possible.

In response to the comment regarding the use of the term "course" in proposed §463.9(d)(3)(A), the Council agrees to adopt the rule with this change, to use the term "program" instead. Especially since the term "program" is currently the term used in the rule, and the Council agrees the term "program" best reflects the intent of the rule.

Council staff currently reviews coursework as part of the LSSP application process, so it is not anticipated that the addition of "school-based" to subsection (e) of the rule will increase the burden on staff reviewing applications.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has com-

plied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§463.9. Licensed Specialist in School Psychology.

(a) License Requirements. An applicant for licensure as a specialist in school psychology must:

(1) hold an appropriate graduate degree;

(2) provide proof of specific graduate level coursework;

(3) provide proof of an acceptable internship;

(4) provide proof of passage of all examinations required by the Council; and

(5) meet the requirements imposed under §501.2525(a)(3) - (9) of the Occupations Code.

(b) Applicants who hold active certification as a Nationally Certified School Psychologist (NCSP) are considered to have met all requirements for licensure under this rule except for passage of the Jurisprudence Examination. Applicants relying upon this subsection must provide the Council with their NCSP certification number.

(c) Applicants who graduated from a training program accredited or approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association are considered to have met all training and internship requirements for licensure under this rule. Applicants relying upon this subsection must submit an official transcript indicating the degree and date the degree was awarded or conferred.

(d) Appropriate Graduate Degrees.

(1) Applicants who do not hold active NCSP certification, or who did not graduate from a training program accredited or approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited institution of higher education. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of study is titled psychology.

(2) Applicants applying under this subsection must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited institution of higher education. A maximum of 12 internship hours may be counted toward this requirement.

(3) An applicant who holds a graduate degree that does not qualify under subsection (d)(1) but meets the requirements of subsection (d)(2) is considered to have an appropriate graduate degree if:

(A) the applicant holds a certificate of completion from a graduate-level training program designed to train individuals from related disciplines in the practice of school psychology;

(B) the applicant holds a graduate degree in a discipline related to psychology from a regionally accredited institution of higher education;

(C) the applicant is licensed, certified, or registered in good standing to practice school psychology in another jurisdiction; or

(D) the applicant was licensed, certified, or registered to practice school psychology in another jurisdiction within the previous ten years before application for licensure and was not subject to any administrative or disciplinary actions during that same time period.

(e) Applicants applying under subsection (d) of this section must submit evidence of graduate level coursework as follows:

(1) Psychological Foundations, including:

(A) biological bases of behavior;

(B) human learning;

(C) social bases of behavior;

(D) multi-cultural bases of behavior;

(E) child or adolescent development;

(F) psychopathology or exceptionalities;

(2) Research and Statistics;

(3) Educational Foundations, including any of the following:

(A) instructional design;

(B) organization and operation of schools;

(C) classroom management; or

(D) educational administration;

(4) School-based Assessment, including:

(A) psychoeducational assessment;

(B) socio-emotional, including behavioral and cultural, assessment;

(5) School-based Interventions, including:

(A) counseling;

(B) behavior management;

(C) consultation;

(6) Professional, Legal and Ethical Issues; and

(7) A School-based Practicum.

(f) Applicants applying under subsection (d) of this section must have completed an internship with a minimum of 1200 hours and that meets the following criteria:

(1) At least 600 of the internship hours must have been completed in a public school.

(2) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Council §463.11(d)(1) and (d)(2)(C) of this title.

(3) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.

(4) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.

(5) Unless authorized by the Council, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(6) Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.

(7) Internship hours must be obtained in not less than one or more than two academic years.

(8) An individual completing an internship under this rule must be designated as an intern.

(9) Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.

(10) The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(g) Provision of psychological services in the public schools by unlicensed individuals.

(1) An unlicensed individual may provide psychological services under supervision in the public schools if:

(A) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education; or

(B) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Council that has not been denied or returned.

(2) An unlicensed individual may not provide psychological services in a private school setting unless the activities or services provided are exempt under §501.004 of the Psychologists' Licensing Act.

(3) An unlicensed individual may not engage in the practice of psychology under paragraph (1)(B) of this subsection for more than forty-five days following receipt of the application by the Council.

(4) The authority to practice referenced in paragraph (1)(B) of this subsection is limited to the first or initial application filed by an individual under this rule, but is not applicable to any subsequent applications filed under this rule.

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

Filed with the Office of the Secretary of State on March 7, 2024.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §681.72

The Texas Behavioral Health Executive Council adopts amended §681.72, relating to Required Application Materials. Section 681.72 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6720) and will not be republished.

Reasoned Justification.

The adopted amendments delete the requirement that an applicant must receive a passing score on either the NCE or NCMHCE within five years of the date of application. The licensure exams for other types of behavioral health licensees, such as psychologists and marriage and family therapists, do not have a time limit or expiration for their examination scores. Therefore, this five year expiration for a passing scores is deleted.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this rule change. One commenter opined that the application process is already congested, and it is a waste of time for the agency and applicants to have associates reapply and retake the exam. If applicants only have to get approved to take and pass the exam once, then this will make a difference in the timeline of the process for everyone.

Agency Response.

The Council thanks the commenters for their supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice,

standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Texas State Board of Examiners of Professional Counselors
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For further information, please call: (512) 305-7706

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PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.404

The Texas Behavioral Health Executive Council adopts amended §781.404, relating to Recognition as a Council-approved Supervisor and the Supervision Process. Section 781.404 is adopted with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5438) and will be republished.

Reasoned Justification.

The adopted amendments are intended to clarify the allowable fee arrangements between supervisor and supervisee.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter raises concerns about the potential for dual relationships in supervision and maintaining ethical boundaries in supervisor-supervisee relationships, particularly when a supervisor is also the employer of a supervisee and the supervisee pays for the supervision. The commenter questions whether the proposed change may inadvertently allow supervisors in independent practice to accept payment from their employees for supervision. The commenter suggests that if the goal is to prevent supervisors from being paid twice (by both employer and supervisee), the rule should explicitly state this.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None

Agency Response.

The purpose of this rule amendment is to provide clarity in the rule, that a supervisor may not exploit their supervisees by being paid twice for the supervision they are providing. Therefore, in response to the comment, the Council adopts this rule with a change to make it clear that, a Council-approved supervisor who is otherwise compensated for supervisory duties may not charge or collect a fee or anything of value from the supervisee for the supervision services provided to the supervisee.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§781.404. Recognition as a Council-approved Supervisor and the Supervision Process.

(a) Types of supervision include:

(1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

(4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor; or

(5) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.

(1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.

(2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.

(3) The Council-approved supervisor must have completed a 40-hour supervisor's training program acceptable to the Council.

(A) At a minimum, the 40-hour supervisor's training program must meet each of the following requirements:

(i) the course must be taught by a licensed social worker holding both the appropriate license classification, and supervisor status issued by the Council;

(ii) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(iii) the 40-hour supervision training must include at least:

(I) three (3) hours for defining and conceptualizing supervision and models of supervision;

(II) three (3) hours for supervisory relationship and social worker development;

(III) twelve (12) hours for supervision methods and techniques, covering roles, focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (race, ethnic, and gender issues), and evaluation methods;

(IV) twelve (12) hours for supervision and standards of practice, codes of ethics, and legal and professional issues; and

(V) three (3) hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(B) Subparagraph (A) of this paragraph is effective September 1, 2023.

(4) The Council-approved supervisor must submit required documentation and fees to the Council.

(5) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.

(A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;

(B) An LMSW-AP may supervise non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

(C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;

(D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.

(6) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.

(7) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.

(8) A Council-approved supervisor who wishes to provide any form of supervision or Council-ordered supervision must comply with the following:

(A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.

(B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.

(C) A Council-approved supervisor who is otherwise compensated for supervisory duties may not charge or collect a fee or anything of value from the supervisee for the supervision services provided to the supervisee.

(D) Before entering into a supervisory plan, the supervisor shall be aware of all conditions of exchange with the clients

served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

(E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.

(F) A supervisor shall not be a family member of the person being supervised.

(G) A supervisee must have a clearly defined job description and responsibilities.

(H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.

(I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.

(J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.

(K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.

(L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

(M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.

(N) Providing supervision without Council-approved supervisor status is grounds for disciplinary action.

(O) A supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

(9) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked for the 3,000 hours of supervised experience. No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months for LCSW or Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months.

(F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.

(G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.

(H) Supervised professional experience required for licensure must comply with §781.401 of this title and §781.402 of this title and all other applicable laws and rules.

(10) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.

(A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(i) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;

(ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential su-

pervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Council-ordered and mandated supervision timeframes are specified in the Council order.

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

Filed with the Office of the Secretary of State on March 7, 2024.

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Darrel D. Spinks
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For further information, please call: (512) 305-7706

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22 TAC §781.412

The Texas Behavioral Health Executive Council adopts amended §781.412, relating to Examination Requirement. Section 781.412 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6723) and will not be republished.

Reasoned Justification.

The adopted amendments eliminate the requirement that an applicant must receive a passing score on the ASWB national examination within two years prior to the initial or upgrade application. The rule as adopted will still require a passing score before the date of application, but examination scores older than two years will no longer expire for licensure purposes. The licensure exams for other types of behavioral health licensees, such as psychologists and marriage and family therapists, do not have a time limit or expiration for their examination scores. Therefore, this two year expiration for a passing scores has been deleted.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter questioned whether this rule change means LMSWs who have spent their entire 3,000 hours in a clinical or therapeutic setting do not have to retest to upgrade their license to LCSW.

Agency Response.

The rule amendment does not change the requirements for an LMSW to upgrade to an LCSW, an LMSW must complete the required supervised clinical hours of experience and receive a passing score on the ASWB national examination. What the rule amendment does is no longer require the applicant LMSW achieve a passing examination score within two years of the date of application. Which means, if the applicant has ever achieved a passing score on the required examination then the applicant is not required to retake the examination.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401019
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: March 27, 2024
Proposal publication date: November 17, 2023
For further information, please call: (512) 305-7706

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22 TAC §781.501

The Texas Behavioral Health Executive Council adopts amended §781.501, relating to Requirements for Continuing Education. Section 781.501 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5441) and will not be republished.

Reasoned Justification.

The adopted amendments correct a typographical error and allow field and practicum instructors to claim up to 10 hours of continuing education credit when providing instruction to social work students.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voiced support for the rule amendments and thanked the agency for reinstating the ability to earn CE credit for serving as a practicum instructor. The commenter opined that the term "field" could be offensive to some and suggested a future change to remove the term. The commenter believed the term "practicum" is sufficient and using both is redundant.

Agency Response.

The Executive Council thanks the commenter for their supportive comments but declines to amend the rule as requested. The Council has previously received comments from individuals identifying themselves as either practicum instructors or field instructors, and both expressed an interest in a rule amendment such as the one being adopted. Therefore, at this time, the Council chooses to keep both practicum instructors and field instructors included in the rule.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on March 7, 2024.

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Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: March 27, 2024
Proposal publication date: September 22, 2023
For further information, please call: (512) 305-7706

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §801.2

The Texas Behavioral Health Executive Council adopts amended §801.2, relating to Definitions. Section 801.2 is adopted without changes to the proposed text as published

in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5443) and will not be republished.

Reasoned Justification.

The adopted amendment adds a definition for independent practice for the purpose of providing greater clarity in the rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-2024001022
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: March 27, 2024
Proposal publication date: September 22, 2023
For further information, please call: (512) 305-7706

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §801.48

The Texas Behavioral Health Executive Council adopts amended §801.48, relating to Record Keeping, Confidentiality, Release of Records, and Required Reporting. Section 801.48 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5446) and will not be republished.

Reasoned Justification.

The adopted amendment provides greater clarity in the rules, to make it clear that any licensee in private practice must establish a plan of custody and control for a client's records.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules

regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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Proposal publication date: September 22, 2023
For further information, please call: (512) 305-7706

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SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.142

The Texas Behavioral Health Executive Council adopts amended §801.142, relating to Supervised Clinical Experience Requirements and Conditions. Section 801.142 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5447) and will not be republished.

Reasoned Justification.

The adopted amendment increases the number of hours that may be counted towards licensure that are provided by technology-assisted services from 500 hours to 750 hours.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

The Council received a comment in support of this rule change.

Agency Response.

The Council thanks the commenter for their supportive comment.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401024
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: March 27, 2024
Proposal publication date: September 22, 2023
For further information, please call: (512) 305-7706

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22 TAC §801.143

The Texas Behavioral Health Executive Council adopts amended §801.143, relating to Supervisor Requirements. Section 801.143 is adopted without changes to the proposed text

as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5449) and will not be republished.

Reasoned Justification.

The adopted amendments remove the 12 supervisee limit on supervisors, allowing supervisors to determine the appropriate number of supervisees that they can provide adequate supervision. Additionally, the adopted amendments make it clear that a supervisor must establish a plan of custody and control for records of supervision for their LMFT Associates.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401025
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: March 27, 2024
Proposal publication date: September 22, 2023
For further information, please call: (512) 305-7706

SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §801.305

The Texas Behavioral Health Executive Council adopts the repeal of §801.305, relating to Schedule of Sanctions. The repeal of §801.305 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5451) and will not be republished.

Reasoned Justification.

This rule is repealed and replaced with a new schedule of sanctions that is adopted elsewhere in this issue of the *Texas Register.*

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the

adoption this rule repeal to the Executive Council. The rule repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule repeal.

Lastly, the Executive Council also adopts this rule repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401026
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: March 27, 2024
Proposal publication date: September 22, 2023
For further information, please call: (512) 305-7706

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22 TAC §801.305

The Texas Behavioral Health Executive Council adopts new §801.305, relating to Schedule of Sanctions. Section 801.305 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5453) and will not be republished.

Reasoned Justification.

The adopted new rule is necessary to correct a *Texas Register* submission error regarding the graphic chart. The same chart that was proposed in the August 5, 2022, issue of the *Texas Register* was re-proposed and now adopted, because unfortunately the chart adopted in the November 18, 2022 issue of the *Texas Register* was the previous chart. As stated previously in the preamble to the August 5th proposal, this adopted schedule of sanctions chart will more closely resemble the format used by the other behavioral health boards, which adopted this format to make their schedule of sanctions charts easier to use. There are some substantive changes being made to the current schedule of sanctions chart in effect, but again, these changes are the same as those proposed in the August 5, 2022 edition of the *Texas Register*; there are no changes being proposed that have not been reviewed and proposed by the member board. This adopted schedule of sanctions chart will align with the changes made to §801.302, which reduced the amount of severity levels from five to four by combining the two previous suspension levels into one. Therefore, violations of §§801.44(t) and (v), 801.47, and 801.57(e) will no longer be split between two types of suspension levels. Additionally, the sanction for §801.47 is being split between subsection (a) and (b), which are a suspension and revocation respectively. Section 801.44(s) - (v) has been updated to correspond more accurately to the correct rule and sanction. Amendments have been made to §801.143(h) - (l) so corresponding amendments have been made to match those changes. Lastly, some typographical errors are being corrected.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: March 27, 2024
Proposal publication date: September 22, 2023
For further information, please call: (512) 305-7706

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PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER B. LICENSE

22 TAC §882.23

The Texas Behavioral Health Executive Council adopts amendments to §882.23, relating to License Required to Practice. Section 882.23 is adopted with changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6725) and will be republished. The changes to the adopted rule are made in response to public comments.

Reasoned Justification.

The adopted amendments clarify when an individual is conducting a professional service in Texas, which is regulated by the Executive Council. The determining factor is, if the recipient of the professional service is physically located in Texas, then the individual is conducting the regulated practice of marriage and family therapy, professional counseling, psychology, or social work in Texas.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that Texas has a provider crisis and cannot meet the needs of its own citizens. The commenter believes this rule change is evidence that NGOs are completely incognizant of the reality of mental healthcare in the 21st century, and the rule change is a veiled attempt to inadvertently worsen mental healthcare disparities that will negatively impact the entire nation. The commenter believes that access to mental healthcare should be a right and not a privilege.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

A commenter opined that they believed the rule change is helpful and provides necessary clarification, especially as Telehealth becomes more prominent.

A commenter, while agreeing with the change, requested a clarification or distinction be added to this rule change. The proposed change includes an interviewee in the definition of a client. Mental health professionals, especially forensic evaluators, often meet with consultants and interview collaterals for an evaluation. While the consultants and collaterals are not the recipients of services as it relates to being the person being evaluated, they are recipients of services as it relates to being an interviewee because they receive an interview which is a service as part of an evaluation. Therefore the commenter requested clarification as to whether collateral witnesses are included in the definition of client under this rule.

Agency Response.

The Council declines to amend the rule as requested by the commenter that is against this rule. The purpose of this rule change was not to address access to mental healthcare or disparities in mental healthcare. The purpose of this rule amendment is to clarify when a professional service, that is regulated by the Council, occurs in Texas. Previously, if a provider was physically present in Texas when services were provided to a client in another jurisdiction then that could have constituted the practice of a regulated profession in Texas, thereby requiring a Texas license. The mission of the Council is to protect the people of Texas. Requiring a license for an individual providing services to clients located in another state is not part of the Council's mission. The commenter's concern that his rule change somehow impacts access to or disparities in mental healthcare in Texas is not germane to this rule change. Therefore the Council declines to amend this rule as requested.

The Council thanks the commenters for their supportive comments.

The Council agrees to amend the rule as requested by the commenter asking for additional clarity regarding whether collateral witnesses are included in the definition of client under this rule. The purpose of the rule was to clarify when an individual is conducting a regulated service in Texas, which is when the recipient of the service is physically located in Texas. As the commenter correctly pointed out, the Council included the term interviewee as part of the definition of client. The intent of the rule change was always to include any type of recipient of services in the definition of a client, whether that includes the individual being evaluated or the collateral witnesses being interviewed as part of the evaluation. Therefore the Council adopts the rule with changes to make it clear that a client does include an individual or entity interviewed, examined, or evaluated for the purpose of services (e.g. a collateral witness or collateral sources of information).

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§882.23. License Required to Practice.

(a) A person may not engage in or represent that the person is engaged in the practice of marriage and family therapy, professional counseling, psychology, or social work within this state, unless the person is licensed or otherwise authorized to practice by law.

(b) A person is engaged in the practice of marriage and family therapy within this state if any of the criteria set out in §502.002(6) of the Occupations Code occurs while a client is located in this state.

(c) A person is engaged in the practice of professional counseling within this state if any of the criteria set out in §503.003(a) of the Occupations Code occurs while a client is located in this state.

(d) A person is engaged in the practice of psychology within this state if any of the criteria set out in §501.003(b) of the Occupations Code occurs while a client is located in this state.

(e) A person is engaged in the practice of social work within this state if any of the criteria set out in §505.0025 of the Occupations Code occurs while a client is located in this state.

(f) In accordance with §113.002 of the Occupations Code, a licensee of the Executive Council may provide a mental health service, that is within the scope of the license, through the use of a telehealth service to a client who is located outside of this state, subject to any applicable regulation of the jurisdiction in which that client is located. Such conduct does not constitute the practice of marriage and family therapy, professional counseling, psychology, or social work in this state.

(g) For the purposes of this rule, the term "client" means:

(1) a recipient of marriage and family therapy, professional counseling, psychology, or social work services within the context of a professional relationship, including a child, adolescent, adult, couple, family, group, organization, community, or other populations, or other entities receiving services;

(2) an individual or entity requesting the services (e.g., an employer, a state, tribal, or federal court, an attorney acting on behalf of his or her client, an office or agency within local, state, or federal government), the recipient of those services (e.g., the subject of an evaluation, assessment, or interview), and an individual or entity interviewed, examined, or evaluated for the purpose of those services (e.g. a collateral witness or collateral sources of information);

(3) an organization such as a business, charitable, or governmental entity that receives services directed primarily to the organization, rather than to individuals associated with the organization;

(4) minors and wards in guardianships, as well as their legal guardians; and

(5) any related term for the recipient of services, such as a patient, evaluee, examinee, interviewee, participant, or any other similar term.

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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22 TAC §882.28

The Texas Behavioral Health Executive Council adopts new §882.28, relating to Update to Degree on a License. Section 882.28 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6726) and will not be republished.

Reasoned Justification.

The adopted new rule implements a process to update the degree listed on a license.

List of interested groups or associations against the rule.

AMHP-Association for Mental Health Professionals.

Summary of comments against the rule.

Two commenters voiced objections to the proposed new rule, which allows licensees to add a doctoral degree to their license. The commenters argue that no substantial reasons for the new rule have been provided, and no evidence of negative impact on the public has been demonstrated for not having such a rule. They highlight that a doctoral degree is not mandatory for licensure, deeming the proposal a poor use of regulatory resources. The commenters also emphasize existing rules allow licensees, such as counselors, to publicly market their educational achievements. The commenters believe the claim that displaying a doctoral degree on a license leads to higher insurance reimbursements is inaccurate, and that other documentation, such as a degree, could be provided to prove an individual's academic achievements. Overall, the commenters contend that the proposed new rule lacks justification, practical benefits, and is unnecessary.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter believed it would be appropriate to recognize an eligible and applicable doctoral degree on a license, and that it would be misleading and confusing to clients to not accurately display such qualifications on a license. The commenter further opined that there are many licenses already in existence with the acknowledgment of a doctorate degree, and it would be inequitable for licensees with a newly acquired doctoral degree to be excluded from this historical practice.

A commenter opined that new licensees with a doctoral degree have it listed but someone who earns their doctorate post licensure should also have the ability to have their doctoral degree added to their license. Further, the commenter stated that insurance companies compensate doctoral level mental health professionals at a higher rate and by not allowing the inclusion of a doctoral degree on a license it creates inequities for experienced counselors who deferred their doctoral studies.

Agency Response.

The Council declines to amend or not adopt the rule as requested by the commenters. Council and Board members voiced their support for this new rule and opined that it will provide greater notice to the public regarding a particular licensee's educational and academic background. Previously, when several of the underlying Boards were administered by the HHSC, licensees were allowed to add their doctoral degrees to their already issued license but there was no formal process in place to accomplish this task. This new rule establishes such a process, and with a corresponding amendment to the Council's fee rule, §885.1, allows for the collection of a fee to process such a request. The commenters are correct, that most licensing rules do not require a doctoral degree for the issuance of a license, except for licensed psychologists, but many of these same licensing rules will accept any type of relevant graduate degree, meaning a master's or doctoral degree, so a doctoral degree can qualify an individual for licensure. The additional public notice this rule will create is similar to other rules that allow for licensees to list a particular certification or designation on their license. For example, Council rule §463.25 allows psychologists to indicate they are certified as a Health Service Psychologist (HSP) and Council rule §681.73 allows LPCs to be licensed with an art therapy designation. Neither of these are required for licensure, but these certifications or designations get listed on a license to provide additional notice to the public regarding a licensee's educational and academic background. This new rule follows this same tradition, and therefore the Council declines to amend or not adopt the rule as requested by the commenters.

The Council thanks the commenters for their supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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CHAPTER 883. RENEWALS
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §883.1

The Texas Behavioral Health Executive Council adopts amendments to §883.1, relating to Renewal of a License. Section 883.1 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6727) and will not be republished.

Reasoned Justification.

The adopted amendments require licensees selected for audit during renewal to obtain and submit a National Practitioner Data Base self-query. Council rule §882.2 requires new applicants to submit an NPDB self-query with their application, but previously there was no Council rule that required current licensees to submit an NPDB self-query. In a recent audit conducted by the State Auditor's Office, the lack of any required NPDB self-query for licensure renewal was identified as an area of concern for the licensing functions of the Council. Section 507.258 of the Occupations Code requires the Council to establish a process to search a national practitioner database to determine whether another state has taken any disciplinary or other legal action against an applicant or license holder before issuing an initial or renewal license. Therefore, these rule amendments have been adopted to address this identified area of concern, and to further implement §507.258 of the Occupations Code.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter disagreed with this rule change, stating that there are too many fees for a licensee that holds multiple licenses issued by the Council and requests a reduction in fees for such individuals. The commenter opines that individuals that hold multiple licenses must comply with multiple requirements: jurisprudence exams, continuing education fees, license fees, and now multiple NPDB query fees. The commenter concludes that such individuals should not be penalized for holding multiple licenses.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter agreed with this proposed rule change.

Agency Response.

The Council declines to amend the rule as requested by the commenter. This rule change does not directly affect the fees charged to all licensees for the renewal of a license. Only those licensees selected for audit, which under Council rule §882.50 is 5% of licensees renewing, will be required to pay an additional fee. And the current fee for an NBDP self-query is approximately $3.00, which is paid directly to NPDB. Only one NBDP self-query would be required to comply with this requirement, regardless of the number of licenses held by the individual, because the query pertains to the individual and not a particular license. The Council finds that an additional $3.00 fee for 5% of licensees renewing biannually to be so nominal that it should have no economic impact on licensees, and therefore declines to amend the rule to make an exception for individuals with multiple licenses as requested by the commenter.

The Council thanks the commenter for their supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Executive Council adopts this rule pursuant to the authority found in §507.258 of the Tex. Occ. Code which requires the Executive Council to establish a process to search a national practitioner database to determine whether another state has taken any disciplinary or other legal action against an applicant or license holder before issuing an initial or renewal license.

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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CHAPTER 884. COMPLAINTS AND ENFORCEMENT

SUBCHAPTER A. FILING A COMPLAINT

22 TAC §884.1

The Texas Behavioral Health Executive Council adopts amendments to §884.1, relating to Timeliness of Complaints. Section 884.1 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6729) and will not be republished.

Reasoned Justification.

The adopted amendments provide notice and clarity that the rule of limitations for the timeliness of a complaint does not apply to applications for reinstatement.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

Christian Counselors of Texas

Summary of comments for the rule.

The commenter indicated it will publish this proposed rule change in its newsletters, in an effort to increase response and opportunity to speak on such changes.

Agency Response.

The Council thanks the commenter for their supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov’t Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
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CHAPTER 885. FEES

22 TAC §885.1

The Texas Behavioral Health Executive Council adopts amendments to §885.1, relating to Executive Council Fees. Section 885.1 is adopted with changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6730) and will be republished. The changes to the adopted rule are made to correct typographical errors.

Reasoned Justification.

The adopted amendments provide additional notice to applicants and licensees of the potential disciplinary action that may result from attempting to refund fees paid to the Council. Additionally, a new rule has been adopted, §882.28, regarding updates to degrees on licenses, so a new fee of $54.00 has been adopted for these types of applications.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Executive Council adopts this rule amendment pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code.

§885.1. Executive Council Fees.

(a) General provisions.

(1) All fees are nonrefundable, nontransferable, and cannot be waived except as otherwise permitted by law. Any attempt to cancel, initiate a chargeback, or seek recovery of fees paid to the Council may result in the opening of a complaint against a licensee or applicant.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees:

(1) Fees effective through August 31, 2023.
Figure: 22 TAC §885.1(b)(1)

(2) Fees effective on September 1, 2023.
Figure: 22 TAC §885.1(b)(2)

(c) Late fees. (Not applicable to Inactive Status)

(1) If the person's license has been expired (i.e., delinquent) for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person's license has been expired (i.e., delinquent) for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person's license has been expired (i.e., delinquent) for one year or more, the person may not renew the license; however, the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

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

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Darrel D. Spinks
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For further information, please call: (512) 305-7706

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER O. ADVISORY COMMITTEES

31 TAC §51.673

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 25, 2024, adopted new 31 TAC §51.673, concerning the Oyster Advisory Committee (OAC), without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7865). The rule will not be republished.

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission (the Commission) to "appoint committees to advise the commission on issues under its jurisdiction." Under Parks and Wildlife Code, Chapter 76, the legislature has designated the department as the primary regulatory agency for public oyster beds and certificates of location (oyster leases), including the taking, possession, purchase, and sale of oysters. Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules must state the purpose of the committee and describe the way the committee will report to the agency. The rules may also establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Under this authority, the Commission has established a number of advisory committees to provide the department with informed opinion regarding various aspects and dimensions of the department's mission. These advisory committees perform a valuable service for the department and the people of Texas.

The department is the primary state agency responsible for the regulation and management of public and private oyster beds, including the taking, possession, purchase, and sale of oysters. Staff have determined that the creation of an advisory board for matters involving oysters would be helpful in assisting the department and the commission in determining and executing appropriate strategies to maximize the long-term health of oyster resources and the additional habitat and ecosystem services they provide.

The department received seven comments opposing adoption of the rule as proposed.

Four commenters opposed adoption and stated various preferences for the composition of the OAC membership. The department disagrees with the comments and responds that appointments to the OAC are at the sole discretion of the Chairman of the Parks and Wildlife Commission.

Three commenters provided statements addressing resource concerns, but they did not specifically address the substance of the rule as proposed and are, therefore, not germane. No changes were made as a result of the comments.

The department received 24 comments supporting adoption of the rule as proposed.

The new rule is adopted under Government Code, Chapter 2110, which requires the adoption of rules regarding state agency advisory committees.

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

Filed with the Office of the Secretary of State on March 5, 2024.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: March 25, 2024
Proposal publication date: December 22, 2023
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER B. TEXAS BROADBAND DEVELOPMENT OFFICE

DIVISION 1. BROADBAND DEVELOPMENT MAP

34 TAC §§16.21 - 16.24

The Comptroller of Public Accounts adopts new §16.21, concerning broadband development map; §16.22, concerning map challenges and criteria; §16.23, concerning challenge process and deadlines; and §16.24, concerning map challenge determinations, with changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5957). The rules will be republished. These new sections implement changes to Government Code, §490I.0109, made by Senate Bill 1238, 88th Legislature, R.S., 2023. The new sections will be located in Subchapter B, in new Division 1 (Broadband Development Map).

The comptroller also renames Subchapter B as Texas Broadband Development Office.

The new sections replace §16.33, concerning designated area eligibility, and §16.34, concerning designated area reclassification, which the comptroller will repeal in a separate rulemaking.

Section 16.21 implements the requirement for the comptroller to create, and annually update, a broadband development map depicting the availability of broadband service for each broadband serviceable location in this state. As required by Senate Bill 1238, the new section updates the minimum information that must be displayed on the map regarding the availability of broadband service for each designated area. The section updates the scope of designated areas from a census block level to a county level perspective to provide a more relatable way to visualize broadband availability but retains the discretion of the comptroller to adjust the scope as needed if displaying the required information is not technically feasible or impractical at the county level.

Section 16.22 permits internet service providers and political subdivisions of this state to submit challenges to the broadband development map. Challengers will be permitted to challenge the classification of broadband serviceable locations as shown on the broadband development map. The section limits the reasons for which a challenge can be submitted and requires the office to publish the requirements and criteria for submitting a challenge on its website. The section will also limit the ability

to submit a challenge if the comptroller adopts the federal broadband map by imposing a preliminary requirement to first submit a challenge to the federal broadband map before submitting a challenge to the state broadband map.

Section 16.23 outlines the challenge process and deadlines. The section gives the office the discretion to reject a challenge without further action if the challenge does not comply with the requirements of the section or criteria established by the office. To ease administration, the section changes the manner that required notices may be provided to affected broadband service providers and political subdivisions.

Section 16.24 establishes the criteria the office must consider in making a map challenge determination, including: the availability of reliable broadband service; actual internet speed and reliability data; the existence or non-existence of existing federal commitments; and any other information the office determines may be useful in making a determination. The section tracks statutory language regarding when a location that is subject to an existing federal commitment for the deployment of broadband services may be reclassified as eligible to receive funds and re-adopts provisions for recapturing funds if, after making an award, the office later determines that a location was ineligible to receive funding.

The comptroller received comments from the following organizations, interest groups, and individuals: AARP Texas ("AARP"); AT&T; Cherokee County Electric Cooperative Association ("CCECA"); City of Austin ("Austin"); GVEC; Harris County Office of Broadband ("Harris County"); The Honorable Trent Ashby; Nextlink Internet; Tarana Wireless; Texas Cable Association ("TCA"); Texas Electric Cooperatives ("TEC"); Verizon; and Texas Telephone Association ("TTA").

The comptroller thanks Nextlink Internet for its comments expressing appreciation that the proposed rules more closely aligned with the Broadband Equity, Access, and Deployment (BEAD) Program requirements, while enhancing program flexibility and maintaining technology neutrality.

The comptroller also received comments from CCECA that did not address any specific proposed rules. CCECA stated its continuing issue with the lack of state funding being made available to providers bringing broadband to rural areas because those areas are already "locked up" due to existing federal programs like the Rural Digital Opportunity Fund. CCECA stated that it was notably concerned about the apparent strategy employed by some broadband providers to "lock up" areas through the use of existing federal commitments without any true plan on the part of those providers to expand service to those areas and requested that the comptroller provide more flexibility to allow state funding in those areas. While the comptroller appreciates these concerns, the comptroller is statutorily unable to award grant funding to locations that are subject to an existing federal commitment to deploy qualifying broadband service. The comptroller therefore lacks the authority to amend the proposed rules as suggested by these comments.

The comptroller also received general comments from TCA in which they expressed appreciation for the comptroller moving toward a location-based funding approach. At the same time, TCA argued against adoption of §§16.21-16.24. TCA suggested that the Federal Communications Commission ("FCC") map and challenge process should be the primary mapping data source that the BDO should rely upon and argued in favor of adopting the federal map. TCA noted that the FCC map and challenge process were robust and ongoing and therefore questioned the need for a separate state map and challenge process. The comptroller thanks TCA for its comments on this important issue but notes that the BDO is statutorily required to create and update a broadband availability map. While the comptroller may adopt the federal map in lieu of creating its own map, the statute contemplates a state map challenge process regardless of whether or not the comptroller adopts the federal map. The proposed rules are needed to describe the mapping and challenge process consistent with statutory requirements. Therefore, the comptroller will not withdraw the proposed rules as suggested.

TCA submitted a comment on §16.21 in which they proposed amending the rule to make clear that the Broadband Development Office ("BDO") would be required to rely on the FCC broadband maps and its submission and challenge process. The comptroller disagrees with this comment because the rule is consistent with statutory language that permits, but does not require, the comptroller to adopt the federal broadband map. Amending the proposed rule as suggested would limit the comptroller's flexibility to use the best data available when creating or updating the broadband development map. Therefore, the comptroller declines to amend the rule as suggested.

The comptroller received several comments relating to the Broadband Development Map requirements contained in §16.21(b). The comments indicate there is some confusion about the purpose of the proposed mapping changes and how they affect the broadband development program. AARP questioned the reasoning behind the proposed change, noted that counties may be disproportionately large and asked whether the change was made to align with the federal map. Austin expressed a concern that widening the focus of the map to the county level would likely be technically inaccurate and therefore would not be practical in measuring the availability of broadband to all Texans. Austin therefore encouraged the comptroller to adopt the location level measurement that is being used by the FCC in their National Broadband Map. Harris County reiterated the same concerns in its comments regarding the proposed rule, arguing that using county level data would result in the elimination of urban un(der)served areas from program eligibility. In light of these concerns, both Austin and Harris County expressed support for adopting §16.21(c). Similar to the concerns raised by Austin and Harris County, TEC expressed doubt that a county level map would be workable because it would not accurately portray actual service availability. TEC further commented that a separate map representing designated areas by county may result in confusion around eligibility which it correctly identified as being based on granular locations.

The comptroller is adopting the change in focus from the census block level to the county level to better align with the changed purpose of the broadband development map. Under prior law, the comptroller was required to determine the scope of a designated area and for each designated area also determine and display on its map whether the area was eligible for funding under the program based on the percentage of unserved addresses within the area. However, under Senate Bill 1238, 88th Legislature, R.S., 2023, program eligibility is no longer based on designated areas but is instead based on whether individual *broadband serviceable locations* are un(der)served. In line with comments received by AT&T, the purpose of the change in the scope of a designated area is to make it easier to understand and reference the broadband serviceable locations appearing on the map and to provide the BDO an analysis tool for measuring the

availability of broadband in geographically recognizable areas. As outlined by §16.21(d), the BDO is required to display on its map each unserved, underserved, and served broadband serviceable location. Thus, the BDO has already proposed adopting the location level measurement urged by both Austin and Harris County and does not believe that the change in the scope of a designated area will negatively impact the eligibility of urban locations to receive funding under the program. For these reasons, the comptroller disagrees with the comments and adopts §16.21(b) without changes.

With respect to §16.21(b), AT&T further commented seeking confirmation that the proposed change in scope did not mean that project areas proposed by providers must encompass entire counties. The comptroller confirms that project areas proposed by providers will not be required to encompass entire counties as a result of this rule.

TTA commented on §16.21(d) encouraging the comptroller to replace the term "existing federal commitment to deploy" with a newly defined term for enforceable commitment which includes state and local commitments in addition to federal commitments. The comptroller disagrees with this comment because the rule mirrors statutory language which sets forth the *minimum* requirements for the broadband development map. Therefore, the comptroller adopts §16.21(d) without changes.

The comptroller received many comments regarding the map challenge process outlined in proposed §16.22.

TCA suggested that the FCC map and challenge process should be the primary mapping data source that the BDO should rely upon. TCA noted that the FCC map and challenge process were robust and ongoing and questioned the need for a separate state map and challenge process. TCA expressed concern that the proposed rule would result in confusion due to the existence of separate maps and therefore recommended that the rule either should not be adopted or should be modified to require coordination with BEAD processes. The comptroller disagrees with this comment because the proposed rule is consistent with statutory language permitting, but not requiring, the comptroller to adopt the federal broadband map. Amending the proposed rule as suggested would unnecessarily limit the comptroller's flexibility to use the best data available when creating or updating the broadband development map. Therefore, the comptroller declines to amend §16.22(a) to make use of the federal map and challenge processes mandatory.

Both TCA and TTA submitted comments suggesting amendments to §16.22(c). TCA requested that the comptroller consider permitting limited map challenges on a rolling basis based on newly built locations and locations that are not reflected on the then-current map. According to TCA, such a change would ensure the map was as up-to-date as possible to avoid overbuilding. While the comptroller agrees that having an up-to-date map is desirable, the comptroller does not believe that a rolling challenge process is practical due to limited comptroller resources and would be inconsistent with the current statutory scheme for map challenges. TCA also requested that the comptroller consider allowing challenges where there are pending challenges under the FCC's Broadband Data Collection challenge processes, there are unresolved challenges pending at the FCC, or there has been a successful map challenge in connection with the administration of NTIA's BEAD challenge process. For the reasons outlined above, the comptroller believes a rolling challenge process is impractical and inconsistent with the current statutory scheme if the comptroller has not already adopted the FCC map. And while the comptroller agrees that its map should reflect the results of NTIA's BEAD challenge process, the comptroller already has the authority to update its map using the best available data, including data from the BEAD map challenge process. Therefore, the comptroller does not believe a change to the rule is needed based on this comment.

TTA requested that the time period for making reliable broadband service available at a location as outlined in §16.22(c)(1) should be clarified to be within 10 business days to remain consistent with the federal Broadband Data Act. The comptroller agrees with this comment and will adopt §16.22(c)(1) with changes.

TTA also commented that the term "reliable broadband service" should be expanded to include "qualifying broadband service" for the sake of clarity, noting that a location reclassification can be anything from an unserved, underserved, or served location and that the combined term would make that distinction. The comptroller disagrees with this comment because the proposed rule already considers the distinction between unserved, underserved and served broadband serviceable locations. Therefore, the comptroller declines to make a change to the proposed rule based on this comment.

TCA proposed that the comptroller amend §16.22(c)(2) to delete the reference to "actual" speeds of the fastest available service tier at the location when considering a map challenge. The comptroller disagrees with this suggestion because it is statutorily required to determine whether speed thresholds at broadband serviceable locations are met when determining the availability of broadband service at those locations. Divorcing a consideration of actual speeds and only allowing challenges based on theoretical, advertised speeds would not be consistent with statute. Therefore, the comptroller declines to make a change to the proposed rule based on this comment.

TCA opposed the inclusion in §16.22(c)(4) of a challenge based on existence of a data cap that results in actual speeds of the fastest available service tier falling below the broadband service speed thresholds established by Government Code, §490I.0105(a). TCA argued that nothing in state law permits the BDO to determine that a location is not served based on a data cap. TCA further stated that the status of a location should be determined solely on statutory criteria and that BDO should neither add nor subtract from the definition the legislature employed to determine whether a location is served or un(der)served. The comptroller disagrees that its proposed rule which includes consideration of a data cap exceeds its authority or deviates from the statutory scheme. Under Senate Bill 1238, the comptroller is required to classify each broadband serviceable location based on access to reliable broadband service. The plain, ordinary meaning of "access" includes the ability "to obtain or make use of something." See the definition of "Access" *Merriam-in Webster.com.* Merriam-Webster, 2023. In addition, the statute does not qualify or otherwise limit the term "access" to permit the conclusion that access to the internet at the required speeds need only be intermittent. The comptroller believes that imposition of a data cap that artificially restricts data speeds and which results in broadband service at a location falling below the statutorily imposed thresholds necessarily means that the location will not have access to the required broadband service. Thus, permitting a map challenge based on the existence of a data cap is consistent with the statutory guidelines.

TCA further argues that adding a requirement beyond the statutorily imposed thresholds would have the impermissible effect of regulating broadband service. For the reasons outlined above, the comptroller believes its interpretation is consistent with statutory language. However, the comptroller also disagrees with the comment that permitting a challenge based on the existence of a data cap amounts to impermissible regulation. The comptroller acknowledges that under Government Code, §490I.0103(c), it is not granted authority to regulate broadband services or broadband service providers. But nothing in the proposed rule imposes an external obligation upon or regulates the activities of broadband service providers. To the contrary, broadband service providers may or may not, at their sole discretion, choose to impose data caps and nothing in the proposed rule acts to regulate the ability of a broadband service provider to do so. For the foregoing reasons the comptroller declines to make changes to the proposed rule based on these comments.

TCA requested that the comptroller consider amending §16.22(c)(5) to add challenges based on the existence of state and local commitments to deploy qualifying broadband. TTA agreed with TCA that the inclusion of state and local commitments as a permissible challenge would be consistent with federal BEAD requirements and would reduce wasted funding on locations that are already going to be served by other means. In addition to existing federal, state and local commitments, TTA also urged the comptroller to consider permitting challenges based on a provider's "planned service" that is coupled with evidence of existing binding obligations to deploy broadband to a given location which would, in their estimation, obviate the need for funding to be expended in that location. TCA also proposed amending the proposed rule to allow challenges to be made based on "planned privately funded new deployments." The comptroller disagrees with these comments. While the comptroller agrees with the goal of maximizing the expansion of broadband service and avoiding duplicative spending, the comptroller is statutorily required to classify each broadband serviceable location based on access to reliable broadband service. With the exception of existing federal commitments to deploy broadband service which are statutorily prohibited from receiving program funds, the comptroller does not believe it has the authority to stretch the plain and ordinary meaning of "access" to include promises of future broadband availability when considering a map challenge. Therefore, the comptroller declines to amend the proposed rule based on these comments.

The comptroller received many comments related to the map challenge process outlined in §16.22(d) which is applicable in the event that the comptroller adopts the FCC National Broadband Map as permitted under Government Code, §490I.0105(q). TEC expressed concerns with adopting the FCC map and the requirement that an entity seeking to challenge the map must first successfully challenge the federal map. TEC stated that many of its members have expressed frustration at the length of the FCC challenge process and argued that the length of delay while awaiting federal action would hamper the ability to fix inaccuracies in the map as adopted by the BDO. TEC further noted its belief that broadband service providers within the state were more likely to be better informed about the actual status of service quality throughout the state than the FCC. Therefore, TEC requested that the comptroller maintain a challenge process that was not dependent on federal action. In addition, while acknowledging that adoption of the federal map is within the discretion of the comptroller, TEC urged the comptroller to consider a process for broadband service providers and others to either challenge or provide input on the decision to adopt the federal map. TTA raised a concern that the prerequisite federal challenge imposes an unreasonable burden on smaller providers who do not have the resources to mount a successful challenge at the FCC. Therefore, TTA also urged the comptroller to modify the proposed rule to allow challenges irrespective of whether they were the subject of a successful challenge at the FCC. GVEC also commented unfavorably against the requirement that an entity seeking to challenge the map must first successfully challenge the federal map, arguing that the federal map challenge process should be managed by the BDO, with challenges from providers flowing through the BDO to the FCC.

The comptroller appreciates the many viewpoints raised by these comments. In the event that the comptroller adopts the federal map, the proposed rule is aimed at ensuring that the federal and state map challenge processes work in tandem to avoid inconsistencies between the FCC map and the federal map as adopted by the comptroller. Consequently, the comptroller respectfully disagrees with comments urging the comptroller to either not adopt the proposed rule or modify the proposed rule to allow challenges irrespective of whether they were the subject of a successful challenge at the FCC. Similarly, while the comptroller acknowledges the concerns raised by TTA and GVEC, the comptroller does not believe the requirement places a significant fiscal impact on providers and any potential burden is counterbalanced by the need to avoid inconsistencies between the state and federal broadband maps. Therefore, the comptroller declines to make changes to the proposed rule based on these comments.

Harris County also expressed concerns with the proposed rule, noting that the proposed challenge process would impose an inefficient and burdensome validation process. In their view, requiring a state challenge to the adopted federal map in addition to a challenge to the FCC map would likely hinder the speedy reclassification of broadband serviceable locations on the state map. Therefore, Harris County recommended simplifying the challenge process by requiring a single challenge to be made to the FCC and having the BDO adhere to the decision. Austin concurred and made the same recommendation. The comptroller appreciates the concerns raised by these comments but unfortunately is unable to implement this suggestion due to statutory constraints. Under Government Code, §490I.0105(l) et seq. providers are afforded the right to petition the BDO to reclassify broadband serviceable locations which then leads to a mandatory review process. Therefore, the comptroller declines to make changes to the proposed rule based on these comments.

GVEC raised a concern that the current state map and federal maps use different unique location identifiers and suggested that the comptroller consider an additional rule requiring the BDO to publish a cross index of the identifiers used in the Broadband Development Map and the FCC National Broadband Map to alleviate the burden placed on providers. The comptroller appreciates GVEC bringing this issue to its attention. The comptroller does not believe a rule is necessary to address this issue but will instead work to create future versions of the Broadband Development Map contain references to the location identifiers used in the FCC National Broadband Map.

The comptroller received several comments regarding §16.23 which outlines the challenge process and deadlines. As noted above, TCA expressed concerns that adoption of the proposed rules, including this section, would result in confusion due to the existence of separate maps and therefore recommended that the

rule should either not be adopted or should be modified to require coordination with BEAD processes. In line with their comments above suggesting the comptroller should consider both state and local commitments to deploy broadband, TCA suggested the comptroller adopt a process to gather information about local commitments. For the reasons outlined above, the comptroller may not take into account local commitments for the purpose of map challenges and therefore does not believe an additional rule to outline such a process is necessary.

TCA commented that §16.23(a) should be amended to clarify that challenges may be made after any update to the broadband development map and remarked that the current language implies that there is only one publication and challenge process despite the map being updated on a regular basis. TCA also suggested that challenges should be accepted on an ongoing or rolling basis noting that the maps will be updated regularly by the FCC and the state. As noted above, in the event the comptroller adopts the FCC map, several commenters expressed concern with the requirement to first successfully challenge the federal map before submitting a state challenge and the delays associated with that process. The comptroller notes that the deadline for submitting a challenge may be insufficient if a successful federal challenge is required before submitting a challenge to the federal map as adopted by the comptroller. The comptroller agrees that amending the proposed rule to clarify that challenges may be made after any update to the broadband development map would be useful. In addition, if the comptroller adopts the FCC map, then the comptroller believes extending the deadline for a map challenge is warranted. Therefore, the comptroller adopts the proposed rule with changes to clarify that challenges may be submitted after any update to the broadband development map is published, and extends the deadline for submitting a challenge subsequent to a successful federal challenge of the FCC map. However, the comptroller disagrees with the suggestion that challenges should be considered on an ongoing or rolling basis because doing so would be impractical. A rolling challenge process would result in a dynamic, rather than a static, map upon which neither the BDO or applicants for grant funding could reasonably rely.

The comptroller received two comments regarding §16.23(b). TCA remarked that the words "in this division" do not make sense in context. The comptroller disagrees with this comment because that phrase refers to the new sections that are proposed to be located in Subchapter B, in new Division 1 (Broadband Development Map). Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

TEC noted that §16.23(b) permits the BDO to reject a challenge if the challenge is not submitted on the forms prescribed or if the challenge does not meet any other criteria adopted by the BDO, but requested that the comptroller consider requiring the BDO to state a reason for rejecting a challenge and provide for a reasonable cure period where the deficiency may be remedied by the challenger. TEC remarked that allowing a challenge to be rejected without an ability to cure or resubmit following a deficient filing could inadvertently defeat legitimate challenges that should be considered by BDO. The comptroller disagrees with this suggestion because it would extend an already lengthy challenge process and result in unreasonable delay in finalizing map updates. In addition, the map challenge has statutorily defined deadlines that the comptroller does not have authority to extend. For these reasons, the comptroller declines to make changes based on this comment.

The comptroller also received two comments about the notice requirements in §16.23(c). Due to the potential consequences associated with challenges, TEC expressed a concern that deemed notice of challenges may be insufficient. To alleviate this concern, TEC recommended that the comptroller include a written notice requirement for affected broadband service providers, with the date of notice being the date the written notice was delivered. TTA expressed a similar concern and observed that small businesses with limited staff would be unable to timely check the BDO's website every day for possible notices. At the same time, TTA recognized that, with the proposed rule, the BDO was seeking to streamline its notice procedures and suggested that the comptroller consider including an "opt-in" email distribution list to ensure that interested persons would receive actual notice of map challenges that may affect them. The comptroller agrees with the concern that under the proposed rule affected broadband service providers may not receive notice if the notice is limited to publication on the comptroller's website. At the same time, the comptroller appreciates TTA's recognition regarding the need to streamline the notice process and agrees with its compromise suggestion that the comptroller mandate the use of an "opt-in" email distribution list to provide the required notice to broadband service providers. The comptroller will adopt the proposed rule with changes accordingly.

The comptroller received many comments regarding §16.24. As noted above, TCA argued against adoption of the proposed rule for the reasons outlined above; but more specifically, TCA argues against mapping challenge criteria that are different from BEAD and FCC mapping challenge processes because of the risk of ending up with inconsistent data sets that would make coordination between BOOT and BEAD difficult. TCA also commented negatively about §16.24(a)(4), arguing in favor of adopting criteria permitted with BEAD or FCC challenges. The comptroller agrees with the concern raised in this comment but believes that the criteria adopted by the comptroller are either consistent with the federal mapping processes or permit the flexibility to maintain needed consistency between the state and federal maps. Therefore, the comptroller declines to make changes to the proposed rule based on these comments. TEC also commented on the map challenge criteria and advocated for the inclusion of criteria specifically aimed at assessing the feasibility of an ongoing project. TEC expressed the opinion that if an area is deemed to be served on the basis of an existing federal commitment to deploy qualifying broadband services, the proposed project should be analyzed for continued feasibility and, if determined unfeasible, the locations covered by the project should be reclassified. The comptroller disagrees with this comment as it is inconsistent with statute. Under Government Code, §490I.0106(d) and 490I.01061, the comptroller may not award a grant or other financial incentive for a location that is subject to an existing federal commitment unless the federal funding is forfeited. Consequently, the comptroller may only reclassify a location that is subject to an existing federal commitment only if the funding is forfeited and not because the project covered by the funding is unfeasible. Therefore, the comptroller declines to make a change to the proposed rule based on this comment.

Both TCA and TTA noted that §16.24(a) contains a reference to "designated areas" that should be amended due to changes implemented by Senate Bill 1238. The comptroller agrees with these comments and adopts the proposed rule with changes accordingly.

Several commenters including Representative Trent Ashby, AT&T, Austin, and Harris County requested the comptroller to provide a definition for "reliable broadband service." Representative Ashby provided comments urging the comptroller to adhere to the legislative purpose of Senate Bill 1238 by following federal guidance with respect to broadband reliability and enhanced speed requirements. Likewise, AT&T sought confirmation that the comptroller's proposed definition would be the same as that term is used in the BEAD Notice of Funding Opportunity which is limited to fiber-optic technology, cable modem/hybrid fiber-coaxial technology, digital subscriber line technology, or terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum. Austin and Harris County urged the comptroller to provide a specific definition replete with technical specifications that include broadband download/upload speeds, consistency, quality of service and latency requirements. TTA also expressed the belief that the term "reliable broadband service" in §16.24(a)(1) was unclear and suggested it should be expanded to clarify that challenges may be made based on whether a location is unserved, underserved, or served. The comptroller appreciates these comments and agrees with the need to provide a definition for the term for the sake of clarity. The comptroller will add a definition for the term in a separate rulemaking that adopts amendments to §16.30, concerning definitions.

TCA advocated against the inclusion of speed data as a criterion the comptroller must consider when making map challenge determinations as provided under proposed §16.24(a)(2). TCA noted the difficulty of ensuring that speed tests contain accurate, verifiable information and noted that the FCC only relies upon speed tests as a supplemental source of information and not the sole basis for a challenge. TCA recommended that if the speed tests remain, §16.24(a)(2) be amended to require the speed tests submitted with a challenge to be subject to the same rigor that speed tests are subject to under BEAD program rules. While the comptroller agrees with the importance of ensuring that the information the BDO relies upon when making a challenge determination is accurate and verifiable, the rule does not require the comptroller to make a determination base solely on speed tests, nor does it require the comptroller to accept speed tests data results without evaluating their usefulness. Further, the challenge process itself provides third parties an opportunity to challenge any evidence, including speed tests, submitted by a challenger. For these reasons, the comptroller declines to amend the proposed rule based on this comment.

With respect to §16.24(a)(3) and §16.24(b), TTA reiterated its comments requesting the comptroller consider expanding its consideration of existing federal commitments to deploy broadband to also include state and local commitments. TCA also commented in favor of including state and local commitments when considering map challenges to ensure that all commitments for funding deployment to a location are taken into consideration. TTA also reiterated its comments requesting that the comptroller also consider privately funded planned service when evaluating map challenges. For the reasons previously discussed in the context of §16.22(c)(5), the comptroller declines to amend the proposed rule based on these comments.

The comptroller received several comments related to the claw back period contained in §16.24(d). AT&T, TCA and TTA supported the goal of the claw back provision but recommended that the comptroller limit the claw back to one year after award. AT&T commented that a provider's responsibility for proposing a project area that does not include ineligible locations should be limited to the date upon which the provider submits its application stating that a provider should not be held accountable for locations that became ineligible after its application was submitted. TCA argued that recipients should be able to rely on maps as they exist at the time of award and should not be penalized due to a change of conditions beyond their control. TTA observed that an indefinite claw back period was unreasonable because it could place a provider's funding in jeopardy even after the provider expended the funds to build the broadband Texans need. In addition to limiting the claw back period to one year after award, TTA also requested that the BDO be required to consult with an award recipient before making a decision to allow the recipient to make its case for extenuating circumstances. The comptroller disagrees with AT&T's and TCA's comment that the proposed rule would result in claw backs based on changed conditions because the rule limits claw backs for funding that was awarded in error to locations that were not eligible for an award *at the time of making the award*. Nor does the comptroller believe that the proposed rule would lead to uncertainty or penalizing a provider long after they have expended the funds because the rule requires the BDO to reduce the amount of any claw backs if it determines that the grant funds were expended in good faith reliance on the award. At the same time, the comptroller agrees that defining a claw back period would reduce uncertainty. In addition, the comptroller agrees that providers should expressly be given an opportunity to provide feedback before a decision to rescind funding is made. Therefore, the comptroller adopts the proposed rule with changes accordingly.

The new sections are adopted under Government Code, §490I.0109, which permits the comptroller to adopt rules as necessary to implement Chapter 490I regarding the Texas Broadband Development Office.

The new sections implement Government Code, Chapter 490I.

§16.21. Broadband Development Map.

(a) The comptroller shall create, update annually, and publish on the comptroller's website a broadband development map depicting the availability of broadband service for each broadband serviceable location in this state. The office shall use the best available information, including information available from the Federal Communications Commission, political subdivisions, and broadband service providers, to create or update the map.

(b) Except as provided by subsection (c) of this section, for the purpose of developing the broadband development map, the scope of a designated area in this state shall consist of a county.

(c) If the comptroller determines that developing the broadband development map at the county level is not technically feasible or practical, the comptroller may develop the map using a smaller geographic unit for which information is available from the Federal Communications Commission.

(d) The comptroller shall, at a minimum, display for each designated area on the broadband development map:

(1) each unserved, underserved, and served broadband serviceable location;

(2) an indication of whether each broadband serviceable location is ineligible to receive funding on account of an existing federal commitment to deploy qualifying broadband service;

(3) the number of broadband service providers that serve the designated area;

(4) an indication of whether the designated area has access to internet service that is not broadband service, regardless of the technology used to provide the service;

(5) each public school campus with an indication of whether the public school campus has access to broadband service; and

(6) the number and percentage of unserved, underserved, and served broadband serviceable locations within the designated area.

§16.22. Map Challenges; Criteria.

(a) Subject to subsection (c) of this section, a broadband service provider or a political subdivision of this state may challenge the designation of a broadband serviceable location located in this state and petition the office to reclassify the location on the broadband development map.

(b) A challenge submitted under this section must be submitted on forms and contain the information prescribed by the office. The office shall publish on its website the requirements and criteria for submitting a challenge under this section.

(c) A challenge seeking reclassification of a broadband serviceable location may only be made on the following basis:

(1) that reliable broadband service at the location is or is not available within 10 business days of a request for service;

(2) that the actual speed of the fastest available service tier at the location does or does not meet the broadband service speed thresholds as established by Government Code, §490I.0105(a);

(3) that the actual round-trip latency of broadband service at the location exceeds 100 milliseconds;

(4) that the availability of reliable broadband service at the location is subject to a data cap that results in actual speeds of the fastest available service tier falling below the broadband service speed thresholds as established by Government Code, §490I.0105(a); or

(5) that the location is or is not subject to an existing federal commitment to deploy qualifying broadband service to the location.

(d) If the comptroller adopts a map produced by the Federal Communications Commission as provided under Government Code, §490I.0105(q), a challenge may only be submitted under this section if the person or entity submitting the challenge provides evidence that the person or entity previously submitted a successful challenge to the Federal Communications Commission for the broadband serviceable locations for which the entity is seeking a reclassification.

§16.23. Challenge Process; Deadlines.

(a) A challenge under this subchapter must be submitted to the office not later than the 60th day after the broadband development map is published or updated on the comptroller's website. If the comptroller adopts a map produced by the Federal Communications Commission as provided under Government Code, §490I.0105(q), a challenge under this subchapter must be submitted not later than the 30th day after the entity seeking to challenge a location submitted a successful challenge to the Federal Communications Commission.

(b) The office may reject a challenge without further action if the challenge is not submitted on forms prescribed by the office or does not otherwise comply with this division or any criteria established by the office as provided by this subchapter.

(c) The office shall provide notice of an accepted challenge to each affected political subdivision and broadband service provider by posting notice of the challenge on the comptroller's website. For the purposes of this section, an affected political subdivision or broadband service provider shall be deemed to have received notice on the date the notice is posted on the comptroller's website.

(d) Not later than the 45th day after the date that the office posts the notice required under subsection (c) of this section, an impacted political subdivision or a broadband service provider may provide information to the office showing whether the broadband serviceable locations that have been challenged should or should not be reclassified.

(e) Not later than the 75th day after the date that the office posts the notice required under subsection (c) of this section, the office shall determine whether to reclassify the challenged broadband serviceable locations and shall update the map as necessary.

(f) In addition to the notice required under subsection (c) of this section, the office shall send written notice of the challenges that have been received under this subchapter to each political subdivision and broadband service provider that subscribes to an email distribution list managed by the office for the purpose of receiving notices from the office. Notwithstanding this subsection, the date the notice is received shall be deemed to be the date a notice issued under subsection (c) of this section is posted on the comptroller's website.

§16.24. Challenge Determinations.

(a) The office shall consider the following in making a determination of whether to reclassify a broadband serviceable location:

(1) the availability of reliable broadband service;

(2) an evaluation of actual Internet speed test and reliability data;

(3) the existence or non-existence of an existing federal commitment to deploy qualifying broadband service to a location; and

(4) any other information the office determines may be useful in determining whether a location should be reclassified.

(b) A broadband serviceable location that is classified as a served location solely because the location is subject to an existing federal commitment to deploy qualifying broadband service may be reclassified if:

(1) federal funding is forfeited or the recipient of the funding is disqualified from receiving the funding; and

(2) the location is otherwise eligible to receive funding under the program.

(c) A determination made by the office under this subsection is not a contested case for purposes of Government Code, Chapter 2001.

(d) If within one year after making an award the office determines that at the time of making the award a broadband serviceable location was not eligible to receive funding under this subchapter, the office may proportionately reduce the amount of the award and the grant recipient shall be required to return any grant funds that were awarded as a result of the classification error. Prior to making a decision to reduce the amount of the award, the office shall provide an opportunity to the award recipient to demonstrate cause for why the award should not be reduced. The office shall reduce the amount required to be returned under this subsection if the office determines, in its sole discretion, that the grant funds or any portion thereof were expended in good faith.

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

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DIVISION 2. BROADBAND DEVELOPMENT PROGRAM

34 TAC §§16.30, 16.31, 16.35 - 16.38, 16.40 - 16.42

The Comptroller of Public Accounts adopts amendments to §16.30, concerning definitions, §16.31, concerning notice of funds availability, §16.35, concerning program eligibility requirements, §16.36, concerning application process generally, §16.37, concerning overlapping applications or project areas, §16.38, concerning special rule for overlapping project areas in noncommercial applications, §16.40, concerning evaluation criteria, §16.41, concerning application protest process, and §16.42, concerning awards; grant agreement. Sections 16.30, 16.36, 16.37, 16.40 and 16.41 are adopted with changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5959) and will be republished. Sections 16.31, 16.35, 16.38 and 16.42 are adopted without changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5959) and will not be republished.

The comptroller renames Subchapter B as Texas Broadband Development Office, reorganizes it into two divisions, and moves all sections located in Subchapter B to Division 2 (Broadband Development Program).

The amendments to §16.30 add new definitions.

The amendments to §16.31 expand the methods by which the office may publish the required notice of funds availability.

The amendments to §16.35 make conforming changes required by Senate Bill 1238, 88th Legislature, R.S., 2023, by deleting the prohibition against making an award to a broadband service provider that does not report certain information to the office and renumbering accordingly.

The amendments to §16.36 provide the office with greater discretion to reject an application that does not comply with applicable program requirements on its face. The amendments also update the reasons for which an applicant may amend and resubmit an application after a protest has been upheld. The amendments also make conforming changes required by Senate Bill 1238, 88th Legislature, R.S., 2023, by prohibiting a broadband service provider from submitting an application protest if the provider has not provided certain information requested by the office.

The amendments to §16.37 revise and streamline the process by which overlapping project locations are resolved by removing the requirement allowing broadband service providers to collaboratively resolve project area overlaps and providing for the office to independently resolve the overlapping areas to avoid duplication. The amendments make changes to how the remaining project area is calculated after overlapping project areas are resolved by the office. The amendments also require the office to provide notice to applicants affected by the determination of the office.

The amendments to §16.38 revise the process by which overlapping project locations are resolved between applications from noncommercial broadband service providers and applications from commercial broadband service providers.

The amendments to §16.40 provide for a new process through which the office shall establish eligibility and award criteria and requires the office to provide notice of the criteria in a notice of funds availability. The amendments expand the mandatory criteria that the office must consider when establishing the eligibility and award criteria, including establishing a preference for fiber optic projects while also allowing the office to consider non-fiber optic projects for high-cost areas.

The amendments to §16.41 update the application protest process by requiring the office to publish on its website the criteria and requirements for submitting a protest. The amendments clarify the basis for which a protest may be submitted and eliminate specific documentation requirements set out by rule. The amendments provide additional notice requirements for applicants affected by a protest determination and make changes to when an affected applicant may submit an amended application if a protest is upheld.

The amendments to §16.42 clarify that the restriction on the use of grant funds only applies to grants for the deployment of broadband infrastructure.

The comptroller received comments from the following organizations, interest groups, and individuals: AT&T; Cherokee County Electric Cooperative Association ("CCECA"); City of Austin ("Austin"); GVEC; Harris County Office of Broadband ("Harris County"); The Honorable Trent Ashby; National Rural Telecommunications Cooperative ("NRTC"); Nextlink Internet; Tarana Wireless; Tekwav; Texas Cable Association ("TCA"); Texas Electric Cooperatives ("TEC"); Verizon; Texas Telephone Association ("TTA") and Wireless Internet Service Providers Association ("WISPA").

The comptroller received general comments in support of the proposed rules from organizations including Nextlink Internet, TCA, and Tarana Wireless. Nextlink Internet expressed appreciation that the proposed rules more closely aligned with the Broadband Equity, Access, and Deployment (BEAD) Program requirements, while enhancing program flexibility and maintaining technology neutrality. In addition to more specific comments, the comptroller also received general comments from TCA expressing support of the comptroller moving toward a location-based funding approach through the proposed rules. Tarana Wireless also commented favorably on the proposed rules noting that alignment with Senate Bill 1238 was a positive stride toward bridging the digital divide. Tarana Wireless specifically expressed its support for the increased discretion afforded the BDO in the application overlap process would strengthen the ability to prevent duplication. Tarana Wireless also supported the consideration of non-fiber technologies as an inclusive and pragmatic strategy that would guarantee the selection of the most suitable tools to address the broadband needs of Texans.

The comptroller received comments from CCECA that expressed concerns but were not directly focused at any specific proposed rule. CCECA raised its continuing concern with the lack of state funding being made available to providers bringing broadband to rural areas because those areas are already "locked up" due to existing funding commitments from federal programs like the Rural Digital Opportunity Fund. CCECA stated that it was notably concerned about the apparent strategy em-

ployed by some broadband providers to "lock up" areas through the use of existing federal commitments without any true plan on the part of those providers to expand service to those areas and requested that the comptroller provide more flexibility to allow state funding in those areas. While the comptroller appreciates these concerns, the statute does not allow the comptroller to award grant funding to locations that are subject to an existing federal commitment to deploy qualifying broadband service. The comptroller therefore lacks the authority to amend the proposed rules as suggested by these comments.

The comptroller received many comments regarding the proposed definitions contained in §16.30. TTA expressed its support for the proposed definition for "middle mile infrastructure" noting that the proposed definition was consistent with BEAD and excludes the provision of service to end-users. TTA also supported the proposed changes to the definition of "project area" because it focuses on individual locations and allows applicants to define their proposed project areas.

In line with its comments regarding §16.36(d), TCA requested the comptroller to change the definition of "application protest period" contained in §16.30(2) to extend the period to 45 days. The comptroller disagrees with this comment because the current 30-day period provides sufficient time to evaluate whether an application may be subject to protest. The comptroller therefore declines to make a change to the proposed definition based on this comment.

TTA provided a comment regarding the definition for "broadband serviceable location" contained in §16.30(5), remarking that the term "broadband internet service" as used in that section is not in the BDO's enabling statute and is already included in the definition of "broadband service." Therefore, TTA recommended removing the word "internet" as unnecessary. The comptroller agrees with this comment and will adopt the proposed definition with changes.

TTA also commented on §16.30(6) which outlines the definition of a "census tract" and noted that the term would no longer be used in the subchapter with the repeal of §16.33 and §16.34. Consequently, TTA recommended deletion of the term. The comptroller agrees with this comment and will delete the definition.

AT&T and TCA requested clarification regarding the meaning of "designated area" in renumbered §16.30(9) given the repeal and replacement of §16.33 in separate rulemakings and suggested revision of the definition. The comptroller agrees with these comments and adopts the proposed definition with changes.

TTA commented on the definition of "grant funds" contained in renumbered §16.30(10) noting that the concept of a designated area no longer applied in this context with enactment of Senate Bill 1238. The comptroller agrees with this comment and adopts the proposed rule with changes.

TTA urged the comptroller to expand the definition of a "served location" in §16.30(20) to include not only existing federal commitments, but also state and local commitments arguing that this proposed expansion would be consistent with BEAD guidelines. The comptroller disagrees with this comment because the comptroller is statutorily required to classify each broadband serviceable location based on access to reliable broadband service. With the exception of existing federal commitments to deploy broadband service which are statutorily prohibited from receiving program funds, the comptroller does not believe it has the authority to stretch the plain and ordinary meaning of "access" to include commitments of future availability of broadband service when determining whether a location is served or not. Therefore, the comptroller declines to amend the proposed definition based on this comment. TTA similarly urged the comptroller to replace the term "reliable broadband service" as used in that section with a newly defined term they suggested for "qualifying broadband service" that would incorporate specific speed and latency requirements. The comptroller disagrees with this comment. While the comptroller agrees with adding a definition for the term "qualifying broadband service" is warranted for the sake of clarity, adopting specific speed and latency requirements would unnecessarily restrict the flexibility of the BDO to prescribe differing thresholds based on funding source or changing needs over time. Therefore, the comptroller declines to amend the proposed definition based on this comment.

In addition to commenting on the proposed definitions, some commenters advocated for the inclusion of new definitions. Many commenters, including Representative Trent Ashby, AT&T, Austin, GVEC, Harris County, TCA, TEC, and TTA, remarked on the need for the comptroller to define what constitutes "reliable broadband service." Representative Ashby provided comments urging the comptroller to adhere to the legislative purpose of Senate Bill 1238 by following federal guidance with respect to broadband reliability and enhanced speed requirements. Likewise, GVEC, TEC and TTA requested the comptroller to harmonize its definition with federal guidelines. TEC went further, urging the comptroller to specifically exclude both satellite and unlicensed fixed spectrum from the definition of reliable broadband service. AT&T sought confirmation that the comptroller's proposed definition would be the same as that term is used in the BEAD Program's Notice of Funding Opportunity (NOFO). Austin and Harris County urged the comptroller to provide a specific definition replete with technical specifications that include broadband download/upload speeds, consistency, quality of service and latency requirements. The comptroller agrees with commenters urging the comptroller to adopt a definition for reliable broadband service that more closely harmonizes state law with federal guidance. The comptroller believes that adopting a definition for reliable broadband service that is the same as that found in the BEAD Program's NOFO is needed to fulfill and comply with the legislative purpose of Senate Bill 1238. Therefore, the comptroller adopts the proposed rule with changes to reflect the addition of a definition for "reliable broadband service."

TEC also requested the comptroller to consider inclusion of a new definition for the term "broadband." While noting that a statutory definition exists for the term, TEC opined that a definition should be included in the proposed rules. The comptroller disagrees with this comment because the proposed rules already include the statutory definition of "broadband service."

GVEC noted that the proposed rules use the term "qualifying broadband service" multiple times and suggested that the comptroller adopt a definition for the term. GVEC pointed out that existing federal programs have differing thresholds for delivering internet service and urged the comptroller to adopt a definition that is closely aligned with the higher threshold used by the federal BEAD Program. NRTC and TTA similarly suggested the utility of the comptroller adopting a definition for "qualifying broadband service." TTA offered a proposed definition that incorporates both the speed and latency requirements and the reliability standards contained in the BEAD NOFO. The comptroller appreciates the concern raised by these comments and the need for additional clarity; however, because the threshold for

what constitutes qualified broadband service may be dependent on the funding source and may change over time, the comptroller does not believe adopting a defined threshold by rule is the right approach. Instead, to maintain flexibility, the comptroller believes that this threshold should be defined in each applicable Notice of Funds Availability (NOFA) issued by the office. Therefore, the comptroller will amend the proposed rule to add a definition for "qualifying broadband service" that permits the BDO to set the applicable standard as part of the criteria contained in each state-issued NOFA.

TTA also advocated for inclusion of a newly defined term "planned service commitment" for use in the context of map challenges. TTA argued that new term would allow a challenge based not only on the existence of a federal, state, or local commitment to deploy broadband service, but also on a provider's existing plans to provide reliable broadband service to the location within a reasonable time and without government grant funding. TTA further remarked that given the significant number of locations in Texas that do not have access to broadband and limited funding, that planned service commitments as defined by a newly adopted definition would prevent wasteful, duplicative spending by avoiding unnecessary funding of a location when that location would already be served using private investment. While the comptroller agrees with the goal of maximizing the expansion of broadband service and avoiding duplicative spending, the comptroller does not believe it has the authority to consider planned service because it is statutorily required to classify broadband serviceable locations based on their current access to reliable broadband service. Therefore, the comptroller declines to amend the proposed rule based on these comments.

The comptroller received several comments from TCA and TTA regarding §16.31 which provides notice requirements. TTA proposed the office make the publication of a NOFA on its website mandatory as a fundamental part of the process for consistent, fair notice to all applicants. While the comptroller agrees that consistent notice is a fundamental part of the application process, the comptroller does not believe that changing the rule to make publication on its website is necessary. The proposed rule already requires the comptroller to provide notice to interested applicants by publication in either the *Texas Register* or the comptroller's Electronic State Business Daily search website. Both TCA and TTA suggested that in addition to the publication requirement, the comptroller expand the methods of providing notice by requiring the BDO to provide notice through an email distribution list for interested parties. The comptroller disagrees with these comments because the comptroller's Electronic State Business Daily search website already includes the requested functionality that would allow interested parties to receive email notification of posted funding opportunities.

Both TCA and TTA also urged the comptroller to amend §16.31 to require the BDO to permit interested parties to submit comments on proposed NOFAs before they are finalized. TCA argued that many NOFA provisions are essentially rules with the same impact and effect as administrative rulemaking and therefore deserve the same public comment process. TCA opined that gathering input from interested parties would yield NOFAs that are clearer, fairer and more effective. Therefore, TCA recommended making draft NOFAs available 45-days before official issuance and allowing for informal comment for 30 days. TTA proposed a similar timeline for providing public comment, noting that the process would allow any errors to be corrected. The comptroller disagrees with comments that equate an invitation to voluntarily enter into a contract or grant agreement with rulemaking. The comptroller believes that permitting applicants to shape the grant requirements prior to issuance could prevent open and fair competition. The comptroller notes that the question-and-answer process subsequent to issuance of a NOFA already allows the BDO to provide clarification and correct any errors identified. Therefore, the comptroller declines to make a change to the proposed rule based on these comments.

The comptroller received many comments regarding the application process found in §16.36. TCA submitted a comment requesting the comptroller to consider extending the application publication and protest period found in §16.36(d) to 45 days due to the number and complexity of projects that may be involved. TCA noted that an extended timeframe would allow for more thorough and accurate protests to be made and result in avoidance of frivolous protests. The comptroller disagrees with this comment because the current proposed rules narrow the ground on which a protest may be submitted and ultimately simplify the evaluation process. Therefore, the comptroller believes the current 30-day period provides sufficient time to evaluate whether an application may be subject to protest. TTA also commented on §16.36(d), requesting that the comptroller include broadband serviceable locations among the information the BDO is required to publish on its website. The comptroller notes that its current practice is to publish summary information regarding application protests on its website together with a link that allows interested parties to review the contents of an application protest. Therefore, the comptroller does not believe a change to the proposed rule is necessary based on this comment.

TTA also commented on §16.36(f) regarding the use of the term "location" in two places which they suggested should be preceded with the term "broadband serviceable" for the sake of clarity. The comptroller agrees with this comment and will adopt the proposed rule with changes accordingly.

TCA and TTA commented that the use of the term "designated area" in §16.36(h) should be replaced with "project area" to conform with changes made in Senate Bill 1238. The comptroller agrees with these comments and will adopt the proposed rule with changes accordingly. TTA further commented that the definition of "interested party" contained in §16.36(h) should include applicants. The comptroller notes that the definition for "interested party" is very expansive and already includes a broadband service provider who proposes to provide broadband services in the project area. Therefore, the comptroller does not believe a change to the proposed rule is needed based on this comment.

The comptroller received several comments regarding new §16.36(i). TEC and CCECA supported inclusion of the requirement for broadband service providers to submit required information regarding enforceable federal commitments under Government Code, §490I.01061(b), as a prerequisite for submitting a challenge of another applicant's application. TEC further remarked that while statutory language requires a broadband service provider to submit certain information, the statute is silent as to other consequences for failure to provide that information. TEC reiterated its concerns over the apparent strategy of some broadband providers to include areas that overlap with cooperative provider territories to garner additional funding without a true plan to actually serve customers in those areas. TEC noted that as a result, those areas are "locked up" and ineligible for further funding. TEC added that the information provided under Government Code, §490I.01061 is vital to prevent gaming the system and also ensure the equitable

expansion of service and allocation of funding. Therefore, TEC urged the comptroller to consider reclassifying those areas for which the comptroller does not receive the required information as eligible. The plain language of §490I.01061 prohibits the comptroller from awarding a grant to a location that is subject to an existing federal commitment and only provides for a limited exception if the federal funding is forfeited or the recipient is disqualified from receiving federal funding. Consequently, the comptroller does not have the authority to reclassify an area subject to an existing federal commitment based on noncompliance with §490I.01061 and therefore lacks the authority to amend the proposed rules as suggested by these comments.

Harris County opined that the new rule, which replaces language in repealed §16.35(c), does not make broadband service providers sufficiently accountable for their lack of compliance with requests for information under Government Code, §490I.0105 or §490I.01061. Under the previous rule, a broadband service provider that did not provide the requested information was barred from participating in the program. Harris County supported retaining language that bars noncompliant providers from participation in the program. TEC also recommended prohibiting entities that do not provide the requested information from receiving any funding from the broadband development program. CCECA echoed TEC's comments but went further by requesting that the comptroller consider a rule that would make it clear that any application submitted by a broadband service provider that does not provide the required information would be denied. The comptroller agrees with comments suggesting the comptroller has the discretion to impose sanctions for noncompliance that go beyond the limited sanction imposed by statute in which a noncomplying broadband service provider may not submit an application protest. That said, the comptroller does not have the authority to prohibit an *applicant* from participating in the program because the plain language of Government Code, §490I.01061 requires grant *recipients* to provide information regarding existing federal commitments. While the comptroller agrees with comments suggesting that a grant recipient that does not provide the required information should be subject to additional possible sanctions, the statute and rules already provide this authority. Therefore, the comptroller declines to make changes based on these comments.

The comptroller received two additional comments regarding §16.36(i). TEC advocated for greater transparency regarding existing federal commitments and recommended that the BDO should make public any information it receives regarding existing enforceable commitments. TEC noted that greater transparency regarding existing federal commitments and the timelines for deployment would assist broadband providers developing their own expansion plans and would provide consumers assurance that public funds will be appropriately leveraged. The comptroller agrees that transparency is needed to ensure that the public has information about the deployment plans of broadband service providers who have existing federal commitments. However, the comptroller notes that the requested information would already be subject to the Public Information Act. For these reasons, the comptroller declines to amend the rule based on this comment. TTA also commented on §16.36(i) requesting that the comptroller permit entities to use a representative to provide the required information. The comptroller does not believe a change to the proposed rule is necessary based on this comment because the rule does not prohibit an entity from using a third party to assist them in providing the required information.

The comptroller received several comments regarding how overlapping project areas would be deconflicted under §16.37. TTA commented generally that the rule should contain defined criteria for deciding between applicants and recommended factors such as past performance metrics, build out time frames, consumer satisfaction ratings, scalability, proven redundancy and reliability. TEC noted that using set criteria will provide transparency to the decision-making process and give applicants a sense of their standing while actively encouraging better performance by providers and rewarding those with better track records of service when separate applications contain overlapping territory. The comptroller agrees with the need for set criteria but notes under the proposed rule the deconfliction decision is not based on a subjective comparison between applicants but is instead based upon a detailed comparison of the proposed projects using the criteria contained in the applicable NOFA. Therefore, the comptroller does not believe a change to the proposed rule is needed based on this comment.

TCA commented unfavorably on §16.37(d) which gives the BDO the discretion to remove an application from consideration where area deconfliction resulted in more than half of the original project locations being removed. TCA advocated for removing this discretion in favor of allowing applicants to choose whether to proceed with a substantially reduced application. The comptroller disagrees with removing the BDO's discretion to remove an application from further consideration in circumstances where the scope of an application is substantially reduced; however, the comptroller agrees that before deciding to remove an application from further consideration the BDO should take into account whether an applicant would like to proceed with a substantially reduced application. The comptroller adopts the proposed rule with changes to require the comptroller to notify the applicant of a substantially reduced application before removal.

TTA commented on §16.37(e) recommending that the threshold for the size of an area after an overlapping location is removed should be clarified to be greater than 50 percent of the broadband serviceable locations in the original project area to make it clear that a geographic area is not being used for the calculation. The comptroller agrees with this comment and adopts the proposed rule with changes accordingly.

GVEC, TCA and TTA commented on the amendment period contained in §16.37(f). All three commenters requested that the comptroller extend the amendment period to allow applicants sufficient time to prepare and submit a revised application. While the comptroller believes 10 business days is sufficient time to submit an amended application without challenged locations as contemplated by the proposed rule, the comptroller recognizes that there may be circumstances in which additional time may be required. Therefore, the comptroller is withdrawing the proposed change that would make removing an application from consideration obligatory to allow the comptroller the discretion to extend the required deadline on a case-by-case basis.

In line with comments GVEC provided regarding §16.37(f), GVEC requested the comptroller to consider extending the amendment deadlines contained in §16.38(b). TTA also commented on §16.38 noting that the time required for noncommercial applicants to amend their applications to eliminate overlapping locations should be extended to 30 calendar days. The comptroller disagrees with this comment because it believes 10 business days is sufficient time to resubmit an application without overlapping locations. In addition, the current rule pro-

vides the necessary flexibility for the comptroller to extend the required deadline on a case-by-case basis because it permits, but does not require, the BDO to remove an application from consideration if the deadline is not met. As previously outlined in its response to comments regarding §16.37(f), the comptroller is withdrawing the proposed change to §16.37(f) to retain this flexibility. Finally, because the comptroller has not proposed amendments to that rule the comment is outside the scope of the current rulemaking. Therefore, the comptroller declines to make changes based on this comment.

The comptroller received many comments regarding the evaluation criteria contained in §16.40.

TTA commented that the term "broadband service" as used in §16.40(a) should be updated to be "qualifying broadband service" to be consistent with the objectives of the statute. TTA also recommended inclusion of specific, higher speed and latency requirements that should be applicable to applications that expand access to broadband in schools because, in their opinion, the preference was intended to be given to broadband service that is faster than qualifying broadband service to schools. The comptroller disagrees with these comments because the rule language closely follows the applicable statutory language, and the comptroller may not restrict a mandatory preference established by the legislature. Therefore, the comptroller declines to make a change to the proposed rule based on these comments.

TCA also commented that the language contained in §16.40(a)(3) afforded the BDO too much discretion to set speed, latency, reliability, consistency, scalability, and related criteria outside of rule noting that this negatively impacted certainty and confidence in the process. TCA therefore urged the comptroller to limit the criteria the office may consider to criteria established by rule. The comptroller disagrees with this comment. The text of the proposed rule mirrors the statutory language contained in Senate Bill 1238 which contemplates the need for the comptroller to establish applicable criteria in notices of funding availability. For this reason, the comptroller declines to make changes to the proposed rule based on this comment.

TCA and TTA commented generally on the use of the term "designated area" throughout §16.40(b) and recommended updating where needed to align with changes made in Senate Bill 1238. The comptroller disagrees with this comment as it relates to §16.40(b)(5). In that section, the rationale for using the term designated area (county) remains notwithstanding the map changes resulting from Senate Bill 1238, i.e., assessing the impact of a proposed project in a designated area. However, the comptroller agrees with this comment as it relates to §16.40(b)(6) and (8) and adopts the proposed rule with changes.

Several commenters including AT&T, TCA, TEC, and TTA commented on the evaluation criteria contained in §16.40(b). TEC commented that, given the underlying policy goal of delivering high speed internet and increasing coverage of reliable internet service across the state, it makes little sense to not make delivery of highspeed internet a mandatory consideration when evaluating a project for award. TEC therefore recommended making speed considerations a mandatory provision under subsection (a). The comptroller notes that the purpose of subsections (a) and (b) is to respectively outline the statutorily imposed criteria that the BDO must prioritize during the application evaluation process and the criteria for which the comptroller *may* provide a preference. The inclusion of broadband transmission speeds in §16.40(b)(2) is not intended to provide a preference for meeting required minimum broadband service speeds but instead to provide notice that the BDO may give a preference to applications in which the technical specifications exceed the required minimum. Therefore, the comptroller does not believe a change to the proposed rule is needed based on this comment.

TCA commented that §16.40(b)(5) should be amended to allow the prioritization to be based on the proportion of unserved and underserved locations in a proposed project area and not the proportion in the designated area (county) in which the project is located. The comptroller disagrees with this comment because the preference is intended to measure the cost effectiveness and impact of a proposed project - in this case the proportion of locations to be served by the project compared to the number of serviceable locations within the designated area(s) measures the percentage of increased coverage in the designated area. For this reason, the comptroller declines to make a change to the proposed rule based on this comment.

TCA strongly opposed inclusion of renumbered §16.40(b)(7) which permits the BDO to consider community, non-profit, or cooperative involvement or participation in a project. TCA observed that the enabling statutes do not contain such a preference and argued that inserting a preference for non-commercial projects runs contrary to the intent to prioritize commercial providers. As an alternative to repeal, TCA advocated for amending the rule to clarify that it reflects community "support" for a project rather than "involvement" in a project. The comptroller respectfully disagrees with the comment that a consideration of community participation conflicts with the commercial provider preference established by Government Code, §490I.0106(d)(2). The commercial provider preference is limited to a mandatory priority between commercial and non-commercial provider applications seeking funding for the same broadband serviceable locations. It neither requires the comptroller to provide a global preference for commercial provider applications, nor prohibits the comptroller from establishing additional, non-conflicting preferences. The comptroller believes local community participation and support of an application is a non-conflicting preference and is an important factor to consider when evaluating applications. Such participation is evidence that a proposed project considers the particular, local community broadband needs and is ostensibly designed to best meet the needs of the area. Therefore, the comptroller declines to repeal the proposed rule as recommended. However, the comptroller agrees with the suggestion that the rule should be clarified to also allow the comptroller to consider community *support* in addition to active community participation as a criterion. The comptroller will adopt the proposed rule with changes based on this comment.

AT&T commented that under §16.40(b)(8) it is unclear how affordability will be measured and how such a measurement will impact a provider's application. They further noted that the proposed rule provides no affordability standards upon which such a measurement would be based and cautioned that providing a better preference score for "affordability" based on lower rates may be considered, for all practical purposes, a form of rate regulation, which is not permitted on broadband services. The comptroller disagrees with the comment that providing a preference based on affordability is a form of rate regulation. As noted previously, participation in the grant program is entirely voluntary and setting a condition for receipt of a grant is not rate regulation. The comptroller notes that §16.40 merely provides notice of the factors the comptroller may include and provide a preference for in each applicable notice of funds availability. As such, the rule is not intended to either establish affordability standards or pro-

vide a definitive measure of how affordability will be measured. Instead, as contemplated by statute, those considerations, if applicable, will be left for each state-issued NOFA. Accordingly, the comptroller does not believe a change to the proposed rule is needed based on this comment.

AT&T raised similar concerns regarding affordability with respect to §16.40(b)(9) noting that preferences relating to consumer pricing could become a form of rate regulation. TCA also commented that care must be taken to avoid rules that morph preferences into price regulation. While acknowledging that evaluating affordability is an acceptable objective for the program, TCA reiterated its comments regarding Government Code, §490I.0103, which prohibits the comptroller from regulating broadband service providers. TCA further expounded on this theme, referencing Utilities Code, §52.002(d), which prohibits the state from directly or indirectly regulating the rates charged for any broadband-enabled service. TCA noted that courts have held in related contexts that statutory prohibitions against rate regulation apply where a state either (1) specifies the rates that must be charged for specific levels of service or (2) freezes prices or restricts providers from adjusting rates in certain ways. Consequently, TCA argued that adoption of *any* specific price point or setting any sort of price cap would amount to impermissible rate regulation under both analyses. Further, TCA recommended that the comptroller align any evaluation of affordability with the Affordable Connectivity Program, a federal subsidy program aimed to assist eligible households afford internet service, and to permit applicants to specify their own framework to meet affordability requirements. The comptroller disagrees with these comments to the extent that they suggest that the comptroller may not by rule establish a preference that considers affordability because doing so is, in effect, indirect rate regulation. The comptroller notes that the proposed rule neither sets specific rates that must be charged for specific levels of service nor sets a price cap. Further, the comptroller reiterates that participation in the broadband development program is voluntary and that setting a condition for receiving a grant through the program cannot be considered rate regulation. For these reasons, the comptroller declines to make changes to the proposed rule based on these comments.

TCA argued against §16.40(b)(12) which it believes provides the comptroller virtually unlimited discretion to apply preferences to application based on its own determinations. TCA suggested this language is unnecessarily redundant and would leave applicants without certainty or guardrails as to how proposals will be evaluated. They further suggested that if additional factors are to be considered, stakeholders should be given the opportunity to provide comments prior to issuance of a NOFA. The comptroller disagrees that the discretion provided by §16.40(b)(12) is unfettered. The proposed rule limits the discretion of the BDO to apply preferences based on its own determinations by requiring the office to publish criteria in a NOFA. And contrary to the assertion that the proposed rule will result in uncertainty as to how proposals will be evaluated, the publication requirement provides applicants with notice of the evaluation criteria the office will use. Finally, the comptroller does not agree with the suggestion that stakeholders should be given the opportunity to provide comments prior to issuance of a NOFA. The comptroller believes that permitting stakeholder participation may act to prevent open and fair competition by allowing potential grant recipients to participate in drafting grant requirements prior to issuance. The comptroller believes that the question and answer process following the issuance of a NOFA already allows stakeholders to request clarification as to how proposals will be evaluated. For these reasons, the comptroller declines to make changes based on this comment.

The comptroller received several comments regarding §16.40(c) including comments from TCA, Tekwav, Verizon and WISPA. TCA disfavored adoption of a rule that allows consideration of alternative technologies that are proposed for high-cost areas and that may be deployed at a lower cost than fiber technology. TCA noted that under this provision there would be no definition for a high-cost area that would constrain the section. TCA also pointed out that federal programs do not require or encourage non-fiber projects and evidence a clear intent to support fiber-based projects. TCA further argued that adoption of a high-cost threshold would harm the ability of the BDO to maximize fiber deployment. Therefore, TCA encouraged the comptroller to coordinate the use of state funds with the federal BEAD program by pursuing a fiber-only goal for state funds and leaving non-fiber technology to be available only through the BEAD program for areas above the extremely high-cost threshold established under that program.

Contrarily, Verizon, Tekwav and WISPA supported adoption of §16.40(c). Verizon noted the importance of the rule in ensuring different technologies be employed to provide broadband coverage in Texas. WISPA recognized the proposed rule as a first step in preserving the BDO's ability to consider the benefits of these alternative technologies without sacrificing the prioritization of fiber projects. WISPA extoled the benefit of preserving the flexibility to consider alternative technologies, noting that fixed wireless could be built at a fraction of the capital costs over a shorter time span. However, these commenters suggested that the proposed rule should be expanded to fully meet the directives set out in Senate Bill 1238. Verizon commented that the proposed language fails to fully comport with Senate Bill 1238 because the proposed rule only allows an alternative technology application to be considered if it is both for a high-cost area and offered at a lower cost than fiber whereas the statutory language is written disjunctively. All three commenters also observed that the statutory language contemplates the use of alternative technologies where, in addition to being proposed for a high-cost area and available at a lower cost, the technologies also meet the technical criteria established by the office including speed, latency, reliability, consistency, and scalability. Therefore, these commenters recommended enumerating and including in the rule the criteria outlined in the statute that would further expand the office's scope to appropriately consider fiber alternatives.

The comptroller appreciates the important viewpoints raised in these comments. The comptroller respectfully disagrees with TCA's suggestion that the comptroller should not adopt §16.40(c). While Senate Bill 1238 establishes a clear mandate for fiber-based projects, it also contemplates the need to consider non-fiber projects and gives the comptroller the flexibility to consider alternative technologies in the appropriate circumstances. As other commenters observed, Texas is a large state with large swaths of rural land that make it hugely challenging to implement fiber connectivity. This difficulty necessitates the need to consider other types of technology capable of delivering high-speed and affordable broadband service. Therefore, the comptroller agrees with commenters who supported the proposed rule as preserving the ability to consider the benefits of alternative technologies in appropriate circumstances without sacrificing the prioritization of fiber projects. Similarly, the comptroller believes that pursuing, as TCA suggests, a fiber-only strategy for state funds runs counter to the legislative

intent to prioritize but not mandate fiber-based projects where a proposed project fulfills the circumstances contemplated by the legislature. The comptroller also agrees with commenters who urged the comptroller to more closely adhere to the statutory language and expand the flexibility to appropriately consider fiber alternatives. The comptroller adopts the proposed rule with changes to correct the conjunctive language used in the proposed rule and more closely track the statutory language regarding the technical criteria the office may prescribe to consider fiber alternatives.

TCA also advocated for the comptroller to replace the proposed §16.40(c) with a new rule to ensure that no eligibility criteria would be indirectly used to regulate the rates, terms, and conditions for broadband service offerings in a project area. TCA strongly expressed its opinion that the legislature has been clear that the BDO should not be an avenue for increased broadband regulation and urged the comptroller to adopt a rule that explicitly states its intent not to engage in regulation. The comptroller appreciates TCA for raising this important issue. The comptroller agrees that Government Code, §490I.0103, makes clear that the comptroller is not granted the authority to regulate broadband service and broadband service providers; however, for the reasons previously discussed, the comptroller does not believe that the setting of evaluation criteria for the receipt of grant funds either directly or indirectly regulates the rates, terms, and conditions for broadband service offerings because participation in the program is voluntary. The comptroller is entitled to set evaluation criteria for the application for public funds and broadband service providers are entitled to seek public funds if they are willing to be evaluated by those criteria. Broadband service providers who do not seek to fund projects with taxpayer dollars are in no way regulated by conditions outlined by the BDO within a NOFA. Because nothing in the rules purports to broadly regulate broadband services or broadband service providers and the statute is unambiguous that the comptroller is not granted such authority, the comptroller does not believe that it needs to clarify its intent to refrain from unauthorized industry regulation.

The comptroller also received comments from TCA and TTA regarding §16.41. TCA urged the comptroller to amend §16.41(a) to add pre-existing service as a basis for submitting an application protest to avoid spending limited resources to overbuild existing service. TCA also commented that the comptroller should amend the proposed rule to make clear that, in addition to the existence of federal commitments, challenges may also be submitted due to pre-existing state and local commitments to expand broadband service to a location. TTA also agreed that the comptroller should allow challenges based on pre-existing state and local commitments. TTA advocated for modifying the term "existing federal commitment" to encompass both state and local commitments to reduce wasted funding on locations that would be served by other means. In addition, TTA also recommended adding to the concept of federal, state, or local commitments to include private planned service commitments. TTA reiterated its comments regarding adding a new definition for "planned service commitment" that would allow a challenge based on another provider's existing plans to provide qualifying broadband service within a reasonable time to the location as indicated in construction contracts or similar documents or permits showing ongoing deployment, or as indicated in contracts or a similar binding agreement. While the comptroller agrees with the goal of avoiding duplicative spending, the comptroller disagrees with recommendations to allow interested parties to use application challenges for that purpose. For example, TCA urged the comptroller to add pre-existing service at a location as a basis for protest but the question of whether a broadband serviceable location is served or unserved is already subject to challenge through the map challenge process. The comptroller similarly disagrees with comments urging the comptroller to amend the rule based on state or local commitments and planned service. The comptroller is statutorily required to classify each broadband serviceable location based on its *current* access to reliable broadband service. Except for existing federal commitments to deploy broadband service which are statutorily prohibited from receiving program funds, the comptroller does not believe it has the authority stretch the plain and ordinary meaning of "access" to include promises or commitments of future availability of broadband service within that meaning. Therefore, the comptroller declines to amend the proposed rule based on these comments.

TCA also requested that the comptroller amend the language in §16.41(a)(3) to clarify that challenges may be raised based on criteria prescribed either by rule or in a NOFA. The comptroller agrees with this comment and adopts the proposed rule with changes accordingly.

The comptroller received comments from GVEC and TCA proposing that the comptroller amend §16.42(a) to extend the timeline to sign the grant agreement due to the complexity of the documents and factors that may be outside the control of the grant recipient. The comptroller does not believe extending the completion time across the board is warranted and notes that the rule currently permits the BDO to extend the deadline to fully execute the grant agreement on a case-by-case upon a showing of good cause by a grant recipient. Therefore, the comptroller declines to amend the proposed rule based on these comments.

TCA commented that §16.42(b) reflects language in Government Code, §490I.01069(h) which provides that awards may only be used "for capital expenses, purchase or lease of property, and other expenses, including backhaul and transport, that will facilitate the provision or adoption of broadband service." TCA requested, however, that explicitly including labor and make-ready costs in the list of allowable expenses would provide helpful certainty. The comptroller disagrees with this comment. The comptroller does not believe a change to the proposed rule is necessary because the cost accounting standards applicable to grants are dependent on the funding source and will be addressed in the applicable grant agreements. Accordingly, the comptroller declines to make changes to the proposed rule based on this comment.

TTA submitted a comment regarding §16.42(b) in which it reiterated its comments regarding usage of the term "broadband service" which it argued should be adjusted to its proposed definition for "qualifying broadband service." For the reasons previously discussed, the comptroller does not agree with this comment and declines to make changes to the proposed rule based on this comment.

The amendments are adopted under Government Code, §490I.0109, which permits the comptroller to adopt rules as necessary to implement Chapter 490I regarding the Texas Broadband Development Office.

The amendments implement Government Code, Chapter 490I.

§16.30. Definitions.

As used in this subchapter and in these rules, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A person that has submitted an application for an award under this subchapter.

(2) Application protest period--A period of at least thirty days beginning on the first day after an application is posted under §16.36(d) of this subchapter.

(3) Broadband development map--The map adopted or created under Government Code, §490I.0105.

(4) Broadband service--Internet service that delivers transmission speeds capable of providing:

(A) a download speed of not less than 25 Mbps; or

(B) an upload speed of not less than three Mbps; and

(C) network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements.

(5) Broadband serviceable location--A business or residential location in this state at which broadband service is, or can be, installed, including a community anchor institution.

(6) Census block--The smallest geographic area for which the U.S. Bureau of the Census collects and tabulates decennial census data as shown on the most recent on Census Bureau maps.

(7) Commercial broadband service provider--A broadband service provider engaged in business intended for profit, a telephone cooperative, an electric cooperative, or an electric utility that offers broadband service or middle-mile broadband service for a fare, fee, rate, charge, or other consideration.

(8) Community anchor institution--An entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

(9) Designated area--A census block or other area as determined under §16.21 of this subchapter.

(10) Grant funds--Grants, low-interest loans, and other financial incentives awarded to applicants under this subchapter for the purpose of expanding access to and adoption of broadband service.

(11) Grant recipient--An applicant who has been awarded grant funds under this subchapter.

(12) Mbps--Megabits per second.

(13) Middle mile infrastructure--Any broadband infrastructure that does not connect directly to an end-user location, including a community anchor institution. The term includes:

(A) leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and

(B) wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links.

(C) The term does not include provision of Internet service to end-use customers on a retail basis.

(14) Non-commercial broadband service provider--A broadband service provider that is not a commercial broadband service provider.

(15) Office--The Broadband Development Office created under Government Code, §490I.0102.

(16) Project area--The area, consisting of one or more broadband serviceable locations, identified by an applicant in which the applicant proposes to deploy broadband service or middle mile infrastructure.

(17) Public school--A school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12 and is operated by a governmental entity.

(18) Qualifying broadband service--Broadband service that meets the minimum speed, latency and reliability thresholds prescribed by the office in each applicable notice of funds availability.

(19) Reliable broadband service--Broadband service that is accessible to a location via:

(A) fiber-optic technology;

(B) Cable Modem/ Hybrid fiber-coaxial technology;

(C) digital subscriber line (DSL) technology; or

(D) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

(20) Served location--A broadband serviceable location that has access to reliable broadband service that exceeds the minimum threshold for an underserved location or a location that is subject to an existing federal commitment to deploy qualifying broadband service.

(21) Underserved location--A broadband serviceable location that has access to reliable broadband service but does not have access to reliable broadband service with the capability of providing:

(A) a download speed of not less than 100 Mbps;

(B) an upload speed of not less than 20 Mbps; and

(C) a network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements as established under Government Code, §490I.0101.

(22) Unserved location--A broadband serviceable location that does not have access to reliable broadband service.

§16.36. Application Process Generally.

(a) No award for competitive grant funding will be disbursed by the office except pursuant to an application submitted in accordance with this subchapter.

(b) An application for funding under this subchapter shall be submitted on the forms and in the manner prescribed by the office. The office may require that applications be submitted electronically.

(c) Prior to publication of application information pursuant to Government Code, §490I.0106(e), the office may undertake an examination to determine whether the application appears on its face to comply with applicable program requirements. The office may reject and take no further action on an application that does not appear to comply with applicable program requirements on its face.

(d) The office shall for a period of at least 30 days publish on its website information from each accepted application, including the applicant's name, the project area targeted for expanded broadband service access or adoption by the application, and any other information the office considers relevant or necessary. The information will remain on the website for a period of at least 30 days before the office makes a decision on the application.

(e) During the 30-day application protest period described by subsection (d) of this section for an application, the office shall accept from any interested party a written protest of the application relating to whether the applicant or project is eligible for an award or should not receive an award based on the criteria prescribed by the office. A protest of an application must be submitted as provided under §16.41 of this subchapter.

(f) Notwithstanding any deadline for submitting an application, if the office upholds a protest on the grounds that one or more of the broadband serviceable locations in a project area is not eligible to receive funding, the applicant may resubmit an amended application as provided under §16.41 of this subchapter without the challenged broadband serviceable locations not later than 30 days after the date that the office upheld the protest. An amended application may not include additional areas or broadband serviceable locations not already included in the original application.

(g) If the office upholds a protest and the applicant resubmits an application in accordance with subsection (f) of this section, the resubmitted application is not subject to further protest.

(h) For the purposes of this section "interested party" means a person, including an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity, that resides, is located, or conducts business in the project area subject to protest and also includes a broadband service provider that is not located in the project area but who proposes to provide broadband service in the project area.

(i) Notwithstanding subsection (e) of this section, a broadband service provider who has not provided information requested by the office under Government Code, §490I.0105 or §490I.01061, may not submit a protest of an application made under this subchapter.

§16.37. Overlapping Applications or Project Areas.

(a) Except as provided under §16.38 of this subchapter, if at the close of the application period the office has received multiple applications that propose to provide broadband service to the same broadband serviceable locations, the office shall, prior to publishing information regarding the applications as required by §16.36 of this subchapter, resolve the overlapping areas to ensure that the award of grant funds are not duplicated for a broadband serviceable location.

(b) The office shall resolve overlapping applications; by evaluating each impacted application independently; and the office shall:

(1) score each impacted application and the application receiving the highest score shall proceed to grant funding consideration with its project area locations intact; and

(2) remove the overlapping project locations from the lower scored applications and provide notice to the impacted applicants that the overlapping project locations have been removed from the application.

(c) The office shall provide notice of a determination made by the office under subsection (b) of this section to each affected applicant including notice of the right, if any, to submit an amended application under subsection (e) of this section.

(d) If removing overlapping project locations as provided under subsection (b) of this section results in the application retaining less than 50% of the broadband serviceable locations originally proposed for the project area, the office shall contact the applicant to determine whether the applicant wants to proceed with a substantially reduced application and the office shall take into account this preference when determining whether to remove the application from further consideration. The office may, notwithstanding the preference of an applicant to proceed with a substantially reduced application, at its sole direction, remove the application from grant funding consideration.

(e) If the office removes an overlapping location from an application, an applicant may amend and resubmit an application without the overlapping location if:

(1) The remaining number of broadband serviceable locations in the project area is greater than 50% of the broadband serviceable locations originally proposed for the project area; or

(2) The remaining number of locations in the application is less than 50% of the broadband serviceable locations originally proposed for the project area and the application has not been removed from grant funding consideration under subsection (d) of this section.

(f) If an amended application without the overlapping locations is not received by the office by the 10th business day after an applicant receives notice that it may amend its application under subsection (c)(2) of this section, the office may remove the application from grant funding consideration.

§16.40. Evaluation Criteria.

(a) The office shall establish the eligibility and award criteria applicable for each round of competitive grant funding by publishing the criteria in a notice of funds availability as provided by §16.31 of this subchapter. In establishing eligibility and award criteria, the office shall:

(1) prioritize applications that expand access to and adoption of broadband service in designated areas in which the highest percentage of broadband serviceable locations are unserved or underserved locations;

(2) prioritize applications that expand access to broadband service in public and private primary and secondary schools and institutions of higher education;

(3) prioritize applications that connect end-user locations with end-to-end fiber optic facilities that meet speed, latency, reliability, consistency, scalability, and related criteria as the office shall determine;

(4) give preference to applicants that provide the information requested by the office under Government Code, §490I.0105 and §490I.01061; and

(5) take into consideration whether an applicant has forfeited federal funding for defaulting on a project to deploy qualifying broadband service.

(b) In addition to the evaluation criteria provided under subsection (a) of this section, the office may include and provide preferences for the following evaluation criteria in the notice of funds availability:

(1) application participant(s) experience;

(2) technical specifications including broadband transmission speeds (Mbps upload and download) that will be deployed as a result of the project;

(3) estimated project completion date;

(4) the availability of matching funds including amount, percentage, and source of matching funds;

(5) cost effectiveness and overall impact as measured by the total project cost, the total number of prospective broadband service locations to be served by the project, the proportion of unserved and underserved locations to be served by the project compared to the number

of serviceable locations within the designated area(s) the project is located, the proportion of recipients to be served by the project compared to the population of the designated area(s) in which the project is located, and the project cost per prospective broadband service recipient;

(6) geographic location including, but not limited to, rural areas where because of population density the cost of broadband expansion is characterized by disproportionately high capital and operational costs;

(7) community, non-profit, or cooperative support or participation in the project;

(8) affordability of broadband services in the areas in which the proposed project is located prior to the deployment of broadband services as a result of the project;

(9) consumer price of broadband services that applicant proposes to deploy as a result of the project;

(10) participation in federal programs that provide low-income consumers with subsidies for broadband services;

(11) small business and historically underutilized business involvement or subcontracting participation; and

(12) any additional factors the office may determine are necessary to further the expansion and adoption of broadband service.

(c) Notwithstanding subsection (a)(3) of this section, the office may consider an application for a broadband infrastructure project that does not employ end-to-end fiber optic facilities if the use of an alternative technology:

(1) is proposed for a high-cost area;

(2) may be deployed at a lower cost than deploying fiber optic technology; or

(3) meets the speed, latency, reliability, consistency, scalability, and related criteria as the office shall determine for each applicable notice of funds availability.

§16.41. Application Protest Process.

(a) The office shall publish on the office's website criteria and requirements for submitting a challenge under this section. An application protest may only be made on the following basis:

(1) the applicant is ineligible to receive an award;

(2) the application contains broadband serviceable locations that are not eligible to receive funding because of an existing federal commitment to deploy qualifying broadband service to the location; or

(3) the project is ineligible to receive or should not receive an award based on the criteria prescribed by the office as provided by §16.40(a) of this subchapter.

(b) A protest submitted under this section shall be submitted electronically in the manner and on the forms prescribed by the office and shall be accompanied by all relevant supporting documentation. The protesting party bears the burden to establish that an applicant or project should not receive or is ineligible for an award based on the criteria prescribed by the office.

(c) The office shall review the protest and make a determination as to whether the protest should be upheld. The office shall provide notice of its determination to each affected applicant, including the right, if any, to submit an amended application under subsection (d) of this section.

(d) If the office upholds a protest on the basis that one or more broadband serviceable locations are not eligible to receive funding under the criteria prescribed by the office, an applicant may amend and resubmit an application without the challenged locations and re-scope the application or project area if, after the protest is upheld:

(1) the remaining number of broadband serviceable locations in the project area is greater than 50% of the original number of locations in the project area; or

(2) the remaining number of broadband serviceable locations in the project area is less than 50% of the original number of locations in the project area and the office permits, at its sole discretion, the applicant to amend the application.

(e) If an amended application without the challenged locations is not received by the office by the 30th day after receiving notice of the determination under subsection (c) of this section, the office may remove the application from grant funding consideration.

(f) A determination made by the office under this section is not a contested case for purposes of Government Code, Chapter 2001.

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

Filed with the Office of the Secretary of State on March 4, 2024.

TRD-202400957
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: March 24, 2024
Proposal publication date: October 13, 2023
For further information, please call: (512) 475-2220

SUBCHAPTER B. BROADBAND DEVELOPMENT PROGRAM

34 TAC §16.33, §16.34

The Comptroller of Public Accounts adopts the repeal of §16.33, concerning designated area eligibility, and §16.34, concerning designated area reclassification, without changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5963). The rules will not be republished.

The comptroller will adopt new §16.21, concerning the broadband development map, §16.22, concerning map challenges and criteria, §16.23, concerning the challenge process and deadlines, and §16.24, concerning map challenge determinations, in a separate rulemaking to replace §16.33 and §16.34. These new sections will implement changes to Government Code, §490I.0109, made by Senate Bill 1238, 88th Legislature, R.S. 2023, and will be located in Subchapter B, in new Division 1 (Broadband Development Map).

The comptroller also renames Subchapter B as Texas Broadband Development Office.

The comptroller received a single comment from the Texas Cable Association expressing support for the repeal and replacement of §16.33 and §16.34.

The repeals are adopted under Government Code, §490I.0109, which permits the comptroller to adopt rules as necessary to im-

plement Chapter 490I regarding the Texas Broadband Development Office.

The repeals implement Government Code, Chapter 490I.

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

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TRD-202400955
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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Proposal publication date: October 13, 2023
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS

37 TAC §215.13

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §215.13, Risk Assessment, with non-substantive changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7879). The rule will be republished.

This adopted amended rule allows for a training provider's licensing examination passing rate to be calculated across all exam attempts, instead of only first attempts by students. This will encourage training providers to provide further educational support for students while continuing to maintain minimum standards for licensing examinations.

No comments were received regarding adoption of the amendment as proposed.

The amended rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority and §1701.254, Risk Assessment and Inspections. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.254 requires the Commission to adopt rules to establish a system for placing a training provider on at-risk probationary status, which includes prescribing the criteria to be used by the Commission in determining whether to place a training provider on at-risk probationary status.

The amended rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.254, Risk Assessment and Inspections. No other code, article, or statute is affected by this adoption.

§215.13. Risk Assessment.

(a) A training provider may be found at risk and placed on at-risk probationary status if:

(1) for those providing licensing courses, the passing rate on a licensing exam for all attempts for any three consecutive state fiscal years is less than 80 percent of the students attempting the licensing exam;

(2) courses taught by academic alternative providers are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) commission required learning objectives are not taught;

(4) lesson plans for classes conducted are not on file;

(5) examination and other evaluative scoring documentation is not on file;

(6) the training provider submits false reports to the commission;

(7) the training provider makes repeated errors in reporting;

(8) the training provider does not respond to commission requests for information;

(9) the training provider does not comply with commission rules or other applicable law;

(10) the training provider does not achieve the goals identified in its application for a contract;

(11) the training provider does not meet the needs of the officers and law enforcement agencies served; or

(12) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(b) A training provider may be found at risk and placed on at-risk probationary status if:

(1) the contractor provides licensing courses and fails to comply with the passing rates in subsection (a)(1) of this section;

(2) lesson plans for classes conducted are not on file;

(3) examination and other evaluative scoring documentation is not on file;

(4) the provider submits false reports to the commission;

(5) the provider makes repeated errors in reporting;

(6) the provider does not respond to commission requests for information;

(7) the provider does not comply with commission rules or other applicable law;

(8) the provider does not achieve the goals identified in its application for a contract;

(9) the provider does not meet the needs of the officers and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(c) An academic alternative provider may be found at risk and placed on at-risk probationary status if:

(1) the academic alternative provider fails to comply with the passing rates in subsection (a)(1) of this section;

(2) courses are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) the commission required learning objectives are not taught;

(4) the program submits false reports to the commission;

(5) the program makes repeated errors in reporting;

(6) the program does not respond to commission requests for information;

(7) the program does not comply with commission rules or other applicable law;

(8) the program does not achieve the goals identified in its application for a contract;

(9) the program does not meet the needs of the students and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of education or failure to meet education needs for the service area.

(d) If at risk, the chief administrator of the sponsoring organization, or the training coordinator, must report to the commission in writing within 30 days what steps are being taken to correct deficiencies and on what date they expect to be in compliance.

(e) The chief administrator of the sponsoring organization, or the training coordinator, shall report to the commission the progress toward compliance within the timelines provided in the management response as provided in subsection (d) of this section.

(f) The commission shall place providers found at-risk on probationary status for one year. If the provider remains at-risk after a 12-month probationary period, the commission shall begin the revocation process. If a provider requests a settlement agreement, the commission may enter into an agreement in lieu of revocation.

(g) A training or educational program placed on at-risk probationary status must notify all students and potential students of their at-risk status.

(h) The effective date of this section is April 1, 2024.

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

Filed with the Office of the Secretary of State on March 8, 2024.

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Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
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Proposal publication date: December 22, 2023
For further information, please call: (512) 936-7700

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CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.1

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §217.1, Minimum Standards for Enrollment and Initial Licensure, with non-substantive changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8189). The rule will be republished.

This adopted amended rule conforms with the addition of Texas Occupations Code §1701.3095 and the amendment to Texas Occupations Code §1701.451 made by Senate Bill 252 (88R). Texas Occupations Code §1701.3095 requires the Commission to issue a license to an otherwise qualified legal permanent resident of the United States who is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge and has applied for United States citizenship. Texas Occupations Code §1701.451(a)(3)(B)(x) requires law enforcement agencies, before hiring a licensee, to obtain and review proof that the licensee is a United States citizen or a legal permanent resident of the United States who is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge and has applied for United States citizenship.

This adopted amended rule also conforms with the amendment to Texas Occupations Code §1701.310 made by House Bill 2183 (88R). Texas Occupations Code §1701.310(b)-(b-3) allows for a county jailer appointed on a temporary basis to have their temporary appointment extended for six months by the Commission under certain conditions and allows for a person whose county jailer license has become inactive to be appointed as a county jailer on a temporary basis.

One comment was received supporting the adoption of the amendment as proposed. State Senator Carol Alvarado, the author of Senate Bill 252 (88R), appreciates the Commission's diligent efforts to implement the bill.

The amended rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The amended rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.3095, Licensing of Certain Veterans Who Are Legal Permanent Residents, §1701.310, Appointment of County Jailer; Training Required, and §1701.451, Preemployment Procedure. No other code, article, or statute is affected by this adoption.

§217.1. Minimum Standards for Enrollment of Initial Licensure.

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation, acceptable to the Commission, that the individual meets eligibility for licensure.

(b) The commission shall issue a license to an applicant who meets the following standards:

(1) minimum age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

(i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or

(ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers and telecommunicators is 18 years of age;

(2) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level;

(B) holds a high school diploma; or

(C) for enrollment purposes in a basic peace officer academy only, has an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) has never been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) has never been convicted or placed on community supervision in any court of an offense involving family violence as defined under Chapter 71, Texas Family Code;

(8) for peace officers, is not prohibited by state or federal law from operating a motor vehicle;

(9) for peace officers, is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation completed by the enrolling or appointing entity into the applicant's personal history. A background investigation shall include, at a minimum, the following:

(A) An enrolling entity shall:

(i) require completion of the Commission-approved personal history statement; and

(ii) verify that the applicant meets each individual requirement for licensure under this rule based on the personal history statement and any other information known to the enrolling entity; and

(iii) contact all previous enrolling entities.

(B) In addition to subparagraph (A) of this paragraph, a law enforcement agency or law enforcement agency academy shall:

(i) require completion of the Commission-approved personal history statement; and

(ii) meet all requirements enacted in Occupations Code 1701.451, including submission to the Commission of a form confirming all requirements have been met. An in-person review of personnel records is acceptable in lieu of making the personnel records available electronically if a hiring agency and a previous employing law enforcement agency mutually agree to the in-person review.

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code § 501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has never received a dishonorable discharge from the armed forces of the United States;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) is a U.S. citizen or is a legal permanent resident of the United States, if the person is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge and presents evidence satisfactory to the commission that the person has applied for United States citizenship.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) A person must meet the training and examination requirements:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course(s);

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s);

(4) training for telecommunicator license consists of telecommunicator course; and

(5) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency; or

(3) on failure to comply with the terms stipulated in the provisional license approval.

(g) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. A jailer appointed on a temporary basis shall be enrolled in a basic jailer licensing course on or before the 90th day after their temporary appointment. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license may not be renewed, except that the sheriff may petition the commission to extend the temporary appointment for a period not to exceed six months. A temporary jailer license expires:

(1) 12 months from the original appointment date;

(2) at the end of a six-month extension, if granted; or

(3) on completion of training and passing of the jailer licensing examination.

(h) A person who has previously been issued a temporary jailer license and separated from that position may be subsequently appointed on a temporary basis as a county jailer at the same or a different county jail only if the person was in good standing at the time the person separated from the position.

(i) A person who has cumulatively served as a county jailer on a temporary basis for two years may continue to serve for the remainder of that temporary appointment, not to exceed the first anniversary of the date of the most recent appointment. The person is not eligible for an extension of that appointment or for a subsequent appointment on a temporary basis as a county jailer at the same or a different county jail until the first anniversary of the date the person separates from the temporary appointment during which the person reached two years of cumulative service.

(j) A person whose county jailer license has become inactive may be appointed as a county jailer on a temporary basis.

(k) The commission may issue a temporary telecommunicator license, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator license. A temporary telecommunicator license expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the telecommunicator licensing examination. On expiration of a temporary license, a person is not eligible for a new temporary telecommunicator license for one year.

(l) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(m) The effective date of this section is April 1, 2024.

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

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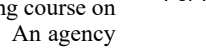

CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §218.3, Legislatively Required Continuing Education for Licensees, with non-substantive changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7881). The rule will be republished.

This adopted amended rule conforms with the addition of Texas Occupations Code §1701.3525 made by Senate Bill 1852 (88R). Texas Occupations Code §1701.3525 requires that officers complete not less than 16 hours of training on responding to an active shooter as part of the officer's required 40 hours of continuing education every 24 months.

No comments were received regarding adoption of the amendment as proposed.

The amended rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The amended rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.351, Continuing Education Required for Peace Officers, and §1701.3525, Active Shooter Response Training Required for Officers. No other code, article, or statute is affected by this adoption.

§218.3. Legislatively Required Continuing Education for Licensees.

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years)

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit. Peace officers shall complete not less than 16 hours of training on responding to an active shooter as developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University-San Marcos.

(2) Telecommunicators shall complete at least 20 hours of continuing education to include cardiopulmonary resuscitation training.

(c) Each training cycle (4 years)

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939), Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislatively required training under another commission license or certificate.

(d) Assignment specific training

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable; and

(B) Each 48 month cycle, at least 40 hours of continuing education for constables, as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment.

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270) within 2 years of being licensed.

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065) within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is April 1, 2024.

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

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CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.46

The Texas Commission on Law Enforcement (Commission) adopts new 37 Texas Administrative Code §221.46, Active Shooter Training for Public Schools and Institutions of Higher Education, with non-substantive changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7883). The rule will be republished.

This adopted new rule conforms with the addition of Texas Occupations Code §1701.2515 made by Senate Bill 999 (88R). Texas Occupations Code §1701.2515 requires that individuals and legal entities that provide active shooter training to peace officers of students or employees at a public primary or secondary school or institution of higher education be certified by the Commission to provide the training.

No comments were received regarding adoption of the amendment as proposed.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.2515, Certificate Required to Provide Active Shooter Training at Public Schools and Institutions of Higher Education. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.2515 requires the Commission to establish a certification program for providers of active shooter training and adopt rules for the renewal of a certificate.

The new rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.2515, Certificate Required to Provide Active Shooter Training at Public Schools and Institutions of Higher Education. No other code, article, or statute is affected by this adoption.

§221.46. Active Shooter Training for Public Schools and Institutions of Higher Education.

(a) To qualify for an Active Shooter Training Instructor certificate under Texas Occupations Code § 1701.2515, an individual must possess a current TCOLE Instructor Proficiency Certificate, complete an active shooter training instructor course approved by the commission, and complete any required application. The certificate expires two years from the date of issuance. An individual may apply for renewal of the certificate by providing proof the applicant has completed eight hours of continuing education related to law enforcement response to active shooter events.

(b) To qualify as an Active Shooter Training Provider under Texas Occupations Code § 1701.2515, a training provider must complete an application and show proof that the training provider employs appropriate training staff that possess a current Active Shooter Training Instructor certificate described in §221.46(a). The certificate expires two years from the date of issuance.

(c) The effective date of this section is April 1, 2024.

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

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